(2013) 07 AHC CK 0258

In the Allahabad High Court

Case No : Central Excise Appeal Defective No. 171 of 2007 (Arising out of order of CESTAT in Appeal No''s. E/3020 to 3022 and E/5/2443 to 2445 of 2006)

Commissioner of Customs and Central Excise, U.P.	APPELLANT
Vs	
Jindal Polyester	RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Citation : (2014) 305 ELT 43 : (2014) 43 GST 208

Hon'ble Judges : Prakash Krishna, J;Manoj Kumar Gupta, J

Bench : Division Bench

Advocate : B.K. Singh Raghuvanshi, for the Appellant; Manu Khare, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The present appeal has been filed u/s 35G of Central Excise Act, 1944 against the order of CESTAT, New Delhi in Appeal Nos. E/3020/2006, E/3021/2006, E/3022/2006 with E/S/2443 to 2445/2006 whereby the appeal filed by the manufacturer in respect of claim for Modvat Credit on Furnace Oil and other eligible goods used in generator of electricity has been allowed. M/s. Jindal Polyster came into existence as factory manufacturing Partially Oriented Yarn and M/s. Jindal Polymer is manufacturing Polymer Chips.

2. M/s. Jindal Polyster (a division of M/s. Jindal Polyfilm Ltd.) was availing Cenvat Credit of duty paid on Furnace Oil which was used as fuel in the DG sets for generation of electricity. A team of Central Excise Officers, Noida visited the factory premises of Jindal Polyster on 10.12.2004. It was found that there were two manufacturing units having their registered factory premises adjacent to each other.

3. One of such unit was registered under Central Excise in the name of M/s. Jindal Polymer having different Central Excise Registration number. Jindal

Polymer was engaged in the manufacture of Polyster Yarn and Poly Propylene Filament Yarn while the other unit was engaged in the manufacture Polymer Chips. The final product i.e. Polymer Chips of Jindal Polymer is the main input of JP.

4. The Department raised a dispute and rejected the contention of the respondents with regard to electricity generated through generation in Unit No. 1. The Department took the view that the respondent was not entitled to Modvat credit on the Furnace Oil used in the generation of the electricity consumed in the second unit. On appeal, the Tribunal held that this is neither in the interest of efficiency and economy nor is it mandated by Modvat Rules that the second unit is not entitled to Modvat credit on input of furnace oil used in the generator set.

5. Being aggrieved, the Department has come out in the present appeal. In the memo of appeal, the following substantial question of law has been framed:

Whether the Appellate Tribunal has correctly interpreted Rule 57AA of the Central Excise Rules, 1944/Rule 2(g) of the Cenvat Credit Rules, 2001/2002/Rules 2(k) of the Cenvat Credit Rules, 2004 in holding that Cenvat Credit is admissible on the portion of Furnace Oil/LDO used for generation of electricity supplied to other units?

6. Heard Shri B.K. Singh Raghuvanshi, learned counsel for the appellant and Shri Bharatji Agrawal, learned Senior Advocate assisted by Shri Manu Khare, Advocate. The learned counsel for the appellant submits that in view of Rule 57-AA of the Central Excise Rules Modvat Credit is not admissible to the second unit.

7. Elaborating the argument, he submits that since the two units are producing different products, they should be treated as separately. In reply, the learned counsel for the respondents submits that the term factory has been defined in Section 2(e) of the Central Excise Act. The two units constitute one factory and therefore, both the units are entitled to claim Modvat.

8. Considered the respective submissions of the learned counsel for the parties and perused the record.

9. The learned counsel for the appellant has placed reliance upon Rule 57-AA particularly Clause (d) which is reproduced below:

Rule 57AA. Definitions-For the purpose of this section-

(a) to (c)

(d) ''Inputs'' means all goods, except High Speed Diesel oil and Motor Spirit used in or in relation to the manufacturer of the final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils cleared along with the final products, goods used as paint, or as packing materials or as fuel or for generation of electricity uses for manufacture of final products or for any other purpose within the factory of production.

10. The said clause (d) defines what ''input'' means. It does not talk about unit or factory. The word ''factory'' has been defined in section 2(e) which reads as follows:

(e) "factory" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured, or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.

11. The learned counsel for the respondents referred number of cases of Tribunal in support of his contention that generation of electricity in one unit for use in all the neighbouring units of a manufacturer is more efficient and economical than setting up generating facility at each and every factory.

12. In SRF Ltd. v. CCE 2005(191) ELT 887 (Tri.-Chennai), it has been held that it is well-settled that tax law should be interpreted in conformity with the normal commercial practice. Therefore, the manner of use should be accepted as to economical, efficient and convenient manner of use. A contrary interpretation would lead to frustrating the purpose of law in granting exemption/Modvat credit. Generation of electricity in one unit for use in all the neighbouring units of a manufacturer is more efficient and economical than setting up generating facility at each and every factory.

13. In 2006 (106) ECC 275 , it has been held that if separate registration is given for polyster yarn manufacturing facility located inside the jute factory, line of production different but factory and manufacturer one. Credit taken on input used in generator in jute factory cannot be denied to yarn unit etc.

14. The learned counsel produced various orders passed by the different Tribunals and they all do support the impugned order of the Tribunal. The learned counsel for the appellant could not refer any statutory regulation or rule to take a different view of the matter. It is logical that if two units are being run at one place, producing two different items and the electricity is supplied to both of them by a common generator, the Modvat facility shall be available to both the manufacturing units, unless statutorily provided otherwise.

15. It is neither expedient nor desirable unless provided otherwise statutorily to have separate electricity generating sets for different manufacturing units. The approach of the Tribunal is pragmatic and in the interest of efficiency and economy.

16. In the result, we find no error in the order of the Tribunal allowing Modvat Credit on Furnace Oil and other eligible inputs used in the generation of electricity. The appeal lacks merits and the same is hereby dismissed. No order as to costs.