Collector of Central Excise Vs. Mansurpur Sugar Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-21-1996

Reported in : (1996)(87)ELT91TriDel

Appellant : Collector of Central Excise

Respondent : Mansurpur Sugar Mills Ltd.

Judgement :

1. In the above case Revenue is aggrieved by the order passed by the Collector. (Appeals) extending benefit of Modvat credit on cane unloader used by the respondents in their sugar factory. The respondents claim that parts of the cane unloader are capital goods within the meaning of Rule 57Q of the Central Excise Rules, 1944 has been accepted by the lower Appellate Authority.

2. I have heard Shri M. Jaya Raman, learned DR and Shri Alok Arora, learned counsel and carefully considered the rival submissions.

3. The manufacture of sugar in the respondent's factory commences with the unloading of cane from truck, cart etc. to the conveyor belt which in turn feds it to their Sugar Crusher. The process of manufacture of sugar is an integral and continuous one as borne out from flow chart which is appended to this order as Annexure A. The case of the department is that cane unloader is nothing but a material handling equipment and is hence not a machine used for production of processing of any goods covered by the explanation to Rule 57Q. DR relies upon the order of the Tribunal in the case of TELCO Ltd. v. C.C.E., Pune - 1994 (70)

E.L.T. 75 wherein Tribunal has held that material handling equipments do not fall under the category of machine or machinery used for production of processing of any goods for the purpose of determining admissibility of Notification No. 217/86. On the other hand, the respondents submit that their case is fully covered by the judgment of the Hon'ble Supreme Court in the case of Collector of Central Excise v. Rajasthan State Chemical Works reported in 1991 (55) E.L.T. 444 (SC) wherein it has been held that preliminary steps like pumping brine and filling the salt pans form integral part of the manufacturing process of crude sodium sulphate even though change in the raw material commences only when evaporation takes place. [Supreme Court was seized of a situation wherein manufacture of sodium sulphate was a continuous process commencing from handling raw materials.] 4. The submissions made by the respondent have great force. In the decision of the Supreme Court cited supra, Supreme Court has held that process of handling/lifting/pumping/transfer/transportation of raw materials is also a process in or in relation to manufacture if it is integrally connected with further operations leading to manufacture of goods. The relevant extract from the judgment is reproduced below :- "16. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the word 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture.

17. The transfer of raw material to the reacting vessel is a preliminary operation but it is part of a continuous process but for which the manufacture would be impossible. The handling of the raw materials for the purpose of such transfer is then integrally connected with the process of manufacture. The handling for the purpose of transfer may be manual or mechanical but if power is used for such operation, it cannot be denied that an activity has been carried on with the aid of

power in the manufacturing process. The use of diesel pump sets to fill the pans with the brine is an activity with the aid of power and that activity is in relation to the manufacture. It is not correct to say that process of manufacture starts only when evaporation starts. The preliminary steps like pumping brine and filling the salt pans form integral part of the manufacturing process even though the change in the raw material commences only when evaporation takes place. The preliminary activity cannot be disintegrated from the rest of the operations in the whole process of manufacture. Similarly, when coke and lime are taken to the platform in definite proportions for the purpose of mixing, such operation is a step in the manufacturing process. It precedes the feeding of the mixture into the kiln where the burning takes place. The whole process is an integrated one consisting of the lifting of the raw materials to the platform mixing coke and lime and then feeding into the kiln and burning.

These operations are so interrelated that without anyone of these operations manufacturing process is impossible to be completed.

Therefore, if power is used in anyone of these operations or anyone of the operations is carried on with the aid of power, it is a case where in or in relation to the manufacture the process is carried on with the aid of power.

22. We are, therefore, of the view that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the aid of power. In this view of the matter, we are unable to accept the contention that since the pumping of the brine into the salt pans or the lifting of coke and lime stone with the aid of power does not bring about any change in the raw material, the case is not taken out of the Notification. The exemption under the Notification is not available in these cases. Accordingly, we allow these appeals. In the facts and circumstances of the case, we make no order as to costs." Even in the case relied upon by the learned DR, the Tribunal has held that it has not been brought out that items involved in the case like gauges and appliances, lifting tackles, trolleys, conveyors manufactured and captively

consumed by the appellants therein, were used for processing of material in the sense as to bring about change therein and so long as that was not established, it could not be held that such inputs were hit by explanation of Notification No. 217/86 for being excluded from exemption. Since in the present case, the process of manufacture of sugar is an integral and continuous process commencing from unloading cane and ending with manufacture of sugar, ratio of the judgment of the Supreme Court applies squarely. Following the ratio thereof, the impugned order is upheld and appeal rejected.

Cross appeal is allowed.