IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.Nos.724 of 2016
and 1487 of 2017
(C.M.P.9364 of 2016)
and C.M.P.No.7995 of 2017

M/s.The India Cements Ltd.,
Sankar Nagar, Tirunelveli
... Appellant in both C.M.As
Vs.

1. Customs, Excise and Service Tax Appellate Tribunal,
No.26, Sashtri Bhavan Annexe Building,
Haddows Road, Chennai - 600 006.

2. The Commissioner of Central Excise,
Tirunelveli.
.... Respondents in both C.M.As

Appeals filed under Section 35G of the Central Excise Act, 1944, against the order dated 09.09.2015 and 01.09.2005 passed in Misc.Order No.41161 of 2015 in Final Order No.1182 of 2005 dated 01.09.2005 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai in Appeal No E/515/2004 S.M. agains the order in Appeal No 7/98 (MDU)(D) dated 22.12.2003 by the commissioner of Central Excise (Appeals) tirunelveli, against the order in O.S. No 133/97 dated 22.12.1997 by the Assistant Commissioner of Central Excise, Tirunelveli Division.

For Appellant : Mr.C.Saravanan
For Respondents :Mr.G.M.Syed Nurullah Sheriff

C O M M O N J U D G M E N T
(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1. At the outset, we may indicate that since, the delay in filing an appeal has been condoned, the Registry has numbered C.M.A.SR.No.9364 of 2016, and hence, the accompanying appeal, i.e., C.M.A.No.1487 of 2017 is taken on board for hearing along

with C.M.A.724 of 2016.

2. Since, the issue raised in C.M.A.No.724 of 2016 is very narrow, the scope of the said appeal would be explained by us, while rendering a decision in the appeal, which is now taken on board.

2.1. As a matter of fact, the issue raised in the appeal, is, squarely covered by the judgment of the Division Bench rendered in India Cements Limited V. Commissioner of Central Excise, Trichy 2013 (297) E.L.T. 508 (Mad.). This decision has been rendered in the Assessee's own case, albeit, relating to a different Commissionerate.

3. Accordingly, with the consent of counsels for parties, C.M.A.No.1487 of 2017 (C.M.A.SR.No.9364 of 2016) is taken up for hearing along with C.M.A.No.724 of 2016.

3.1. Admit.

3.2. The following Questions Of Law are framed for consideration, by this Court, in respect of the captioned matters.

(i) Whether the CESTAT was justified in allowing the department's appeal vide Final Order No.1192/2005 dated 2.9.2005 contrary to decision recorded in the order sheet and pronounced in open court on 01.09.2005?

(ii). Whether the CESTAT was justified in passing impugned orders on merits contrary to law settled by this Court in 2013 (297) ELT 508?

(iii).Whether the CESTAT was justified in passing order without giving opportunity to the appellant to submit their arguments?

4. The record would show that, C.M.A.No.1487 of 2017 (C.M.A.SR.No.9364 of 2016) assails the order dated 01.09.2005, while C.M.A.No.724 of 2016 assails the order dated 09.09.2015.

5. The short issue, which arose for consideration before the Tribunal was, as to whether, the appellant was entitled to Modvat credit on spares, components and accessories of machines, i.e., capital goods, falling under Heading 84.74 of the Central Excise Tariff Act, 1985, for the period, spanning between 23.07.1996 and 31.08.1996.

5.1. The appellant, based on its understanding of the Notification No.25/96-CE NT, dated 31.08.1996 and the Circular No.276/110/96 - TRU, dated 02.12.1996 took a decision that, for the aforementioned period, Modvat credit would be available to it on components, spares and accessories, whether or not, the said goods were classifiable under Heading 84.74. According to the appellant, the classification, as clarified by the aforementioned Notification and Circular was relevant only for the capital goods or machines in issue, and not in respect of spares, components and accessories.

