

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Central Excise Appeal No.26 of 2018 (O&M)
Date of Decision: 05.05.2023

M/s Winsome Yarns Ltd. (Unit-III),
Village Kuranwala, Barwala Road,
Dera Bassi

... Appellant

Versus

Commissioner of Central Excise,
Central Excise Commissionerate,
Chandigarh-II,
(Now Commissioner of Central Goods and
Services Tax, Rishi Nagar, Ludhiana)

... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Surjeet Bhadu, Advocate,
for the appellant.

Mr. Sourabh Goel, Senior Standing Counsel,
for the respondent.

MANISHA BATRA, J.

CM-8966-CII-2018

This is an application for condonation of delay of 4 days in
filing the appeal.

For the reasons mentioned in the application, the same is
allowed and the delay of 4 days in filing the appeal is condoned.

Main Case

1. This Tax Appeal filed under Section 35 G of the Central
Excise Act, 1944 (for short Act, 1944”) is directed against order
No.60289/2017 dated 20.02.2017 in Appeal No.E/57276/2013-SM(BR)
passed by Customs, Excise and Service Tax Appellate Tribunal,

Chandigarh-II (hereinafter to be mentioned as “Tribunal”).

2. Material facts giving rise to the present appeal, briefly stated are that the appellant Company is engaged in manufacture of cotton yarn and holds the Central Excise Registration. It has been availing cenvat credit on capital goods and input services which are used in or in relation to manufacture of final products, under Cenvat Credit Rules, 2004 (for short “Rules, 2004”). During the period from August 2006 to April 2007 also, it had availed cenvat credit on certain capital goods/services. The auditors of Central Excise, Chandigarh-II conducted an audit of the record of the appellant on 26.08.2009 and observed that in contravention of the Rules, 2004, the appellant had availed certain cenvat credits. A show cause notice dated 03.08.2010 was issued against it. The appellant responded to the same. The adjudicating authority vide order dated 12.12.2011 confirmed demand of a sum of Rs.15,16,552/- against the appellant besides imposing penalty of equivalent amount and claiming interest. The appellant preferred an appeal before the First Appellate Authority. The same was partly allowed vide order dated 04.02.2013 and demand of a sum of Rs.7,67,824/- was disallowed whereas the remaining demands along with order of imposition of interest and penalty were upheld. The appellant still being aggrieved by the same, filed an appeal before the Tribunal wherein, it restricted its prayer to the cenvat credit of a sum of Rs.5,93,453/- taken by it on GP coils, GP sheets, aluminum sections etc. that were used by it in making duct for air humidification machine to carry and extract the air from its factory premises so as to regulate humidity in the production area. The Tribunal dismissed the appeal filed by the appellant by passing order dated 20.02.2017.

3. The instant appeal has been filed by the appellant on the ground

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that the cenvat credit was taken by it on GP coils, GP sheets, aluminum sections etc. that were used in making air ducts for humidification machinery and the same were covered under the definition of capital goods under Chapter 84 of Central Excise Tariff Act, 1985 (for short “Tariff Act”). Learned counsel for the appellant vehemently argued that the impugned order dated 20.02.2017 was not sustainable in the eyes of law as the Tribunal had wrongly held that the cenvat credit claimed by it on GP sheets etc. was not qua capital goods. The Tribunal had confused the term “plant” with the term “machinery” and had failed to apply the user test. It had committed an error in holding that the GP sheets etc. could not be treated as capital goods or part of capital goods. He argued that the GP sheets, GP coils etc. which were used in making ducts for air humidifier certainly fell within the ambit and scope of Rule 2 (a) (A) (iii) read with Rule 2 (a) (A) (i) of the Rules, 2004 and were to be treated as accessories of the capital goods i.e. air humidifier referred to in Rule 2 (a) (A) (i) of Rules, 2004. He further argued that even otherwise the GP sheets and GP coils which were used as ducts in the air humidifier, were inputs falling within the definition of Rule 2 (k) read with Explanation 2 of Rules, 2004 and were eligible for cenvat credit. He submitted that the learned Tribunal had committed a grave error by holding that the GP sheets/coils and aluminum sections fell under Chapter 72 and 76 of the Tariff Act and they were neither capital goods nor components, spares or accessories and hence were not entitled to cenvat credit. With these broad arguments, it was urged that the appeal deserved to be allowed. The appellant deserved to retain cenvat credit availed by it on GP sheets etc. and that the order passed by the Tribunal was liable to be set aside. To fortify his argument, learned counsel for the appellant has placed reliance upon

authorities cited as **Thiru Arooran Sugars v. CESTAT, Chennai**, 2017 (355) E.L.T. 373 (Mad.); **Commissioner of Central Excise & Service Tax, Tiruchirapalli v. CESTAT, Chennai**, 2017 (356) E.L.T. 201 (Mad.); **Mundra Ports & Special Economic Zone Ltd. v. C.C.E. & CUS.**, 2015 (39) S.T.R. 726 (Guj.); **M/s Vandana Global Limited v. Commissioner, Central Excise and Customs, Central Excise Building, Dhamtari Road, Tikrapara, Raipur (Chhattisgarh) and another**, 2018 (16) G.S.T.L. 462 (Chhattisgarh) and **Commissioner of Central Excise, Jaipur v. Rajasthan Spinning & Weaving Mills Ltd.**, 2010 (255) E.L.T. 481 (S.C.).

