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CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK NO.2, R.K.PURAM, NEW DELHI-110066
EXCISE APPEAL BRANCH

Appeal No. : E/4990/2004-EX[DB], E/5006/2004-EX[DB] Dated: **25/09/2012**

Assistant Registrar
C.E.S.T.A.T. New Delhi
To,
C.C.E. MEERUT-I
University Road, Mangal Pandey Nagar,
Meerut

C.C.E. MEERUT-I (Appellant)

VS

KISAN SAHKARI CHINI MILLS LTD. (Respondent)

I am directed to transmit herewith a certified copy of Final Order No. **A/1172-1173/2012-EX[DB]** dated **19/09/2012** passed by the Tribunal under section **35-C(1) of the Central Excise and Salt Act, 1944.**

Assistant Registrar
EXCISE Appeal Branch

Copy To,
1. **Respondent**
KISAN SAHKARI CHINI MILLS LTD.
Nanauta, Saharanpur

2. **Advocate(s) / Consultant(s):** MR. VIKRANT KACKRIA, ADV., 509, SECTOR-7, PANCHKULA (HR)

3. **C.D.R**
4. Bar Association, CESTAT, New Delhi
5. Director Publications, Customs, Excise. I.P. Estate, New Delhi
6. M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp. ICICI Bank of Defence Colony, New Delhi-3
7. Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17
8. Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005
9. Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15
10. LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11. TaxIndiaOnline.com Pvt. Ltd., Unit No. 1, 2nd Floor, Vasant Arcade, Nelson Mandela Road, Vasant Kunj, New Delhi - 110070
12. Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Ameer Pet, Hyderabad – 500038
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Assistant Registrar
EXCISE Appeal Branch

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 08/08/2012.
DATE OF DECISION : 19/09/2012.

Excise Appeal No. 4990 of 2004 and 5006 of 2004

[Arising out of the Order-in-Appeal No. 470/CE/MRT-I/2004 dated 26/07/2004 passed by The Commissioner (Appeals), Central Excise, Meerut – I.]

Hon'ble Shri Justice Ajit Bharihoke, President
Hon'ble Shri Rakesh Kumar, Member (Technical)

1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? :
2. Whether it would be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? :
3. Whether their Lordships wish to see the fair copy of the order? :
4. Whether order is to be circulated to the Department Authorities? :

CCE, Meerut – I — Appellant

Versus

M/s Kisan Sahkari Chini Mills Ltd. — Respondent

and vice-versa

Appearance

Shri I. Baig, Authorized Representative (DR) – for the Appellant.

Shri Vikrant Kakaria, Advocate – for the Respondent.

CORAM : **Hon'ble Shri Justice Ajit Bharihoke, President**
Hon'ble Shri Rakesh Kumar, Member (Technical)

FINAL Order No. A/1172-1173/2012-EX(BR)

Per. Shri Rakesh Kumar :-

The facts leading to these appeals are, in brief, as under.

1.1 The appellant are manufacturers of sugar and molasses. The period of dispute in this case is December, 1999. The allegation against the appellant is that during this period, they took Cenvat credit in respect of bagasse carrier chain and parts thereof (Rs. 1,41,485), steam jointing sheets and ceramic fibre blankets (Rs. 27,274/-), metal box expansion unit (Rs. 12,320/-) and structural steel items for fabricating staging structures and other structures for placing sugar mill machinery at particular height (Rs. 27,57,890/-). According to the department these items were not eligible for Cenvat credit either as inputs or as capital goods. Accordingly a show cause notice was issued to the appellant for denying credit in respect of these items and its recovery alongwith interest and imposition of penalty on them. The show cause notice was adjudicated by the Deputy Commissioner vide order-in-original dated 30/11/2000 by which the Cenvat credit of Rs. 1,55,693/- was allowed in respect of bagasse carrier chain and metal box expansion unit, but the Cenvat credit of Rs. 27,83,277/- in respect of the structural steel items used for fabricating staging material and structures for placing the machinery at particular height and ceramic fibre blankets was disallowed. On appeal to Commissioner (Appeals), the Commissioner (Appeals) vide impugned order-in-appeal dated 26/7/2004 allowed the Cenvat credit in respect of ceramic fibre blankets on the ground that the same are used for preventing heat loss from the boiler and, hence, the same have to be treated as component parts of the capital goods. He, however, disallowed the Cenvat credit in respect of structural steel material used for fabrication of staging and other structures, which were required for placing various items of sugar mill machinery at a particular height. Against this order of the Commissioner (Appeals), while the appellant have filed the appeal No. E/5006 of 2004 against the part of the Commissioner (Appeals)'s order disallowing the Cenvat credit in respect of structural steel material used for fabrication of various structures and staging, the department has filed the appeal E/4990 of 2004 against the part of the Commissioner (Appeals)'s order permitting Cenvat credit in respect of ceramic fibre blankets.

