(2009) 03 P&H CK 0254

In the Punjab And Haryana At Chandigarh

Surya Pharmaceutical Ltd. APPELLANT

Vs

Commr. of C. Ex. RESPONDENT

Date of Decision : 16-03-2009

Acts Referred:
Central Excise Rules, 1944 — Rule 57Q, 57S
Central Excises and Salt Act, 1944 — Section 35G
Customs Tariff Act, 1975 — Section 3

Citation : (2010) 256 ELT 51

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—The dealer-appellant has approached this Court by filing instant appeal u/s 35G of the Central Excise Act, 1944 (for brevity, ''the Act'') challenging order dated 3-7-2006, passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, ''the Tribunal''). The Tribunal has held that the dealer-appellant would not be entitled to Modvat Credit in respect of spare and parts of two chilling plants, which have been erected by the dealer-appellant. The rationale adopted by the Tribunal is that Modvat Credit as per the requirement of Rule 57Q Explanation (1)(a) of the Central Excise Rules, 1944 (for brevity, ''the Rules''), is admissible on ''capital goods''. However, the Rule has excluded from the benefits of Modvat Credit items under Chapter Heading 84.15.

2. The short question which arises for determination in this appeal is whether spare parts used by the dealer-appellant for erecting two chillers are covered under Chapter Heading 84.15 or any other entry to the contrary.

3. Brief facts of the case necessary for disposal of the appeal may first be noticed. The dealer-appellant is holding Central Excise registration dated 23-2-1998 and engaged in the manufacture of bulk drugs falling under subheading 2941-11 of the Schedule to the Central Excise Tariff Act, 1985 (for

brevity, ''the 1985 Act''). The dealer-appellant has availed Modvat Credit of duty paid on the parts used in the manufacture of two chilling plants in its factory during the period July 1996 to March 2001. The Adjudicating Authority issued a show cause notice alleging that the credit of duty paid on ''capital goods'' including their spares and components used by the dealer-appellant was not available on the goods covered by Chapter Heading 84.15. It was further alleged that CETH 84.15 has specifically excluded the spare parts from the definition of ''capital goods'' as per Rule 57Q of the Rules. Accordingly, Modvat Credit availed by the dealer-appellant was rejected. The aforesaid order was challenged by seeking refund of Rs. 3,69,008/-. The order of the Deputy Commissioner-cum-Adjudicating Authority categorically holds that the dealer-appellant has erected two chilling plants falling under Chapter Heading 84.15 without paying any duty which were not eligible for Modvat Credit as Chapter Heading 84.15 has been specifically excluded from the definition of ''capital goods'' during the relevant period, namely, 23-7-1996 to 1-4-2001. The argument of the dealer-appellant that chilling plant is essential requirement for the manufacture of pharmaceuticals/drugs did not find favour with the Adjudicating Authority for the reason of express exclusion of those items from the definition of ''capital goods''. On appeal, the view taken by the Adjudicating Authority was reversed by the Commissioner (Appeals) who took the view that items which are generally used in the chilling plant had different function. The Commissioner (Appeals) also held that such items were essential for the manufacture of the final product and without the components the plant cannot function and the final product could not be manufactured.

4. The revenue challenged the order of the Commissioner (Appeals) before the Tribunal. After hearing the parties the Tribunal examined in detail Rule 57Q of the Rules and the definition of ''capital goods''. It proceeded to conclude as under:

A plain reading of the said rule will indicate that the lawmakers intended to grant Modvat credit on the capital goods if those items were covered under Rule 57Q. It can be seen that the Explanation defines the capital goods, and Sub-clause (a) specifically excludes the eligibility of the Modvat Credit on the machinery falling under chapter heading No. 84.15. It would mean that even if any machinery is vital for the manufacture of final products, if it falls under the chapter heading No. 84.15, the assessee is precluded from availing the Modvat credit. In the case before me it is admitted fact that the parts on which Modvat credit is availed fall under chapter heading No. 84.15, hence the respondent is not eligible to avail the Modvat credit on such parts. I find that the cases laws relied upon by the respondent''s advocate were rendered during the period when the definition of capital (goods?) under Rule 57Q was different and was for the period of July 1996. To my mind, the exclusion of the specific heading from the definition of capital goods debars the respondent from availing the Modvat credit on the parts of chilling plant falling under chapter heading No. 84.15, however, it may be required for the manufacture of final products.

5. We have heard learned Counsel for the parties at considerable length and have perused the paper book with their able assistance. It would be necessary to read Rule 57Q of the Rules alongwith the ''Table'', which grant Modvat Credit by defining ''capital goods'' and specifically exclude those items which would not qualify as such. Rule 57Q alongwith the table (as it stood during the relevant period) reads thus:

57Q. (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 utilizing 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 Part 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 u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to the duty of excise paid on such capital goods.

