Oswal Steels Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-10-1996

Reported in : (1996)(87)ELT42TriDel

Appellant : Oswal Steels

Respondent : Collector of Central Excise

Judgement :

1. The captioned appeal has been preferred by the appellants against the findings of the Collector (Appeals). The Collector (Appeals) held that the refractories were used for lining of electric arc furnace are not inputs for the manufacture of iron and steel products.

2. The facts of the case are that the appellants are engaged in the manufacture of iron and steel products. The appellants took credit of duty for the period June, 1987 to June, 1988 paid on refractories used for lining of electric arc furnace which are used in the manufacture of iron and steel products. The declaration under Rule 57G in respect of refractories was filed on 28-3-1986. The department alleged that refractories are not used as inputs for the manufacture of iron and steel products. Accordingly a show casue notice was issued asking the appellants to explain as to why Modvat credit of duty on refractories should not be disallowed and why the penalty should not be imposed on the appellants. After careful consideration of the submissions of the appellants the Collector (Appeals) disallowed Modvat credit and restricted the demand to the period February, 1988 to June, 1988.

3. Shri S. Madhwan, CA for the appellants submitted that the inputs and final products were specified items in the Notification 177/86 issued under Rule 57A; that the appellants observed the procedures set out under Rule 57G; that Rule 57G had nothing to do with availing Modvat credit; that Modvat credit was taken after compliance with the requirement of Rules 57A and 57G; that there was no question of recovery of credit under Rule 57-I. The Chartered Accountant submitted that the various items of refractories which are used for the steel making industries are consumable items, are not part of the furnace in which they are physically located and used; that the decision of the Tribunal in the case of Steel Authority of India reported in 1989 (42) E.L.T. 89 is directly on this point in which it has been held that refractories prodcuts are not component parts of industrial furnace; that the Tribunal in subsequent decision in the case of Mukund Iron and Steel Works Ltd. reported in 1990 (48) E.L.T. 552 and 1990 (45) E.L.T.84 had held that refractories were lining material for heat and corrosive resistance and hence part of machinery and equipment; that subsequently the Hon'ble Calcutta High Court in the case of Singh Alloys & Steel Ltd. reported in 1993 (66) E.L.T. 594, held that the decision of the Tribunal in the case of Mukand Iron and Steel Works were erroneous especially in view of the provision of Rule 57A; that this decision of the Hon'ble Calcutta High Court was followed by the Larger Bench of this Tribunal in the case of A.B. Tools Ltd. reported in 1994 (71) E.L.T. 776 and Kesari Steels reported in 1994 (74) E.L.T.123 that in both the decisions it was held that Modvat credit was admissible on ramming mass; that in the case of Raipur Alloy Steel Ltd. the Member (Judicial) has corretly applied aforesaid decision of the Hon'ble Calcutta High Court in the case of Singh Alloys & Steel Ltd. held that refractories, whether in powder form such as ramming mass or solid form, were not incorporated into nor were they integral parts of furnaces; that majority decision in Raipur Alloys has differentiated the Calcutta High Court's deicision in Singh Alloys on the ground that the decision was only applicable to ramming mass, being an item of chemical, classifiable under Chapter 38 of the Central Excise Tariff and was inapplicable to refractories, which were classifiable under Chapter 69 of the Central Excise Tariff. The CA submitted that both ramming mass and refractories are made of the same chemical ingredients and perform essentially the same function as an item of consumables in the manufacture of

