Modipon Limited Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-1996

Reported in : (1996)(88)ELT289TriDel

Appellant : Modipon Limited

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal along with Appeal No. 2894/93-NB of the same appellants, which is also taken up today, alongwith this appeal, involves the same issue of Modvat credit. The lower authorities had denied Modvat credit on input Dowtherm Dephyl used in the manufacture of nylon polyester filament yarn produced by the appellants, herein. The lower authorities have held that the input is a device for supplying heat and is, therefore, excluded from the scope of inputs under Rule 57A under which inputs, which are in the nature of machines, machinery, equipment and tools, will not be eligible for Modvat credit under that rule. In both the cases, the orders of the jurisdictional Assistant Commissioner have been upheld by the Commissioner (Appeals) in the impugned order leading to the present appeals.

2. Ld. Counsel, Ms. Malini Sood for the appellant, submitted that it is evident from the finding given by the Assistant Commissioner himself that the use of Dowtherm Dephyl is essential for the manufacture of final product and on this ground itself, the Modvat credit should have been allowed instead of denying it on the ground that it is in the nature of a device. The ld. Counsel cited the case law in the case of

Gujarat Alkalies and Chemicals v. C.C.E. reported in 1996 (81) E.L.T.117 wherein the Tribunal held that gases used in the refrigeration plant for maintaining temperature is eligible inputs. The Tribunal's decisions have laid down that inputs need not be present in final product, but .that their use should be essential for the emergence of the final product. The ld. Counsel, further, relied upon the decision of the Tribunal in the case of Rathi Alloys & Steel Ltd. v. C.C.E.reported in 1996 (83) E.L.T. 156 (Tribunal) wherein it was held that Argon gas for maintaining temperature is an eligible input.

3. We have heard Shri Jangir Singh, ld. DR, who submitted that there is no direct nexus of the input to the final product.

4. We have carefully considered the submissions made by both the sides.

The requirement under Rule 57A is that it should be shown that the goods are used in or in relation to the manufacture of the final product. The appellants have explained the function of Dowtherm Diphyl in the manufacture of the final product as follows : "It was further submitted that Nylon and Polyester Filament Yarn are obtained by a process of melt spinning in which the raw material i.e. capralactum for Nylon Yarn and DMT for Polyester Yarn, are in solid state and have to be melted before Polymerisation. The Polymer in both the cases is cast in the form of chips which are again melted and the melt is extruded through spinnerettes to obtain filament which are converted into the required type of Synthetic Filament Yarn. The heating for obtaining molten material at different stages of the said process has to be provided in a regulated manner to maintain the required temperature. Dowtherm Diphyl is an organic compound and is a heating media used in the manufacturing process of Synthetic filament Yarn. The said yarn could not be manufactured except in the presence of the said Dowtherm Diphyl. The Dowtherm Diphyl keeps getting consumed in the process of manufacture." From the above description of the use of Dowtherm Diphyl, it is clear that it is an essential input for maintaining the required heat in the equipment, but for which the emergence of the yarn could not be brought about. From the function of the material in the manufacturing process of yarn, it is clear that this is an input which is used in relation to the manufacture of the nylon and polyester yarn. This would be sufficient reason and would be in consonance with the term under Rule 57A for giving it the status of eligible input for Modvat credit under that rule. The inputs considered by the Tribunal in the case law cited before us by the ld. Counsel, were also discharging similar function.

It is, therefore, held that Dowtherm Diphyl is eligible input under Rule 57A for the purpose of Modvat credit used in the manufacture of nylon and polyester filament yarn produced by the appellants, herein.

In this view of the matter, the impugned orders are set aside and the appeals are allowed.