Explanation.- For the purpose of this section,-

(1) "capital goods" means following goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer, namely:

(a) all goods falling under Chapter 84 (other than those falling under heading No. 84.07 to 84.09, Compressors falling under heading No. 84.14 and of a kind used in refrigerating and air-conditioning appliances and machinery, heading or sub-heading Nos. 84.15, 84.18, 8422.10, 8424, 89.29 to 84.37, 84.40, 84.50, 84.52, 84.69 to 84.74, 84.76, 84.78, expansion valves and solenoid valves falling under sub-heading No. 8481.10 of a kind used for refrigerating and air conditioning appliances and machinery);

(b)

(c)

(d)

(e)

(f)

(g)

(h)

TABLE

-- S. Description of capital goods falling Description of final No. within the Schedule to the Central products Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer -- (1) (2) (3) -- 1 All goods falling under heading All goods specified Nos. 82.02 to 82.11; in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1985), other than the following namely : (i) -- 2 All goods falling under chapter 84 (i)all goods falling (other than internal combustion under Chapter 24; and engines falling under heading No. (ii) all goods falling 84.07 or 84.08 and of a kind used under heading Nos. in motor vehicles, compressors 36.05 or 37.06. falling under heading No. 84.14 and of a kind used in refrigerating and air conditioning appliances and machinery, heading or subheading Nos. 84.15, 85.18, 8422.10, 84.24, 84.29, 84.29 to 84.37, 84.40, 84.50, 84.52, 84.69 to 84.73, 84.76, 84.78, expansion valves and solenoid valves falling under subheading No. 8481.10 of a kind used for refrigerating and air conditioning appliances and machinery); -- 3 All goods falling under chapter 85 (other than those falling under heading Nos. 85.09 to 85.13, 85.16 to 85.31, 85.39 and 85.40); -- 4 to xxx xxx xxx 12 --

6. A perusal of the Rule 57Q of the Rules would show that credit of duty paid on ''capital dues'' used by the manufacturer of specified goods would alone be qualified for Modvat credit. The explanation further defines ''capital goods'' as per the schedule appended to the 1985 Act and used in the factory of the manufacturer. A further perusal of the item shown in the table would show that all goods falling under Chapter Heading 84 have been covered by the expression ''capital goods'' except those under sub-heading No. 84.15 and so on. It would further be necessary to peruse Chapter Heading No. 84.15 of Chapter 84 which show that air conditioning machine etc. have been mentioned therein. Sub-heading 84.15 of Chapter 84 is reproduced hereunder for facility of reference:

-- Tariff Description of goods Unit Rate of Item duty

--- (1) (2) (3) (4) ---

8415 Air-conditioning machines, comprising a motor driven fan and elements for changing the temperature and humidity, including those machines in which the humidity cannot be separately regulated

8415 10 - Window or wall types, self- contained or "split system":

8415 10 10 - Split system u 14%

8415 10 90 - Other u 14%

8415 20 - Of a kind used for persons in u 14% motor vehicles

8415 20 10 - For buses u 14%

8415 20 90 - Other

- Other

8415 81 - Incorporating a refrigerating unit and a valve for reversal of the cooling or heat cycle (reversible heat pumps) :

8415 81 10 - Split air-conditioner two u 14% tones and above

8415 81 90 - Other u 14%

8415 82 - Other, incorporating a refriger- ating unit :

8415 82 10 - Split air-conditioner two u 14% tones and above

8415 82 90 - Other u 14%

8415 83 - Not incorporating a refrigerating unit:

8415 83 10 - Split air-conditioner two u 14% tones and above

8415 83 90 - Other u 14%

8415 90 00 - Parts Kg. 14% ---

7. The order of the Commissioner (Appeals) which favour the dealer-appellant has highlighted that chilling plant is a composite unit and cannot function without various other components forming part of the plant. It also indicate that the motor is used to drive the unit of compressor for the purpose of compression of gas, which after compression moves on to the condenser for condensation and then through the butterfly valves it goes to the chiller within chilling coils installed in the chiller. The aforesaid component forming part of the chilling plant have been part of sub-heading 84.15 and, therefore, it cannot be concluded that merely because it is essential for production of pharmaceutical would be sufficient consideration to include the same in the definition of ''capital goods''. Therefore, we are of the view that entry 84.15 is excluded and all the goods

mentioned therein would be qualified for claiming Modvat Credit.

8. The argument of the learned Counsel for the dealer-appellant that it is covered by entry 84.18 is wholly misconceived because it proceeds on the basis of a printing error in the Gazette notification dated 9-3-1997 wherein Sr. No. 2 of the table in the excepted item instead of 84.18, 85.18 has been erroneously printed. The entry has to be regarded as a mis-print because under Sr. No. 2 of the table only entries excluded from chapter 84 have been mentioned. The entries concerning chapter 85 are dealt with in the next Sr. No. 3. Therefore, it does not stand to reason to say that since the entry 84.18 has not been mentioned in Sr. No. 2 of the table dealing with entry of chapter 84 and it has merely mentioned 85.18, it would not result into a conclusion that entry 84.18 has been kept in the definition of ''capital goods''. Moreover, it would be wholly unwarranted to include entry 84.18 in the definition of ''capital goods'' once 84.14 has been excluded because 84.18 also deals with ''Refrigerators, freezers and other refrigerating or freezing equipment, electric or others....''. The argument appears to be absurd and is, thus, liable to be rejected.

9. For the reasons aforementioned, this appeal fails and the same is dismissed.