steel products; that the decision of the Tribunal is erroneous inasmuch as the Tribunal held that both exclusion as well as in inclusion to the definition of the inputs are to be similarly interpreted. He submitted that this principle is directly contrary to the settled principle of interpretation of law whereby exclusions to a beneficial legislation such as Modvat credits are to be construed strictly whereas inclusions are to be construed in a broad and liberal manner. The CA in support of his contention cited and relied upon the decision of the Apex Court in the case of Doypack Systems reported in 1988 (38) E.L.T. 201, Eastend Paper Industries reported in 1989 (43) E.L.T. 201 and Rajasthan State Chemical Works reported in 1991 (55) E.L.T. 444. The CA referred to the definition of chemical goods in terms of explanation of Rule 57G(1) and submitted that refractories are not part of furnaces; that [refractories] were not part of plant and equipment and therefore they did not figure under Clause (b) of the explanation; that the Government has subsequently inserted Clause (d) to the Explanation with effect from 16-3-1995, whereby Sub-clauses (i) to (x) were inserted into definition; that in this Explanation Sub-clause (x) of Clause (d) stated that refractories are capital goods; that the Government has chosen to insert Clause (d)(x) into the [definition] of capital goods with effect from 16-3-1995 to extend the benefit of Modvat credits to refractories would mean that such refractories are not part of plant and equipments. The CA submitted that in the decision of Raipur Alloys' case the Tribunal relied that parts and equipments are not eligible for Modvat credit under Rule 57A; that this understanding is contrary to the decision of the Tribunal in the case of Cominco Binani Zinc Ltd. reported in 1990 (48) E.L.T.283,1992 (59) E.L.T. 572 and 1994 (72) E.L.T.739.

4. The ld. Chartered Accountant submitted that the refractory bricks used during steel making get consumed and form part of the liquid steel and slag; that refractory material is present in the steel product in the form of finely dispersed non-metallic inclusions and also present in the slag as oxide; that the chemical reactions taking place at the slag metal interface; that the basicity of slag in turn is responsible for some important steel making reactions to take place like the desulphurisation of steel. It was argued before me that it was not possible to use a high silica refractory material for making through the "basic slag" route.

5. The Chartered Accountant submitted that in almost all applications of refractories require to work under extremely stringent conditions; that it has been written in various standard texts on refractories that spalling action is one of the major causes of destruction; that during spalling, pieces of the refractory break away from hot face of the lining; that refractories have limited life and all refractory materials get consumed during their service period. Summing up his arguments the ld. CA submitted that facts, technical literature and law support the view that refractories are inputs used in the manufacture of iron and steel products and are eligible for Modvat credit.

6. Shri Mewa Singh, ld. SDR for the respondent submits that the Tribunal in Raipur Alloys' case clearly held that refractories tire not inputs used in the manufacture of iron and steel products. The ld. SDR submits that in most of the decisions of this Tribunal on the subject have discussed and distinguished by the Tribunal in the judgment of Raipur Alloys' case; that the Raipur Alloys' judgment of this Tribunal being latest in the series should prevail over the earlier judgments of this Tribunal. The ld. SDR also submits that this Tribunal in this decision also distinguished the judgment of the Hon'ble Calcutta High Court.

7. Heard the submissions of both sides. On careful consideration of the submissions made we find that the issue for determination before us is whether refractories are inputs used in or in relation to the manufacture of iron and steel products. We find that the Tribunal in the case of Mukund Iron and Steel Works Ltd. held that the refractory bricks and other materials are used in the inner surface electric arc furnace by lining entire surface; that in that sense they could be broadly called constructional material for lining the machine to perform effectively; that refractory bricks are not in the nature of the material used into furnace for chemical reaction. They get excluded because of the Explanation of Rule 57A. In Mukund Iron and Steel Works Limited's case reported in 1990 (45) E.L.T. 84 this Tribunal had held that no Modvat credit shall be admissible on refractories. This ratio was followed subsequently in another case of Mukund Iron and Steel Works reported in 1990 (48) E.L.T. 552. We find that in the case of Singh Alloys the Hon'ble Calcutta High Court has held that the decision of the Tribunal in the case of Satya Steel Strips and Mukund Iron and Steel Works Ltd.

was wrong and that the Tribunal committed an error in interpreting the definition of inputs in the Explanation to Rule 57A.We also observe that the larger Bench of this Tribunal in the case of A.B. Tools Ltd. had held that Modvat credit in ramming mass used in or in relation to manufacture of steel ingots is eligible as ramming mass is to be construed as input; that this decision was followed in Kesari Steels. We also find that this Tribunal in the case of Raipur Alloys had held that refractory bricks are constructional material and essential part of furnace and covered by excluded category under Rule 57A of the Central Excise Rules, 1944; that refractory bricks are not inputs used in or in relation to the manufacture of steel and therefore Modvat credit was not admissible on refractory bricks.

