(2013) 12 MP CK 0209

In the Madhya Pradesh High Court

Case No : C.E.R. Application No. 7 of 2001

Commissioner of C. Ex. APPELLANT

Vs

Bhopal Sugar Industries Ltd. RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2014) 304 ELT 516 : (2014) 3 MPLJ 220

Hon'ble Judges : Vimla Jain, J;A.K. Shrivastava, J

Bench : Division Bench

Judgement

A.K. Shrivastava, J.—Indeed this reference is pending for last 12 years and we do not think it appropriate to prolong it further. The respondent-assessee has already been served and has also been represented by counsel. The Central Excise and Gold (Control) Appellate Tribunal, New Delhi ("C.E.G.A.T.") has referred the question framed therein u/s 35G(3) vide reference order dated 23-2-2001 [2001 (76) ECC 695]. It would be germane to quote the question which has been referred to us by the C.E.G.A.T., which reads thus;

Whether the items Panel Board and PVC Cables which do not participate in the manufacturing process can be said to fall within the definition of Capital goods under Rule 57Q of the Central Excise Rules, 1944, at the relevant time and accordingly availed credit as provided under the said Rule.

2. The contention of learned counsel for Revenue is that assessee is carrying a Sugar Industry and manufactures sugar and to provide electric connection in the entire establishment, PVC cables and panel boards are affixed. According to assessee for these articles the assessee is entitled for M.O.D.V.A.T. credit. However, according to Revenue it would not cover within the definition of "inputs" as defined in Rule 57 of Central Excise M.O.D.V.A.T. Credit Rules, 1944 and therefore assessee is not entitled for M.O.D.V.A.T. credit on these items. For ready reference, we would like to quote the entire provision which reads thus:

57Q Applicability.--(1) The provisions of this section shall apply to finished excisable goods of the description specified in the annexure below (hereinafter referred to as the "final products") for the purpose of allowing credit of specified duty paid on the ''capital goods'' used by the manufacturer in his factory and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, or as the case may be, on such capital goods, if such capital goods have been permitted to be cleaned under Rule 57-S, subject to the provisions of this section and the conditions and restrictions as the Central Government may specify in this behalf.

Provided that credit of specified duty in respect of any capital goods produced or manufacture -

(a) in a free trade zone and used for the manufacture of final products in any other place in India; or

(b) by a hundred percent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park and used for the manufacture of final products in any place in India.

shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to the duty of excise paid on such capital goods.

Explanation - For the purpose of this section; -

(1) ''capital goods'' means -

(a) machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of the final products;

(b) components, spare parts and accessories of the aforesaid machines, machinery, plant, equipment, apparatus, tools or appliances used for aforesaid purpose; and

(c) moulds and dies, generating sets and weighbridges used in the factory of the manufacturer.

(2) Notwithstanding anything contained in sub-rule (1), no credit of the specified duty paid on capital goods shall be allowed if such duty has been paid on such capital goods before the 1st day of March, 1994.

3. According to us, the "goods" which are mentioned in the question referred to us would come within the term "capital goods" envisaged in this provision and therefore the assessee is entitled for the M.O.D.V.A.T. credit on these items. Indeed the definition of "capital goods" is comprehensive in nature and therefore we do not have any scintilla of doubt in our mind that Panel Board and PVC cables which do not participate in the manufacturing process and are only used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be included in "capital

goods" and hence the assessee is entitled for M.O.D.V.A.T. credit on these items.

4. The Apex Court in Commissioner of Central Excise Coimbatore and Others Vs. Jawahar Mills Ltd. and Others, has categorically held that inclusion of ''capital goods'' would come within the definition in terms for which it is being used. It has been specifically held by the Apex Court in the aforesaid decision that power cables/capacitors, control panels, cable distribution boards, switches, starters, air compressors and electric wires and cables if used for the purpose specified in Expln. (1)(a) to R. 57Q of Central Excise Rules, they will come within the ambit and scope of "capital goods" and upon this M.O.D.V.A.T. credit is applicable to the assessee. In this regard we may place reliance upon para 4 of the aforesaid decision, which reads thus:

4. The aforesaid definition of "capital goods" is very wide. Capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be "capital goods", and, therefore, qualify for availing M.O.D.V.A.T. credit. Per clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purposes enumerated therein would also be "capital goods" and qualify for M.O.D.V.A.T. credit entitlement. Clause (c) makes moulds and dies, generating sets and weighbridges used in the factory of the manufacturers as capital goods and thus qualify for availing M.O.D.V.A.T. credit. The goods enumerated in clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the Explanation is very liberal.

According to us, the aforesaid decision is squarely applicable to the question referred to us and therefore we are of the view that upon the items which are referred to us, the M.O.D.V.A.T. credit facility would be applicable.

5. Since the Apex Court has already held that for these items, the M.O.D.V.A.T. credit facility would be available to the assessee, therefore, question which has been referred to us is answered in negative against the Revenue and in favour of assessee. This reference is accordingly disposed of.