(2017) 04 AHC CK 0043

In the Allahabad High Court

Case No : Sales/trade Tax Revision No. - 99 of 2017

The Commissioner, Commercial Tax, U.P.Lucknow — APPELLANT

Vs

S/S Ambuja Cement Ltd., Saharanpur — RESPONDENT

Date of Decision : 19-04-2017

Acts Referred:

Citation : (2017) 96 UPTC 581

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Bipin Kumar Pandey, Advocate, for the Applicant; Shri M.P. Devnath, Nishant Mishra, Advocates, for the Opposite Party

Final Decision : Dismissed

Judgement

Ashwani Kumar Mishra, J.—This revision is by the revenue questioning an order passed by the Tribunal dated 16.12.2016, whereby the claim of input tax credit by the assessee, in respect of goods utilized for construction of silo, has been disallowed. Challenge is essentially based upon the definition of ''capital goods'' contained under Section 2(f) of the U.P. Value Added Tax Act, 2008. It is contended that ''capital goods'' are goods that are move able in nature, and since silo is a storage tank embedded to earth, as such, it cannot be included within the definition of ''capital goods''. Reliance is also placed upon the definition of ''goods'' defined under Section 2(m) of the Act.

2. It is urged on behalf of the assessee that definition of goods under Section 2(m) is not relevant, and what has to be interpreted is the definition of ''capital goods'', which constitute an separate and distinct category in itself. It is also submitted that plant, particularly a cement plant, is a huge structure which is embedded in earth, and it would not be proper to give a restrictive meaning to the term ''plant'' so as to treat it as movable property alone.

3. I have heard Learned Standing Counsel for the applicant and Sri M.P. Devnath and Sri Nishant Mishra for the assessee.

4. Section 2 (f) of U.P. VAT Act defines ''capital goods'' in following words:-

2. ....

"(f) "capital goods" means any plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation used for manufacture or processing of any goods for sale by the dealer and includes:-

(i) components, spare parts and accessories of such plant, machine, machinery, equipment, apparatus, tool, appliance or electrical installation;

(ii) moulds and dies;

(iii) storage tank;

(iv) pollution control equipment;

(v) refractory and refractory materials;

(vi) tubes and pipes and fittings thereof;

(vii) lab equipments, instruments and accessories''

(viii) machinery, loader, equipment for lifting or moving goods within factory premises; or

(ix) generator and boiler,

used in manufacture of goods for sale by him but for the purpose of section 13, does not include:-

(i) air-conditioning units or air conditioners, refrigerators, air coolers, fans, and air circulators if not connected with manufacturing process;

(ii) an automobile including commercial vehicles, and two or three wheelers, and parts, components and accessories for repair and maintenance thereof;

(iii) goods purchased and accounted for in business but utilised for the purpose of providing facility to the employees;

(iv) vehicle used for transporting goods or passengers or both;

(v) capital goods used in the execution of a works contract; and

(vi)......]Omitted"

Section 2 (m) defines ''goods'' in following words:-

2. ....

"(m) "goods" means every kind or class of movable property and includes all materials, commodities and articles involved in the execution of a works contract, and growing crops, grass, trees and things attached to, or fastened to anything permanently attached to the earth which, under the contract of sale, are agreed to be severed, but does not include actionable claims, stocks, shares or securities;"

5. A perusal of the definition of ''capital goods'' clearly goes to show that plant, machine, machinery, equipment apparatus and tools or appliances and electrical installation, which are used for manufacture or processing of any goods for sale by the dealer, would be included. The parties are not at issue on the factual proposition that goods used herein, are utilized for manufacture or processing of goods sold by dealer. The mere fact that machine, machinery, equipment, apparatus, tools or appliances etc. are generally understood to be movable property, would not mean that plant also has to be necessarily treated as movable property only. There does not appear to be any rational to import the concept of movable or immovable goods while interpreting Section 2 (f) of the Act, when the provision does not say so.

