(2008) 10 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Ex. Ref. No. 3 of 2001

Commissioner of Central Excise APPELLANT

Vs

Gujrat Ambuja Cement Ltd. RESPONDENT

Date of Decision : 30-10-2008

Acts Referred:
Central Excise Rules, 1944 — Rule 57Q, 57Q(1), 57T, 57T(7)

Citation : (2010) 256 ELT 356

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This excise reference was admitted on the following questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal was correct in allowing benefit of Rule 57T(7) of the Central Excise Rules, 1944 to M/s. Gujarat Ambuja Cement Ltd. Solan holding them as a manufacturer when the manufacturer for the impugned D.G. Sets was categorically M/s. WDIL (and not M/s. GACL) as evident from Purchase Order No. GACL/HIM/LCI/124 dated 31-1-97 as per which M/s. WDIL were to supply two D.G. Sets valued at Rs. 15.50 Crores?

2. Whether in the facts and circumstances of the case, the Tribunal was correct in allowing the benefit under Rule 57T of the Central Excise Rules, 1944 when the D.G. Sets assembled from the duty paid Engine & Alternators was chargeable to Nil rate of duty under sub-heading No. 8502.10 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and no duty was payable by M/s. WDIL on D.G. Sets and consequently no credits were admissible to M/s. GACL?

3. Whether Assembling of D.G. Set will amount to initial setting up. renovation, modernization or expansion of the existing Cement Plant in terms of the erstwhile Rule 57-T(7) of the Central Excise Rules, 1944?

4. Whether in the facts and circumstances of the case, the Tribunal was correct in allowing Modvat Credit on parts, components and accessories of impugned D.G. Sets under Rule 57Q(1) (where under Modvat Credit is admissible on parts, components and accessories of capital goods mentioned under Table annexed to Rule 57Q of Central Excise Rules, 1944 at Sr. No. 1 (1-4) when the capital goods (i.e. D.G. Sets) were not in existence to examine admissibility of Modvat credit on such parts, components and accessories?

2. Though detailed questions of law have been framed at the time of admission of the petition, the basic question which arises for consideration is whether the Modvat credit is admissible on the components of Diesel Generating Power Plant (DGPP) installed in a factory when the DGPPs are exempted from payment of duty.

3. The facts necessary for decision of the case are that the respondent Company manufactures cement within the State of Himachal Pradesh. It has set up its factory for the manufacturing of cement at Darlaghat within the State of Himachal Pradesh. The respondent while setting up the factory also got installed a DGPP through another Company M/s. Wartsila Diesel India Ltd. (WDIL). WDIL further contracted out some of the works of the plant, especially the erection of the cooling tower to M/s. Paharpur Cooling Towers Pvt. Ltd. It is not disputed that the DGPP is used for running the factory of the respondent when there is power cut in the area in question.

4. On behalf of the Revenue the main ground taken is that since the DGPP is not exigible to excise the question of giving Modvat credit for the same does not arise. It has also been urged that the DGPP is not used for the manufacture of the final product.

5. Both the arguments raised are without any merit. There can be no dispute that excise has been paid on some of the components of the DGPP. Since the DGPP is exempt from payment of excise no Modvat credit can be claimed by the manufacture of the DGPP, in the present case WDIL. However, there is no dispute that this DGPP is part and parcel of the factory of the respondent. It is definitely a capital good and therefore Rule 57Q is applicable. Rule 57Q enables a party to claim credit of duty paid on capital goods by the manufacturer of specified goods. Under Sr. No. 5 to the table of the said Rule, a manufacture is entitled to claim Modvat Credit on account of the excise paid on the components, spares and accessories of the goods exempt. A DGPP is a capital good. If duty is paid on the components used in its manufacture, we see no reason why the manufacturer cannot claim Modvat credit for such duty.

6. It would also be pertinent to mention that on the basis of the order passed by the CEGAT in the present case, manufacturers in other parts of the Country claim Modvat credit of the excise paid on the components of the DGPP. These matters were decided by different Bench of the CEGAT in favour of the manufacturers following the decision rendered by the CEGAT in the present case. The Revenue

filed a reference petition against one such order in the High Court of Rajasthan in Jodhpur being other Tax Reference Civil Appeal No. 18 of 2003 (Union of India v. Aditya Cement and Anr.) which reference was rejected by a Division Bench of said High Court on 27-3-2008. Another case was decided by another Bench of the CEGAT in the case of Century Rayon Ltd. The Revenue challenged this order in Central Excise Application No. 12 of 2002 which has also been rejected by the Bombay High Court on 7th October, 2008. It is thus clear that two other Courts have decided this issue in favour of the manufacturers.

7. For the reasons given above which finds support from the judgments of the High Courts of Bombay and Rajasthan, we find no merit in the petition which is dismissed. The questions of law are decided against the Revenue and in favour of the Manufacturers. No order as to costs.