5.2. Learned counsel says that this stand of the appellant has been accepted by the Division Bench of this Court, in the matter of: India Cements Ltd. V. Commissioner of Central Excise, 2013 (297) E.L.T.508 (Mad.).

6. Mr.Sheriff, who appears for the Revenue, cannot but contend that the issue raised in the appeals stands covered by the aforementioned judgment of the Division Bench.

7. For the sake of convenience, we may only extract, relevant paragraphs of the judgment:

> "10. It is seen from the above extract that originally Rule 57Q as it stood prior to 16.03.1995, was very general in character that the components, spare parts and accessories of the machines or appliances used for producing or processing of any goods were recognised as capital goods for availing modvat credit. The subsequent amendment to Rule 57Q under Notification No.11/95-CE (NT) dated 16.3.1995, however, inserted Clause (d) in the Explanation to the rule to specify a detailed list of various goods which were eligible as capital goods for the purpose of availing the Modvat credit, notwithstanding the fact that they might not be capital goods within the meaning of clauses (a) to (c). However, while specifying the headings, it is apparent that goods falling under Heading 84.74 were not included therein for the purpose of treating it as capital goods for availing of modvat credit under Rule 57Q. Rule 57Q was further amended under Notification No.14/96-CE dated 23.7.1996, wherein, in sub rule (1), Explanation for 'capital goods' was substituted and the goods listed from clauses (a) to (d) as extracted above were brought under the definition of 'capital goods'. Once again, Heading 84.74 was omitted from the 'capital goods' definition for the purpose of Rule 57Q. The said rule was amended under Notification No.25/96-CE (NT) dated 31.8.1996. As a result, whatever benefit the assessee had had for the period prior to 23.7.1996, after the amendment under the Notification, the assessee could not claim the said benefit from 23.7.1996 to 31.8.1996.
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> 11. In the circumstances, the assessee placed reliance on the circular issued by the Government of India dated 2.12.1996, in support of his contention that Notification No.25/96-CE (NT) dated 31.8.1996 was explained on the availability of modvat credit for the goods received during the disputed period too. Considering the hardship faced by the officers, the Government of India, Ministry of Finance (Department of

Revenue), Tax Research Unit, New Delhi, issued the said Circular and in paragraphs 3 and 4 of the same, clarified the availability of modvat credit on components, spares and accessories under Rule 57Q. The Circular reads as follows:

" Circular No. 27/110/96-TRU
dated 2/12/96
F.No. 354/141/96- TRU

Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit
Subject: Availment of Modvat credit on components, spares and accessories under Rule 57Q of the Central Excise Rules, 1944.

Rules 57Q of the Central Excise Rules, 1944 allows credit of duty paid on capital goods used by the manufacturer of Specified goods. Capital goods eligible for credit have been defined in Explanation (1) annexed to Rule 57Q. Clause (a) to (c) of the said explanation cover specified capital goods falling under Chapters 82, 84, 85 and 90 and clause (d) covers components, spares and accessories of the said capital goods.

2. It has been brought to the notice of the Board that clause (d) of Explanation (1) is being interpreted by some of the field officers covering only such components, spares and accessories which would fall under Chapters shown under clauses (a) to (c) and credit is allowed only on those components, spares and accessories which are covered under the said chapters.

3. The matter has been examined. With effect from 23.7.1996, capital goods eligible for credit under Rule 57Q have been specified either by their classification or by their description. Clause (a) to (c) of Explanation (1) of the said rule cover capital goods by their classification whereas clause (d) covers goods by their description viz. components, spares and accessories of the said capital goods. It may be noted that there is a separate entry for components, spares and accessories and no reference has been made about their classification. As such, scope of this entry is not restricted only to the components, spares and accessories falling under Chapters 82, 84, 85 or 90 but covers all components, spares and accessories of the specified goods irrespective of their classification. The same was the position prior to amendment in rule 57Q (i.e. prior to 23.7.1996) when credit was available on components, spares and accessories of the specified

capital goods irrespective of their classification.