6. The Tribunal has placed reliance upon the decision of Apex Court in Commissioner of Central Excise, Coimbatore and others v. Jawahar Mills Ltd. and Others, (2001) 6 SCC 274, which dealt with grant of MODVAT credit to capital goods under the Central Excise Act. The explanation 1 to Rule 57 (q) defines capital goods which is similar to the definition of capital goods in the U.P. VAT Act. The Apex Court has been pleased to observe as under in paragraph 4 and 6 of the judgement:-

"4. The aforesaid definition of "Capital goods" is very wide. Capital goods can be machines, machinery, plant equipment, apparatus, tools or appliances. Any of these goods if used for producing or processing of any goods or for bringing about any change in any substance for the manufacture of final product would be "Capital goods", and, therefore, qualify for availing MODVAT Credit. Per clause (b), the components, spare parts and accessories of the goods mentioned in clause (a) used for the purposes enumerated therein would also be "Capital goods" and qualify for MODVAT Credit entitlement. Clause (c) makes moulds and dies, generating sets and weighbridges used in the factory of the manufacturers as capital goods and thus qualify for availing MODVAT credit. The goods enumerated in clause (c) need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the Explanation is very liberal.

6.The contention of learned Additional Solicitor-General that the aforesaid decision and other decisions referred by the Tribunal in the impugned order were cases involving sales tax and income tax and, therefore, the Tribunal should not have relied on those decisions is without any substance because the real question is that of the principle laid down by a decision. In view of the liberal language of the provision, Mr. Rohtagi fairly and very rightly did not seriously dispute that if any of the items enumerated in Explanation (1)(a) is used for any purpose mentioned therein for the manufacture of final products, it would satisfy the test of "Capital goods". The main contention of Mr. Rohtagi, however, is that the question whether an item falls within the definition of "Capital goods" would depend upon the user it is put to. The submission is that parts of the items in respect whereof availing of MODVAT credit has been allowed by the Tribunal could not be treated as "Capital goods" as the manufacturer could not establish that the entire item was used in the manufacture of final product. To illustrate his point, Mr. Rohtagi submitted that part of a cable may go into the machine used by the manufacturer and, thus, may qualify the requirement of clause (1)(a) and, at the same time, another part of the cable which is used only for lights and fans would not so qualify. We have no difficulty in accepting the contention of the learned Additional Solicitor-General that, under these circumstances, user will determine whether an item qualifies or not the requirement of clause (1)(a). However, in the present cases this aspect has no relevance. It was not the case of the revenue at any stage before the authorities that an item does not satisfy the requirement of "Capital goods" within the meaning of the Rule on the ground of its user as it now sought to be urged by the learned counsel. The case of the revenue has all through been that the items in question per se are not "Capital goods" within the meaning of the expression as defined in Explanation (1)(a). In respect of the cables of which Mr. Rohtagi gave example, the stand of the revenue before the Tribunal was that the cables per se cannot be treated as "Capital goods". The stand of the revenue was not as has been projected now by Mr. Rohtagi. In this view, the question of directing remand of these matters for fresh decision by the Tribunal does not arise. On the facts and circumstances of these cases, therefore, the stand that the items in question are not used for manufacture of final product cannot be accepted for the reasons afore stated."

7. The aforesaid view taken is followed in a subsequent decision in Commissioner of Central Excise, Jaipur v. Rajasthan Spinning and Weaving Mills limited, (2010) 12 SCC 186. Attention of the Court is also invited to a judgment of a Division Bench of Karnataka High Court in Commissioner of Central Excise, Bangalore-II v. SLR Steels Ltd, 2012 (280) E.L.T. 176. The Court was dealing with a similar provision occurring under Rule 2 (a) of the Cenvat Credit Rules, 2004 in the context of storage tank embedded to earth. After examining the provisions, the Division Bench has taken a view that storage tank embedded in the earth also forms part of capital goods, if it is otherwise being utilized for manufacture of goods. Reliance is also placed upon other decisions, wherein similar view is taken.

8. Learned Standing Counsel appearing for the revenue has attempted to distinguish the present case, with reference to the definition of ''capital goods''. Once this Court finds that the distinction of movable or immovable nature of goods is not contained in the Act, and is otherwise not a relevant consideration, there survives no other ground of challenge to the order of the Tribunal.

9. In such circumstances, the question posed for consideration in this revision is answered by holding that the Tribunal was justified in allowing the benefit of I.T.C on purchase of M.S. Sheets used in construction of silos, treating it as ''capital

goods''.

10. Revision accordingly, fails and is rejected.

