(2007) 07 BOM CK 0142

In the Bombay High Court

Case No : Central Excise Appeal No. 30 of 2006

Indo Rama Synthetics (India) Limited — APPELLANT

Vs

Commissioner of Central Excise — RESPONDENT

Date of Decision : 06-07-2007

Acts Referred:
Central Excise Rules, 1944 — Rule 57B
Central Excises and Salt Act, 1944 — Section 2, 35G

Citation : (2007) 6 BomCR 302 : (2007) 109 BOMLR 1327 : (2007) 120 ECC 15 : (2007) ECR 15

Hon'ble Judges : J.P. Devadhar, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : V.S. Nankani, for the Appellant; S.K. Mishra, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Devadhar, J.—Heard Shri V.S. Nankani, the learned Counsel appearing on behalf of the appellant-assessee and Shri S.K. Mishra, the learned Assistant Solicitor General appearing on behalf of the respondent.

2. This appeal is filed by the appellant-assessee u/s 35G of the Central Excise Act, 1944 (Act for short) against the order of CESTAT dated 25th January, 2006/20th February, 2006 in Appeal No. A/334/WZB/06/C-1/GB.

3. Although several questions are raised in this appeal, the only argument advanced before us is regarding the availment of Modvat Credit on the inputs used in the manufacture of electricity supplied to the residential complexes within the licensed premises. As there are conflicting decisions of the Tribunal, we admit the appeal on the following re-framed question of law:

Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee is not entitled to input duty credit on furnace oil used for generation of electricity supplied to the residential colony of the employees of assessee situated within the precincts of the manufacturing area forming part of the premises licenced under the Central Excise Act, 1944

4. By consent of both the parties, the appeal is heard finally and disposed of by this judgment.

5. The assessee is engaged in the manufacture of excisable goods such as Polyester Filament Yarn (PFY), Polyester Staple Fiber (PSB) etc. at their factory.

6. The ground plan submitted by the assessee was approved by the Jurisdictional Central Excise Officers which covers the areas where the manufacturing activity is carried out as also the areas occupied for non manufacturing purposes such as storage spaces, godowns, cycle sheds, canteens as well as housing complexes for the staff and the workers of the assessee-Company.

7. Within the approved area, the assessee has set up a captive power plant. The electricity generated in the said power plant is used in the manufacturing as well as non manufacturing activities.

8. On receiving information that the assessee is utilising credit of duty paid on furnace oil used for generation of electricity, which, in turn, is supplied to the residential complexes, the Excise Officers visited the factory of the assessee on 28/29.01.2002. On inspection of the books and recording statements of various employees, two show cause notices dated 06.03.2002 and 10.02.2003 were issued alleging that the assessee has willfully and wrongfully availed and utilised ineligible credit of duty on furnace oil consumed for manufacture of electricity generated in the power plant for supply to residential complexes during the period from 1997 to 2002 and by the said show cause notices, the assessee was called upon to show cause as to why the said credit should not be recovered and penalty should not be imposed. The assessee replied to the said show cause notices by stating that the residential complexes are situated inside the factory and hence the assessee is entitled to avail the credit.

9. By a common order in original dated 25.07.2003, the Commissioner of Central Excise inter alia confirmed the demand for recovery of ineligible credit of duty and levied penalty of rupees 30 lakhs.

10. On appeal filed by the assessee, the CESTAT partially upheld the order passed by the Commissioner of Central Excise by confirming the demand but reduced the penalty to rupees five lakhs. Challenging the said order, the present appeal is filed by the assessee.

11. Before dealing with the rival contentions we may note the provisions that are relevant for deciding the question raised in this appeal. Section 2(e) of the Central Excise Act, 1944 defines factory. as follows:

2 (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.

12. Rule 57B(iv) of the Central Excise Rules, 1944 inter alia provides that a manufacturer of final products shall be allowed to take credit of the specified duty paid on the following inputs. Rule 57B(iv). Inputs used for generation of electricity or steam, used for manufacture of final products or for any other purpose, within the factory of production.

13. Shri Nankani, the learned Counsel for the assessee submitted that in the present case, substantial quantity of the electricity generated has been used in the manufacture of final products and roughly about one per cent of the electricity generated has been supplied to the residential complexes situated within the licensed premises. He submits that the word factory. defined u/s 2(e) of the Act is wide enough to cover any premises or precincts thereof, even if the manufacturing activity is carried out only in a part of such premises or precincts. Relying on the decisions of the Apex Court in the case of M/s. Grauer and Weil (India) Ltd. Vs. Collector of Central Excise, Baroda, and in the case of South Eastern Coalfields Ltd. Vs. Commissioner, Customs and Central Excise, M.P., , Shri Nankani submitted that the words premises and precincts thereof. under the Excise Law has to be given a wider meaning. Accordingly, Shri Nankani submitted that the residential complexes situated within the precincts in which the manufacturing activity is carried out would be covered by the definition of factory.