4. Accordingly, it is clarified that all parts, components, accessories, which are to be used with capital goods of clauses (a) to (c) of Explanation (1) of rule 57Q and classifiable under any Chapter heading are eligible for availment of Modvat credit.

5. Trade and field formations may be informed accordingly.

6. The receipt of the Circular may please be acknowledged. "

12. The assessee also placed reliance on the decision reported in 2010 (255) ELT 481 (Commissioner of Central Excise v. Rajasthan Spinning and Weaving Mills Ltd), wherein, the Apex Court, applying "user test" evolved in the judgment in Jawahar Mills' case, held that items used in the fabrication of chimney would fall within the ambit of "capital goods" and that the assessee was entitled to avail modvat credit in respect of the disputed items under Rule 57Q. In fact, the said decision was followed by this Court in respect of the assessee's own case on earlier occasion in C.M.A.No.3101/05 by order dated 13.12.2012. Having accepted the case of the assessee by applying the Apex Court decision reported in 2010 (255) ELT 481 (Commissioner of Central Excise v. Rajasthan Spinning and Weaving Mills Ltd), this Court rejected the Revenue's contention and affirmed the view of the Tribunal that the impugned goods were capital goods entitled to credit under Rule 57Q of Central Excise Rules.

13. It is seen from the facts narrated in the case before us that the item in question were classifiable under Chapter Heading 84.31 and they were parts of materials conveying equipments falling under Chapter Heading 84.28. Apart from that, there were goods falling under Chapter Heading No.84.74 for the period between 23.07.1996 and 31.08.1996. The dispute herein related to goods falling under Chapter Heading 84.74. As is evident from the reading of the amended Rule 57Q (1)(d) under Notification No.14/96-CE dated 23.7.1996, the provision reads as follows:

"(d) components, spares and accessories of the goods specified against items (a) to (c) above."

Going by the liberal meaning given to Clause (d) in Rule 57Q that the position prior to 23.07.1996 when credit was available for components, spares and accessories irrespective of the classification of specified capital goods, we have no hesitation in accepting the case of the assessee. Quite apart, even going by the circular, we agree with the argument advanced by the learned counsel for the assessee that the amendment under Notification No.25/96 dated 31.8.1996 has to be read only as clarificatory and retrospective effect has to be given for availing modvat credit. In view of this reasoning, we find that capital goods itself were eligible for modvat credit under Rule 57Q.

14. Thus, in the light of the decision of this court following the Apex court decision and in the background of the circular issued by the Government of India dated 2.12.1996 that the benefit of modvat credit under Rule 57Q would be applicable to all components, spares and accessories of the specified goods, irrespective of their classification under any chapter heading, we have no hesitation in granting the relief in favour of the assessee, thereby the order of the Customs, Excise and Service Tax Appellate Tribunal is set aside. Consequently, the Civil Miscellaneous Appeal is allowed. No costs."

8. Given the aforesaid circumstances, Question No.2 is answered in favour of the Assessee and against the Revenue. The Tribunal could not have passed the impugned order, which is, contrary to the ratio of the judgment rendered in : India Cements Limited case.

8.1. In so far as Question Nos.1 and 3 are concerned, having regard to the fact that, on merits, we have reached a conclusion in favour of the Assessee, counsel for the appellant, does not press the same.

8.2. Thus, we are not called upon to answer the said Questions.

9. The captioned appeals, are, accordingly, disposed of. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Customs, Excise and Service Tax Appellate Tribunal,
   South Zonal Bench at Chennai.

2. The Commissioner of Central Excise(Appeals)
   II Floor, central Revenue building,
   Tractor Road, NGO'A' Colony
   Tirunelveli 627 007.

3. The Assistant Commissioner of Central Excise
   Tirunelveli Division, Tirunelveli

+1 CC to Mr.C. Saravanan, Advocate sr 36396
+1 CC to Mr.G.M. Syed Nurullah Sheriff, Advocate sr 26204

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