(2015) 03 SC CK 0105

In the Supreme Court Of India

Case No : Civil Appeal No. 8554 of 2003

Jayaswal Neco Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Central Excise Rules, 1944 — Rule 57Q, Rule 57S
Central Sales Tax Act, 1956 — Section 8(1), 8(3)
Central Sales Tax Rules, 1957 — Rule 13
Customs Tariff Act, 1975 — Section 3

Citation : (2015) 319 ELT 247 : (2015) 50 GST 438 : (2015) 31 GSTR 530 : (2015) 4 SCALE 446

Hon'ble Judges : Rohinton Fali Nariman, J.;Arjan Kumar Sikri, J.

Bench : Division Bench

Advocate : V. Lakshmikumaran, M.P. Devanath, R. Ramachandran, L. Charanaya, Aditya Bhattacharya, Prashanth S. Shivadass and Vivek Sharma, for the Appellant; K. Radhakrishnan, Sr. Adv., Sanjai Kumar Pathak, T.C. Sharma, S. Manchanda and B. Krishna Prasad, Advocates f

Final Decision : Disposed Of

Judgement

Arjan Kumar Sikri, J.—This appeal arises out of the judgment/final order dated 30.04.2003 passed by Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as ''CEGAT'') whereby the Tribunal has dismissed the appeal of the Appellant thereby confirming the order of the Commissioner insofar as it denies the Appellant MODVAT credit on some of the capital goods and parts which were detailed in the show cause notice issued under Rule 57Q of the Central Excise Rules, 1944 (hereinafter referred to as ''Rules'').

2. The dispute has arisen in the following factual background.

3. The Appellant is engaged in the manufacture of pig iron falling under Chapter 72 of the Schedule to Central Excise Tariff Act, 1985. The Appellant is availing

MODVAT credit on various capital goods and parts thereof under Rule 57Q of the Rules. The Respondent-authority had issued two show cause notices thereby proposing to deny the Appellant the MODVAT credit availed by them under Rule 57Q on the following items:

4. The Commissioner was of the view that the aforesaid goods were not covered within the definition of "capital goods" under Rule 57Q of the Rules. After giving opportunity to the Appellants to file reply to the said show cause notices and hearing the Appellants, the Commissioner passed the orders dated 30.10.2001. By the said order, the demand in respect of certain capital goods was dropped. At the same time, the MODVAT credit on the aforesaid four items was denied by the Commissioner. The Appellants filed appeal against the said order before the CEGAT and the CEGAT has affirmed the order of the Commissioner thereby dismissing the appeal of the Appellant.

5. In the present appeal preferred by the Appellants against the order of the CEGAT, the relief is confined to item (b) above alone, namely, in respect of railway track material used for handling raw materials, processed goods for which credit for sum of Rs. 16,59,987/- was claimed and was earlier allowed but reversed by the Commissioner. The question is as to whether the said item can be treated as "capital goods" under Rule 57Q of the Rules which was holding the field at the relevant time.

6. The relevant extract of the Rule 57Q, in the form in which it existed then, is reproduced as hereinbelow:

RULE 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 cleared under Rule 57S, 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 manufactured-

(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 per cent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park [or by a unit in Software Technology Parks] 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 Under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to the duty of excise paid on such capital goods.

Explanation.-For the purposes 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 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 weigh bridges used in the factory of the manufacturer.

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7. It follows from the bare reading of the aforesaid provision that for the purpose of allowing credit on specified duty paid on the capital goods, such capital goods are to be used by the manufacturer in his factory and are to be utilised for the purpose of manufacturing of final product. The explanation gives the meaning of ''capital goods''. As per Clause (a) thereof, machines, machinery, plants, equipment, apparatus, tools or appliances which are used for producing or processing goods or in bringing about any change in any substance for the manufacture of final product are to be treated as "capital goods".

8. It is clear from the reading of the definition of capital goods that when machines, machinery, plants, equipment, etc., are used for producing or processing any good or bringing about any change in any substance for the manufacture of final product, it would qualify as ''capital goods'' and MODVAT credit thereon would be permissible. Question that arises for consideration is as to in what manner such machines, machinery, plants, equipment, etc., is to be used for the purpose stated therein.

9. A direct answer to this question is given by this Court in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, . In this case, the test which was enunciated by the Court is:

Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be impossible or commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods". For goods to answer that description, it is not necessary that they must of necessity be goods which are used as "ingredient or commodity in the creation of goods", or which are "directly and actually needed for turning out or making of the goods.

10. Though the court was concerned with the construction of Section 8(3)(b) of the Central Sales Tax Act, 1956, and Rule 13 framed under the said Act, the

expression "in the manufacture or processing of goods for sale" appearing in Section 8(3)(b) came up for interpretation. Section 8(3)(b) authorises the Sales Tax Officer to specify goods intended for use by the dealer in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power. Rule 13 provides that such goods must be intended for use in the manufacture or processing of goods for sale or in mining or generation or distribution of power.

11. The aforesaid expression interpreted by the Court, therefore, becomes relevant for our case as well. The test laid down by the Court and noticed above was explained and expanded by the Court in the following words:

In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in Rule 13 will qualify for special treatment. This is not to say that every category of goods "in connection with" manufacture of or "in relation to" manufacture, or which facilitates the conduct of the business of manufacture will be included within Rule 13. Attention in this connection may be invited to a judgment of this Court in which it was held that vehicles used by a Company (which mined ore and turned out copper in carrying on activities as a miner and as a manufacturer) fell within Rule 13, even if the vehicles were used merely for removing ore from the mine to the factory, and finished goods from the factory to the place of storage. Spare parts and accessories required for the effective operation of those vehicles were also held to fall within Rule 13. See Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar and Ors.

