C.C.E. Vs. Goetze India Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-04-1996

Reported in : (1996)(86)ELT513TriDel

Appellant : C.C.E.

Respondent : Goetze India Ltd.

Judgement :

1. This Revenue Appeal is directed against the order in appeal No.228/CE/CHD/95, dated 29-9-1995 passed by Collector (Appeals), Central Excise, Chandigarh.

1.2 The issue that falls for determination is the admissibility or otherwise of Aluminium Oxide used in removing impurities in Aluminium scrap which in turn is used in the manufacture of piston rings, and cylinder liners.

2. Arguing for the Revenue, the Ld. D.R. submits that Aluminium oxide has no direct usage in or in relation to the final product and is used only in preparing raw materials for the manufacture of final product.

In these circumstances, since there is no direct relation with the manufacturing process resulting in the final products, the Modvat credit is not admissible.

3. Arguing for the Respondents, the Ld. Consultant submits that the department itself has been consistently allowing Modvat credit on Aluminium oxide. Aluminium oxide is used in relation [to] the manufacture of final products and enters : the

stream of manufacture at the very first stage itself. The final product cannot be manufactured without the intervention of Aluminium Oxide for it is inconceivable that impurities could be allowed to remain in such precision products like Piston Rings for automobiles.C.C.E. v. Ballarpur Industries Ltd. -1989 (43) E.L.T. 804 (SC) the Hon'ble Apex Court held that Sodium Sulphate used for Chemical reaction at pulp stage is treatable as raw material used in the manufacture of paper even if Sodium Sulphate is burnt up and does not retain identity in the end product. The Hon'ble Apex Court observed that question whether such inputs would qualify themselves as "raw materials" is dependent upon the test, whether the ingredient is so essential for chemical processes culminating in the emergence of the desired end product that having regard to the importance in an indispensability for the process it could be said that ...(sic) consumption or burning up is its quality and value as raw material. In such a case, the relevant test is not its presence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process.C.C.E. v. Eastend Paper Industries Ltd. -1989 (43) E.L.T. 201 (SC) the Hon'ble Apex Court held that anything that enters into and forms part of manufacturing process or is required to make the article marketable must be deemed to be raw material or component part of the end product and must be deemed to have been used in completion or manufacture of the end product.

4.3 Explaining the meaning of the phrase "in relation to", the Tribunal in case of Andhra Pradesh Paper Mills Ltd. v. C.C.E., reported in 1990 (50) E.L.T. 252 (Tri.) held that the expression "in relation to" has to be read in the context of the manufacturing process of the finished goods covered under the Modvat scheme. There may be processes which are preparatory in nature and anterior to the start of the manufacturing stream of the finished product but which have to be essentially carried out before the actual manufacturing process of the goods can start or these may be related to the preparing of the materials which have ultimately to go into the manufacturing stream or in preparing of certain materials which directly or indirectly participate in the manufacturing process in a manner that these help in the process of manufacture to be carried a step further.C.C.E. v. Swaraj Mazda reported in 1993 (68) E.L.T. 258 (Tri.), Tribunal held that the phrase "in or in relation to" the manufacture has a very wide amplitude; it not merely includes the process and inputs essential or incidental or accessory to the completion of manufacture (including deemed manufacture) but any item or process which is essential for making the final product marketable.

4.5 Phosphoric Acid which is added to the cane juice in a sugar mill for clarification of juice was held to be admissible input. In case of Rahuri Sahkari Sakhar Karkhana Ltd. v. C.C.E. - 1993 (64) E.L.T. 501, the Tribunal held that Phosphoric Acid is an input which goes in the product mix and added to the can juice for clarification. Again in case of Shree Marolivibhag Khand Udyog Sahakari Mandal Ltd. v. C.C.E. - 1993 (68) E.L.T. 700, the Tribunal held that Phosphoric Acid added in the cane juice is an input in the manufacture of the desired quality sugar.

It is not just thrown away in the cane juice for nothing.C.C.E. v. Seshasayee Paper Boards ltd. -1992 (61) E.L.T.304 the Tribunal held that Hydrochloric Acid used for water treatment in the paper industry is eligible for Modvat credit, since their use can be taken to, be for treatment of water for making the water ready for use in the process of manufacture of paper. Again in case of Indian Explosives Ltd. v. C.C.E.-1990 (50) E.L.T. 117 it was held that chemicals and resins used for water treatment and then for manufacture of steam which was used for drying paper, were also eligible for Modvat credit, since the production of steam is connected or integrated process in the manufacture of paper.

5. It was admitted by the Ld. D.R. that in removing the impurities from the scraps Aluminium Oxide is mixed with the scrap and impurities are removed through chemical reaction. In view of this there can be no doubt that Aluminium Oxide does enter the stream of manufacture and can be held to be used in or in relation to the manufacture of the final products.

6. I, therefore, reject the Revenue appeal and uphold the impugned order.