14. Shri Nankani further submitted that the definition of the term factory when read in conjunction with the provisions of Rule 57B, it becomes clear that the inputs used for any purpose other than the manufacture of dutiable final product would be entitled to the credit of duty. Relying on the decisions of the Tribunal in the cases of 2000 (117) ELT 104 , 2006 (133) ECR 40 and Gujarat Narmada Fertilisers Co. Ltd. v. CCE reported in 2007 (78) RLT 469(T), Shri Nankani submitted that the term for any other purpose. in Rule 57B(iv) of the Central Excise Rules, 1944 and similar Rules framed thereafter must be construed to mean that the fuel oil used for generation of electricity would be eligible for modvat credit even if the electricity is used within the factory premises for a purpose other than the manufacture of dutiable final products. Therefore, electricity supplied to the residential complexes situated within the factory premises would be covered within the meaning of the words any other purpose. set out in Rule 57B(iv) of the Central Excise Rules, 1944 and consequently credit of duty paid on inputs namely furnace oil used in the generation of electricity supplied to the residential complexes would be available to the assessee.

15. Shri Nankani further submitted that it is not in dispute that the residential complexes of the assessee are situated within the licensed premises approved by the Central Excise Authorities. He submits that where the electricity is used within the factory premises, whether for production of the dutiable goods directly or for any other purposes, the credit of duty paid on the inputs used in the generation of such electricity, cannot be denied.

16. Shri Nankani fairly stated that the decisions of the Tribunal in the cases of SAIL v. CCE reported in 137 ELT 572(T); 2001 (130) ELT 459 ; and 2004 (177) ELT 597 support the contention of the revenue. However, he submits that the decision of the Tribunal in the case of SAIL reported in 137 ELT 572 (T) was based on a concession and the said decision has been followed in the subsequent decisions of the Tribunal referred to herein above. Since the above decisions are based on the concession, Shri Nankani submitted that the said decisions cannot be said to lay down correct proposition of law. Accordingly, Shri Nankani submitted that the decision of the Tribunal impugned in the appeal be quashed and set aside by answering the re-framed question in favour of the assessee.

17. Shri S.K. Mishra, the learned Assistant Solicitor General appearing on behalf of the respondent supported the order of the Tribunal. Relying on the decision of the Apex Court in the case of Vikram Cement Vs. Commnr. of Central Excise, Indore, , Shri Mishra submitted that to avail credit of duty, electricity must be utilised for an intermediate product or a final product. If the electricity is used for a purpose which is not connected with the intermediate product or the final product, then the credit of duty on inputs used in the generation of electricity would not be available. In the present case, since the supply of electricity to the residential complexes is neither connected with nor related to the intermediate product or the final product, the assessee is not entitled to the credit of duty paid on inputs. Accordingly, Shri Mishra submitted that there is no merit in the appeal and the same is liable to be dismissed.

18. We have carefully considered the rival submissions. The basic dispute in the present case revolves on the meaning of the word any other purpose. contained in Rule 57B(iv) of the Central Excise Rules, 1944 as well as similar Rule contained in the Cenvat Credit Rules, 2001 and Cenvat Credit Rules, 2002. During the period from 1997 to 2002 the electricity generated has been utilised by the assessee within the licensed premises for manufacture of final product and at the residential complexes. The question is, whether the assessee is entitled to the credit of duty paid on furnace oil used in the generation of electricity for supply to residential complexes situated within the licensed premises ?

19. According to the assessee, the words any other purpose. in Rule 57B(iv) is wide enough to cover supply of electricity to the residential complexes. In other words, the submission is that once it is established that the electricity manufactured from the duty paid furnace oil is used within the factory premises for any purpose whatsoever, the credit of duty paid on furnace oil would be available.

20. We find it difficult to accept the submissions of the assessee. In our opinion, credit of duty under Rule 57B(iv) would be available to inputs used for generation of electricity provided, the electricity is used for manufacture of final products or for any other purpose connected with or related to the manufacture of the final products. In other words, the use of electricity must have nexus with the goods

manufactured in the factory. For example, where the electricity is used in the production of an intermediate product within the licensed premises for use in the final product or use of electricity in the godowns or workshop established by the assessee within the licensed premises to facilitate storage/repair of the machinery used in the production of the final products, it would be covered within the meaning of the word any other purpose. in Rule 57B(iv) of the Central Excise Rules, 1944.

21. The fact that the residential complexes are situated within the licensed premises would not entitle the assessee to avail credit of duty paid on furnace oil used in the manufacture 13 of electricity supplied to the residential complexes. It is necessary to establish that the electricity is used for any purpose connected with or related to the production of final products. In our opinion, supply of electricity to the residential complexes situated within the factory premises are neither connected with or related to the production of the final products. In this view of the matter, we hold that the finding recorded by the Tribunal that the assessee is not entitled to the credit of duty paid on the furnace oil used in the generation of electricity supplied to the residential complexes cannot be faulted.

22. The decision of the Apex Court in the case of Grauer and Weil (I) Ltd. v. CCE (supra) and the case of South Eastern Coalfields Limited v. CCE (supra) relied upon by the assessee do not support their case. What is held in those cases is that the words any premises including the precincts thereof. in Section 2(m) of the Central Excise Act are wide enough to cover any activity carried on within the licensed premises. In both the above cases, the Apex Court was not called upon to consider the issue which is raised in this appeal. In any event, it is pertinent to note that in both the above cases, the activity in question related to the production of excisable goods or an activity connected with or related to the production of the final products. In the present case, supply of electricity to the residential complexes is wholly unconnected with or related to the final products produced in the factory of the assessee. Therefore, reliance placed on the above decisions of the Apex Court is wholly misplaced.

23. In the result, the appeal fails.

24. The question framed herein above is answered in the affirmative i.e. in favour of the revenue and against the assessee. Appeal is dismissed with no order as to costs.