12. In the process, the court also explained that there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. In the opinion of the court, the expression "in the manufacture" takes within its compass, all processes which are directly related to the actual production. It noted that goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. The court further marked that drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".

13. The said judgment also reflects discussion on certain other material goods which are used ''in the manufacture of goods'' and depending upon the manner in which such materials are used, it may or may not be integrally connected with the ultimate production of goods. To exemplify the same, the court noted the use of building materials as well as electronics goods, by pointing out the aforenoted distinction in the following manner:

Building materials including lime and cement not required in the manufacture of tiles for sale cannot, however, be regarded within the meaning of Rule 13, as raw materials in the manufacture or processing of goods or even as "plant". It is true that buildings must be constructed for housing the factory in which machinery is installed. Whether a building is a "plant" within the meaning of Rule 13, is a difficult question on which no opinion need be expressed. But to qualify for specification Under Section 8(3)(b) goods must be intended for use of the nature mentioned in Rule 13, in the manufacture of goods. Building materials used as raw materials for construction of "plant" cannot be said to be used as plant in the manufacture of goods. The Legislature has contemplated that the goods to qualify Under Section 8(3)(b) must be intended for use as raw materials or as plant, or as equipment in the manufacture or processing of goods, and it cannot be said that building materials fall within this description. The High Court was, therefore, right in rejecting the claim of the Company in that behalf.

The expression "electricals" is somewhat vague. But in a factory manufacturing cotton and other textiles, certain electrical equipment in the present stage of development would be commercially necessary. For instance, without electric lighting it would be very difficult to carry on the business. Again electrical humidifiers, exhaust fans and similar electrical equipment would in the modern conditions of technological development normally be regarded as equipment necessary to effectually carry on the manufacturing process. We are not prepared to agree with the High Court that in order that "electrical equipment" should fall within the terms of Rule 13, it must be an ingredient of the finished goods to be prepared, or "it must be a commodity which is used in the creation of goods". If, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment would be regarded as intended for use in the manufacture of goods for sale and such a test, in our judgment, is satisfied by the expression "electricals". This would of course not include electrical equipment not directly connected with the process of manufacture. Office equipment such as fans, coolers, air-conditioning units, would not be admissible to special rates Under Section 8(1).

14. Applying the aforesaid test to the facts of this case, it is apparent that the use of railway tracks is related to the actual production of goods and without the use of the said railway track, commercial production would be inexpedient.

15. In the instant case, the manner in which railway track materials have been used by the Appellant was explained by the Appellant before the Commissioner and veracity thereof was accepted by the Commissioner. Therefore, without any fear of contradiction, we may note the exact process that is involved:

These railway tracks used in transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is poured into pig casting machine for manufacture of pig iron. Secondly the system also helps in taking hot pigs from pig casting machine to pigs storage yard by the big wagon where hot pig iron are dumped for cooling and making ready for dispatchers. This Railway tracks are also used in handling of raw materials at wagon tippler to stacker reclaimer where stacking and reclaiming of raw material is taken place and required quantity is conveyed for further processing at stock house.

16. It reflects that the Appellant has installed railway tracks within the plant which is a handling system for raw material and processed material.

17. The aforesaid process squarely meets the test laid down by this Court in M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd.''s case. It is clear that the railway tracks are installed not only within the plant, but the main objective and purpose for which the capital expenditure on laying these railway tracks is incurred by the Appellant is for transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is poured into pig casting machine for manufacture of pig iron, It is clear from the above that the use of railway tracks inside the plant not only form the process of manufacturing, but it is inseparable and integral part of the said process inasmuch as without the aforesaid activity for which railway tracks are used, there cannot be manufacturing of pig iron.

18. We find from the order of the Commissioner that in spite of taking note of the aforesaid use of the railway tracks and accepting the same as correct, the Commissioner denied the relief to the Appellant on an extraneous ground, i.e., railway tracks were used for other purposes as well, namely, apart from conveying hot metal and hot pigs, it was used for carrying raw materials and finished goods as well. This can hardly be a ground to deny the relief inasmuch as by incidental use of the railway tracks for some other innocuous purpose, it does not lose the character of being an integral part of the manufacturing process. The Commissioner has further observed in his order that the railway track is not utilised directly or indirectly for producing or processing of goods or bringing about any change for manufacture of final product. This conclusion, obviously, is completely erroneous and amounts to misreading of the process. Such an error has occurred because the Commissioner did not keep in mind the principle of law laid down by this Court in M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd.''s case, highlighted above.

19. When we read the order of the CEGAT, we find that CEGAT has not even adverted to and examined the issue from the aforesaid angle, which was the only method for arriving at a finding as to whether the railway tracks installed within the plant would come within the definition of capital goods under Rule 57Q of the Rules or not. The order of the CEGAT is stoically silent. It has affirmed the order of the Commissioner by simply observing that the Commissioner has arrived at the conclusion that these goods are not being used directly or indirectly for producing or processing the goods or for bringing about any change for the manufacture of the final product. We have already pointed out that the aforesaid conclusion of the Commissioner is not only factually incorrect and perverse but

legally unsustainable as well.

20. Resultantly, we set aside the order of the Commissioner as well as of CEGAT insofar as it pertains to item "railway track material used for handling raw materials, process goods" and hold that the Appellant has rightfully claimed for MODVAT credit in respect of this item which credit is wrongly reversed by the authorities below. To that extent, order of the Commissioner as well CEGAT is set aside and the present appeal is allowed in the aforesaid terms. No order as to costs.