8. On careful scrutiny of the various judgments of this Tribunal on the subject. We find that refractory bricks are constructional materials for the furnace. They are not used as inputs used in or in relation to the manufacture of iron and steel products. We also find that the various other products came up in the decisions cited and relied upon by the appellants. No doubt the Hon'ble Calcutta High Court in passing orders had commented on certain decisions of this Tribunal. These decisions were in respect of Satya Steel Strips and Mukund Iron and Steel Works Ltd. In the case of Satya Steel Strips the dispute was about ramming mass whereas in the case of Mukund Iron and Steel Works Ltd. the issue was about refractory. We also find that in the case of Singh Alloys refractory was not the issue before the Hon'ble Calcutta High Court. We find that the issue before the Calcutta High Court was whether ramming mass was an input used in the manufacture of iron and steel products. We also observe that the ramming mass is a chemical product classifiable under Heading 38.16 of the Tariff. We also observe that Chapter 38 covers miscellaneous chemical products. Heading 38.16 covers refractory cements, mortars, concretes and similar compositions, other than products of Heading 38.01. Heading 38.01 covers artificial graphite etc. These items were said to be charged into the furnace when ingots were manufactured lost their identity and were said to be consumed in the process. Whereas in the instant case we are not concerned with chemicals but with specific identifiable and separately classifiable goods obtained by the firing after shaping of specific materials and mixed with binders. Thus the arguments of the appellants that the product called refractory bricks should be given the same treatment as ramming mass has no

force. We therefore hold that the ratio of the Hon'ble Calcutta High Court's decision in the case of Singh Alloys does not cover refractory bricks. We also find that the decision of this Tribunal in the case of Raipur Alloys the ratio of the decision of the Apex Court in the case of Ballarpur Industries Ltd., M/s. J.K. Cotton Spinning Weaving Mills Co., Doypack Systems Pvt. Ltd. and Mahalakshmi Oil Mills have been very lucidly brought out in the following paragraphs of 1995 (78) E.L.T. 44. The Paragraphs are 28 and 29 :-Collector of C. Ex. v. Ballapur Industries Ltd. - 1989 (43) E.L.T. 804 (SO), the Hon'ble Supreme Court had distinguished between the manufacturing process, and the manufacturing apparatus. They had observed that the relevant test was not the presence of the raw material in the end product but the dependence of the end product for its essential presence at the delivery end of the process. The ingredients go into the making of the end product in the sense that without its absence, the presence of the end product as such is rendered impossible. The Hon'ble Supreme Court emphasised that this quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatusJ.K. Cotton Spinning and Weaving Mills Co. v. Sales Tax Officer, Kanpur (1965) 1 (SCR) 900, the Hon'ble Supreme Court were dealing with a Sales Tax entry which was very wide. It covered raw materials, processing materials, machinery, plant, equipment, tools stores, spares parts, accessories, fuel and lubricants with regard to the manufacturing of tiles for sale, the Hon'ble Supreme Court held that" building materials used as raw materials for construction of "plant" cannot be said to be used as plant in the manufacture of goods.

"29. Explanation under Rule 57 A of the Rules provide for certain inclusions and certain exclusions for the purpose of that rule. This explanation does not necessarily establish that the 'inclusions' were otherwise excluded, or explanation only reflects the intention of the legislature to extend or to restrict the coverage of Modvat credit in certain critical areas. The inclusions or the exclusions are mainly in respect of certain groups or group of materials. In the case of Doypack Systems Pvt. Ltd. v. Union of India -1988 (36) E.L.T. 201 (SC) the Hon'ble Supreme Court had observed that "it is well settled that the word 'includes' is an inclusive definition and expands the meaning. In the case of Mahalakshmi Oil Mills v. State of Andhra Pradesh - 1988 (38) E.L.T. 714 (SC) in Para 11 the Hon'ble Supreme Court had observed as 0under :- As with inclusions so with the exclusions, the terms apparatus, equipment, plant etc. had to be given a wider meaning. In the case of Krishi Utpadan Mandi Samiti v. Shanker Industries -1993 AIR SCW 762, the Supreme Court in Para 9 of the judgment had observed as under :- "Where the legislature uses the words 'means' and 'includes', such definition is to be given a wider meaning and is not exhaustive or restricted to the items contained or included in such definition." 9. Having regard to the above discussions and ratio of the various judgments cited (supra) we hold that the refractories are not inputs used in or in relation to the manufacture of iron and steel products.

In this view of the matter the appeal is rejected.