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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-08-1996

Reported in : (1996)(88)ELT123TriDel

Appellant : High-tech Carbon

Respondent : Collector of Central Excise

Judgement :

1. The appeal is directed against Order-in-Appeal No. 111/CE/ALLD/93, dated 23-9-1993 passed by Collector of Central Excise, Allahabad upholding the Order-in-Original No. 13/93, dated 25-5-1993 passed by Assistant Collector of Central Excise, Mirzapur Central Excise Division whereby the latter had held the appellants to be not eligible for Modvat Credit on Caustic Soda and Hydrochloric Acid claimed by them to be inputs in relation to the manufacture of their final product, Carbon Black.

2. Shri S. Madhavan, learned Chartered Accountant appeared for the appellants. He submitted that the inputs in question are used by them in their demineralisation plant where water is purified and boiled to produce steam. The lower authorities have erroneously concluded that such use of the inputs in question is not in or in relation to the manufacture of Carbon Black, their final product but only in the maintenance of plant and machinery. He referred to the Tribunal decisions in the case of Straw Products Limited v. Collector of Central ExciseIndian Explosives Limited v. Collector of Central ExciseAndhra Pradesh Paper Mills v.Collector of Central Excise 3. The arguments were resisted by the learned Departmental

Representative who pleaded that the appeal may be dismissed and the order-in-appeal upheld.4. I have considered the submissions and perused the record. I find that the Collector (Appeals) has held that caustic soda and hydrochloric acid are admittedly used for maintenance of plant and machinery and hence cannot be called inputs within the definition of Rule 57A of Central Excise Rules, 1944. He has then observed that the inputs used in the maintenance of plant and machinery have specifically been excluded from the definition of inputs as per Rule 57A and hence the appellants were not entitled to avail Modvat credit on such inputs.

He has then proceeded to observe that these inputs are not directly consumed for manufacture of finished goods and that these are also not used in or in relation to the manufacture of finished goods but only for maintenance of plant and machinery. He has observed in conclusion that these items have no direct or indirect nexus with the production of carbon black and hence they cannot be taken to have been used in or in relation to the manufacture of such final product.

5. The observation that inputs used in the maintenance of plant and machinery have specifically been excluded from the purview of the expression inputs used in Rule 57A is not factually correct. What stand so excluded from the scope of the expression "inputs" are items, like machines, machinery equipment etc. and not items used in the maintenance of plant and machinery. During the arguments, Shri Madhavan specifically contested the observation in the order that caustic soda and hydrochloric acid are admittedly used for maintenance of plant and machinery. He contended that there was no such admission on their part.

The purpose of using the disputed item in their demineralisation plant is to obtain demineralised water which is used to produce steam. Some quantity of steam is directly used as input in the manufacture of the final product by reacting with the feed stock. As regards the finding that these inputs are not directly consumed for the manufacture of the finished products, it is to be noted that the modvat provisions do not require that the materials in order to qualify for modvat benefit should be directly consumed. The requirement is that these should be used in or in relation to the manufacture of the final products. The scope of the expression "in relation to the manufacture of final product" came up for decision recently before the Larger Bench of the Tribunal in Shri Ramakrishna Steel Industries Limited v. Collector of Central Excise, Madras -1996 (82) E.L.T. 575 (Tribunal). The relevant observations in this regard in the said decision are as follows :- "14. We are here dealing with a case where inputs are not necessarily required to be used in the manufacture of final product, but are used "in relation to the manufacture" of the final product, which is an expression of considerably larger import. The word "in relation to the manufacture" are intended to set at rest all doubts.

Where raw material is actually used in the main stream of manufacture of final product, that is, actually used in the physical or chemical process of manufacture, it is certainly an input used in the manufacture of final product. The doubt may arise only in regard to use of some article not in the main stream of the manufacturing process but in another stream of manufacturing something which is to be used for rendering final product marketable or used otherwise in assisting the process of manufacture. Such doubt is set at rest by use of the words "used in relation to the manufacture".

6. The scope of the more restricted expression "use in the manufacture of" itself came up for decision in the case of J.K. Cotton Spinning & Weaving Co. Mills Ltd. v. S.T.O. -1965 (16) STC 563. It was held therein that the expression in the manufacture of goods should normally encompass the entire process of converting raw materials into finished goods. It was further held that where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture or processing of goods would be commercially inexpedient, goods required in that process would fall within the expression in the manufacture of goods. Applying this criterion to the present production of steam is a necessary and essential process in the manufacture of carbon black. From the record I find that the appellants have explained that steam is used by them as follows :- (1) Thermal cracking by atomising of carbon black feedstock by passing it through high pressure steam.

The production of steam by boiling demineralised water in the boiler is thus part of the process of manufacture of carbon black. The use of demineralised water in such boiling is commercially expedient to ensure boiler safety and proper heating process. By not treating the water and removing the dissolved impurities and minerals, the process will become commercially inexpedient. The use of Caustic Soda and Hydrochloric Acid in the demineralisation plant is thus connected with the process of manufacture of carbon black and cannot be treated as an isolated process of maintenance of plant and machinery. To purify and demineralise the water before boiling it to produce steam for the manufacturing process is not the same as maintenance of plant and machinery.

7. For the above mentioned reasons, the impugned Order cannot be sustained. I set aside the same and allow the appeal.