2. Heard both the sides.

3. Shri Vikrant Kakaria, Advocate, the learned Counsel for the appellant pleaded that so far as ceramic fibre blankets are concerned, the same are used for wrapping the pipes and vessels to reduce the heat loss, that without the use of these items, the manufacturing operation is not possible, that in view of this, item has to be treated as component or accessory of the capital goods and that as such there is no infirmity in the Commissioner (Appeals)'s order permitting the Cenvat credit in respect of this item, that as regards the structural steel material – MS Angles, Channels, Plates, Shapes, Sections etc. used for fabrication of staging and structures for placing different type of sugar mill

machinery at a particular height, the staging and structures fabricated have to be treated as component of the machinery, that sugar mill machinery is covered by Chapter 84 and, hence, the staging and structures for placing the machinery at the required height have to be treated as component parts of such machinery and, therefore, these structures though classifiable under Chapter 73, would be covered by the definition of 'capital goods' as the same are component accessory of the sugar mill machinery and, hence, would be eligible for the Cenvat credit. He, therefore, pleaded that the impugned order disallowing the Cenvat credit in respect of the structural steel items used for fabrication of components of capital goods is not correct.

4. Shri I. Baig, learned Departmental Representative, pleaded that so far as the structural steel items used for fabrication of staging are concerned, the same are not eligible for Cenvat credit either as input or as capital goods, as neither the MS Angles, Channels, Plates etc. falling under Chapter 72 and 73 are covered by the definition of 'capital goods' nor the structures fabricated by using these items are covered by the definition of capital goods, that in this regard he relies upon the judgment of the Apex Court in the case of **Saraswati Sugar Mills vs. CCE, Delhi – III** reported in **2011 (270) E.L.T. 465 (S.C.)**, wherein it has been held that various supporting structures of Iron and Steel fabricated in the sugar mill for supporting the machinery are not covered by the definition of capital goods as given in Rule 57Q of Central Excise Rules and that in this judgment, the Apex

Court specifically held that these structures cannot be called components of the capital goods. He, therefore, pleaded that there is no infirmity in the impugned order of the Commissioner (Appeals) disallowing the Cenvat credit in respect of structural steel items used for fabrication of staging structure. As regards, the ceramic fibre blanket, he assailed the impugned order pleading that the same is only an insulating material and cannot be treated as a part of capital goods.

5. We have considered the rival submissions and perused the records.

6. So far as the ceramic fibre blankets are concerned, there is no dispute that the same are used for wrapping around the pipes and vessels to reduce the heat loss. In our view, without the use of these items smooth manufacturing operation would not be possible and, therefore, we hold that the Commissioner (Appeals) has correctly treated this item as component of the capital goods and has correctly allowed the Cenvat credit in respect of the same.

7. As regards, the structural steel items used for fabrication of staging/structures for placing the machinery at the desired height, these structures are classifiable under Chapter 73. During the period of dispute, the definition of capital goods, as given in Rule 57Q, was as under :-

"Rule 57Q of the Central Excise Rules, 1944 reads :-

"(1) All goods falling under heading Nos. 82.02 to

82.11;

(2) All goods falling under Chapter 84 (other than internal combustion engines falling under heading No. 84.07 and 84.08 and of a kind used in motor vehicles, 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. 85.18. 8422.40, 8424.10, fire extinguishers falling under sub-heading No. 8424.80, 8424.91, 8424.99, 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 sub-heading 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 and 85.40);

(4) All goods falling under heading Nos. 90.11 to 90.13, 90.16, 90.17, 98.22 (other than for medical use), 90.24 to 90.31 and 90.32 (other than of a kind used for refrigeration and air-conditioning appliances and machinery);

(5) Components, spares and accessories of the goods specified against S. Nos. 1 to 4 above."

8. From the perusal of this definition, it will be seen that during that period, the term 'capital goods' included only the items specified in the table annexed to Rule 57Q. The goods falling under Chapter 73 are not specified in this table. The goods

of Chapter 73 can be treated as capital goods only if the same are proved to be the "components, spares and accessories" of the goods specified against Sl. No. 1 to 4 of the table. The goods specified against Sl. No. 1 to 4 of the table are various items of machinery, instruments, tools falling under Chapter 82, 84, 85 and 90 of the Central Excise Tariff. There is no dispute that the structural steel items, in question, have been used for fabrication of staging/structures for placing the machinery at the desired height and these staging/structures can be treated as 'capital goods' only if the same can be treated as components, spares or accessories of the capital goods specified against Sl. No. 1 to 4 of the table to Rule 57Q. The question as to whether such supporting structures/staging, even if not fixed to the earth, can be treated as component of the machinery was considered by the Apex Court in the case of **Saraswati Sugar Mills vs. CCE, Delhi – III** (supra) and the Apex Court in this case held that the same cannot be treated as component parts of the sugar manufacturing machinery. In view of this, we are of the view that the staging/structures fabricated by the appellant by using the structural steel items are not covered by the definition of capital goods and, hence, the items used for their fabrication would not be covered by the definition of input and, hence, would not be eligible for Cenvat credit.

9. In view of the above discussion, we do not find infirmity in the impugned order. The appeals file the appellant as well as by the Revenue are dismissed.

(Pronounced in the open court on 19/09/2012)

(Justice Ajit Bharihoke)
President

(Rakesh Kumar)
Member (Technical)

PK