(2009) 07 GUJ CK 0007

In the Gujarat High Court

Case No : Central Excise, Customs Gold Control Reference No. 11 of 2000

Commissioner of Central Excise — APPELLANT

Vs

Botliboi and Co. Ltd. — RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57G(1), 57I
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2010) 257 ELT 191 : (2009) 3 GLH 279

Hon'ble Judges : K.A. Puj, J;A.L. Dave, J

Bench : Division Bench

Advocate : Manisha Lavkumar, for the Appellant; None, for the Respondent

Judgement

K.A. Puj, J.—At the instance of the Commissioner of Central Excise and Customs, Surat the Customs, Excise and Gold (Control) Appellate Tribunal, Bombay has referred to the following question of law for the opinion of this Court u/s 35-G of the Central Excise Act, 1944;

Whether the Hon''ble Tribunal is correct in holding that Grinding Wheels i.e. the parts of grinding machines/machinery are eligible for availing Modvat credit under Rule 57-A of the C. Ex. Rules, 1944 when such machines, machinery, plant equipment, apparatus, tools of appliances etc. have been specifically excluded from such eligibility in terms of the Explanation under the same very Rule.

2. The brief facts giving rise to the present reference are that the respondent-assessee, namely, M/s. Batliboi & Co. Ltd., Udhna was holding Central Excise license for the manufacture of excisable goods falling under Chapter 8473 of the Central Excise Tariff Act, 1985 and was availing benefit of Chapter VAA of Central Excise Rules, 1944 and availing credit of duty paid on the goods (inputs) used in or in relation to the manufacture of the final products and utilizing the said credit towards payment of duty of excise leviable on the final products under Rule 57A is subject to fulfilling of conditions as laid down under the Rules covered under Chapter VAA of the Central Excise Rules, 1944. The respondent-assessee had

continued to take Modvat credit for the duty paid on various inputs received by them in the RG 23 Part-II register maintained by them during the period from October, 1989 to March, 1990. On scrutiny of their RG 23A Part-II register with duty paid on inputs and the declaration filed by them under Sub-rule (1) of Rule 57G of the said Rules it was found that the respondent assessee had taken Modvat credit on ''Grinding Wheels'' falling under Chapter Heading 6801.10 amounting to Rs. 29,370.78 basic duty plus., Rs. 1,466.56 special duty total Rs. 30,837.34 during the period from 20-10-1989 to 31-3-1990. The department was of the view that credit of inputs is admissible only when such inputs are used within the factory of production in or in relation to the manufacture of final products. Since the Grinding Wheels which were fixed on the machinery do not form part of inputs as they were not used in or in relation to the manufacture of final products, the condition laid down under Rule 57A was not fulfilled. The superintendent of Central Excise has, therefore, issued demand-cum-notice to show cause dated 16-4-1990 as to why the credit of Rs. 29,370.78 plus Rs. 1,466.56 special duty total Rs. 30,837.34, wrongly taken and utilized by the respondent assessee should not be disallowed and recovered u/s 57-I of the Central Excise Rules, 1944.

3. The above show cause notice was adjudicated and order dated 6-2-1991 was passed by the Assistant Collector, Surat disallowing the credit of Rs. 30,837.34 and in case the said credit has already been utilized, they should pay an amount equivalent to the amount disallowed under Rule 57-I of the Central Excise Rule, 1944.

4. Being aggrieved by the said order of the Assistant Collector, the respondent-assessee preferred an Appeal before the Collector of Central Excise (Appeals), Bombay who vide his order dated 24-10-91 dismissed the said Appeal and held that Grinding Wheel is used for processing of components even though such processing is for bringing about the change in the component which is used in relation to the manufacture of final products, the Grinding Wheels will be hit by the Explanation clause under Rule 57A.

5. Being aggrieved by the said order of the Collector of Customs and Central Excise (Appeals) the respondent-assessee preferred second appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, Mumbai and the Tribunal vide its order dated 10-12-1997 1998 (74) ECR 251 set aside the order of Collector of Central Excise and Customs and allowed the Appeal filed by the respondent assessee. While allowing the said Appeal the Tribunal followed the decision of the Larger Bench of the Tribunal in the case of 1996 (66) ECR 1 72 and also the decision of Larger Bench in the case of 1997 (68) ECR 826 The Tribunal held that Grinding Wheels are definitely parts of the grinding machines used by the appellants and they have to be considered as inputs under Rule 57A of the Rules.

6. The Central Excise Department thereafter filed reference application before the Tribunal u/s 35G of the Central Excise Act and the Tribunal vide its order dated

24-12-1999 referred the above question of law for opinion of this Court.

7. Ms. Manisha Lavkumar, learned Central Government Counsel appearing for the Excise Department has submitted that the Grinding Wheels are accessories, which are added to the grinding machines, on which various rough coatings and other components are smoothened and their surface is worked so as to give it specific shape or to remove surface defects etc. She has further submitted that grinding wheel in itself has no use unless and until the same is added to a grinding machine. The Grinding Machine has to be construed as a composite machine having the mechanical portion for providing necessary speed or rotation and the grinding portion consists of grinding wheel. She has further submitted that Rule-57A of the Central Excise Rules, 1944, excludes certain types of input which, inter alia, excludes plant and machineries. For manufacturing any goods various type of plant and machineries, tools etc. are employed and without which the goods cannot come into existence, but the same is not entitled for Modvat credit in view of its exclusion from the purview of term ''input''. She has further submitted that grinding wheel on its own is neither used as a component part or a raw material in the final product being manufactured by the assessee nor it can be considered as being used in relation to the manufacture of these goods. She has further submitted that since the entire Grinding Machine would be covered under purview of tools/machinery, the grinding wheels would not be eligible for its being considered as input in terms of Rule-57A of the Central Excise Rules, 1944. She has, therefore, submitted that the order passed by the Tribunal is required to be reversed and the question referred to this Court should be answered in favour of the department and against the assessee.

8. despite service of notice nobody appears on behalf of the respondent assessee.

9. The question referred to this Court is required to be considered and answered in light of the provisions contained in Rule-57A of the Central Excise Rules, 1944. This rule deals with the applicability of the Modvat scheme. According to this rule credit of Central Excise Duty is available in respect of Central Excise Duty, Special Excise Duty and countervailing duty paid on inputs, used in the production of final products mentioned in 37 Chapters of the Central Excise Tariff Act. The real question for this Court to decide is as to whether grinding wheels are to be considered as input within the meaning of Rule-57A and are entitled to Modvat credit. Similar question arose before the Full Bench of the New Delhi Tribunal in the case of Collector of Central Excise, Bolpur v. Durgapur Cement Works (supra) wherein it is held that, Ball Mill is the machinery used for manufacture of Cement. Ball Mill can of course be switched on without Steel Balls but it cannot perform the process of grinding without using Steel Balls on the machine. Steel balls are most essential for the process. One of manufacturing process is grinding. Grinding takes place on account of the impact of Steel Balls on the raw materials. A part of the Steel Balls on account of severe impact, gets damaged and particles and pieces of Steel Balls are mixed together with the powdered raw materials and become part of the final product. It is thus held that even if it is

assumed that Steel Balls are part of machine or machinery, parts are not covered by exclusion Clause (i) of the Explanation to Rule-57A of the Rules and hence Modvat credit is admissible.

10. The New Delhi Tribunal has relied upon the decision of Union Carbide India Ltd. v. Collector of Central Excise (supra) wherein it is held that under Rule-57A inputs are not only goods used in relation to the manufacture of final products. The Tribunal in that case held that felts, Phosphor Bronze, Stainless Steel Wire Cloth, Wire Mesh and Dandy cloth used as parts in machine or machinery in the manufacture of paper and paper products are eligible inputs and are not excluded by virtue of exclusion Clause (i) of Explanation to Rule-57A of Central Excise Rules, 1944. The Tribunal further held that copper wire used in welding process in the manufacture of metal containers and ending up as waste because of small particles of tin deposits thereon, is an eligible input. The Tribunal, therefore, took the view that copper wire is used in relation to manufacture of metal container, since without use of the copper wire manufacturing process cannot be conducted. The copper wire was, therefore, held as input as contemplated in Rule-57A of the Central Excise Rules, 1944.

11. In the case of 1993 (44) ECR 345 it is held that for the items to pass the test of eligibility to the benefit of Modvat credit will be such that they participate in the process of manufacture without which the end product cannot be produced. In that case, the chemicals were used for the purpose of softening of water; the same were considered to be a process which was for the manufacture of paper and softening of water is a requirement for the manufacture of paper. Soda Ash and Alflock power used in this process are eligible for the benefit of Modvat credit.

12. In the case of Collector of Central Excise Vs. Solaris Chemtech Limited and Others, the Apex Court held that LSHS was used to generate electricity which was captively consumed. Without continuous supply of such electricity generated in the plant it was not possible to manufacture cement, caustic soda and hence LSHS would, come within the ambit of the expression ''used in relation to the manufacture'' occurring in Rule 57-A and hence the assessees were entitled to Modvat credit on LSHS. The Court further held that any operation in the course of manufacture, if integrally connected with the operation which results in the emergence of manufactured goods, would come within the term ''manufacture''. Since electricity was self-generated and since it came into existence as an intermediary product, its utilization for production of final product was crucial and hence Modvat credit on LSHS used in production of electricity could not be denied.

13. Applying the above test laid down by the Tribunals as well as the Apex Court to the facts of the present case it can certainly be said that the grinding wheels are definitely parts of the grinding machine used by the respondent assessee and they have to be considered as inputs under Rule-57A of the Central Excise Rules. The question referred to this Court is, therefore, answered in the affirmative i.e. in favour of respondent-assessee and against the department.

14. This reference is accordingly disposed of without any order as to costs.