4. Per contra, it was argued by learned counsel for the revenue that the impugned order was well reasoned and did not warrant any interference. The appellant had claimed benefit of cenvat credit on GP sheets and aluminum sections on the plea that humidification plant was machinery as a whole and not a plant and GP sheets etc. used for making duct for the same, were to be treated as capital goods though infact these goods were not used in or in relation to manufacture of final products or manufacture of capital goods which were further used in factory of the appellant and hence were neither inputs under Rule 2 (a) nor were covered under Rule 2 (k) Explanation 2 of the Rules, 2004 as amended w.e.f. 07.07.2009. To fortify his argument, learned counsel relied upon the authority cited as **CCE, Chandigarh v. Modern Steels Ltd.**, 2007 (219) E.L.T. 423 wherein it was observed by Delhi Tribunal that by omitting “plant” as well as “components, spare parts and accessories thereof,” from the definition of “capital goods” in Rule 57Q of the Central Excise Rules, 1944 (for short “Rules, 1944”) and Rule 2 (b) of Rules, these goods could not be treated as capital goods or parts of the capital goods. Therefore, he argued that the appeal was liable to

be dismissed.

5. In the light of contents of impugned order of the Tribunal and submissions made by the appellant and the revenue, the short question arising for determination in this case is whether the Tribunal was justified in law in rejecting the claim of the appellant and whether the appellant was right in availing cenvat credit in respect of aforementioned GP coils etc. by treating them as “capital goods”.

6. Before delving into the above question, we deem it appropriate to extract certain relevant rules. Rule 2 (a) of the Rules, 2004 defines “capital goods” which reads as under:-

“2 (a) “**capital goods**” means:-

(A) the following goods, namely:-

(i) **all goods falling** under Chapter 82, **Chapter 84**, Chapter 85, Chapter 90, heading No. 68.05 grinding wheels and the like, and parts thereof falling under heading 6804 of the First Schedule to the Excise Tariff Act;

(ii) pollution control equipments;

(iii) **components**, spares and **accessories** of the goods specified at (i) and (ii);

(iv) moulds and dies, jigs and fixture;

(v) refractories and refractory material;

(vi) tubes and pipes and fitting thereof; and

(vii) storage tank,

used:-

(1) in the factory of the manufacturer of final products, but does not include any equipment or appliance used in an

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office;

or

(2) for providing output services”

7. Further, the definition of ‘inputs’ as given in Rule 2 (k) of the Rules, 2004 reads as follows:-

“Input means-

(i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production;

(ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service;

Explanation 1:- The light diesel oil, high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2:- Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer”

8. It is relevant to mention here that the Rules, 2004 were

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amended w.e.f. 07.07.2009 and the Explanation 2 of Rule 2 (k) was also amended to include as follows:-

“Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer but shall not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods;”

9. It is also relevant to mention here that the term “capital goods” was also defined in Explanation to Rule 57Q of the Rules, 1944 which reads as under:-

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.”

10. This explanation was subsequently amended and the word

“plant” was omitted from the same by the substituted explanation which was

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brought into force from 23.07.1996. It is also relevant to mention here that the provisions of Rule 57Q were pari materia with Rule 2 (k) of the Rules, 2004.

11. We have given due deliberations to the contentions as raised by learned counsel for the appellant as well as revenue. The parties have been ad idem on the point that the air humidifier machine which was installed in the factory premises of the appellant falls under Chapter 84 Sub Heading 84.79 of the Tariff Act and cenvat credit is admissible to an assessee under the definition of capital goods qua this machine. The dispute is with regard to availing cenvat credits for GP sheets, GP coils and aluminum sections etc. which were used for making ducts for the air humidifier machine. The authorities below and the Tribunal had proceeded on the premise that since the GP sheets/GP coils fell under Chapter 72 and aluminum sections fell under Chapter 76 of the Tariff Act which was not covered under Rule 2 (a) (A) (i) of the Rules, 2004, therefore, these goods/items could not be treated as capital goods and did not fall under the category of same. Neither they could be treated as components, spares or accessories of the capital goods. To form this opinion, the Tribunal is shown to have heavily relied upon **Modern Steels Ltd.’s** case (Supra) wherein cenvat credit had been claimed by the assessee on CTD bars, angles, channels, MS bar, joists and shapes which were used by it for its project work, by treating them as capital goods. The Tribunal had observed that since the words “plant” and the expression “components, spare parts and accessories of the plant” which were used in the erstwhile Rule 57 of Rules, 1944 were kept out of consideration in the new rules, therefore, these goods which fell under Chapter 72 could not be considered as spare parts, components or

accessories and were not eligible for cenvat credit.

12. On perusal of the order passed by the Tribunal, it has been revealed that the judgment pronounced in **Rajasthan Spinning & Weaving Mills Ltd.’s** case (Supra) by Hon’ble Supreme Court had not been placed before and brought to the notice of the Tribunal. In that case, modvat credit had been claimed by the assessee on steel plates and MS channels that were used for fabrication of chimney for diesel generating set of the assessee company which was engaged in the business of manufacturing yarn. The revenue had issued a show cause notice alleging that these items were not capital goods though there was no dispute that the chimney was attached to the generating set which fell under the definition of capital goods. The Hon’ble Supreme Court had allowed the claim of the assessee company by observing that the goods which were used for producing or processing of any goods or for bringing about any change in the substance for the manufacture of final product may that be machines, plant, equipments, tools, appliances or apparatus, would fall within the purview of capital goods.

13. The Hon’ble Apex Court had further applied the “user test” as mentioned in Rule 2 (a) of Rules, 2004 and had held that since the steel plates etc. were required to be used for fabrication of chimney that was an integral part of the diesel generating set, particularly when the Pollution Control laws had made it mandatory that all the plants which emitted effluents, should be so equipped with apparatus which could reduce or get rid of the effluent gases, therefore, such equipment used for the said purpose had to be treated as accessory and the assessee was entitled to avail modvat credit in respect of such items by treating them as capital goods. On applying the ratio of law as laid down in the above cited case to the present

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case, we feel that the same is squarely applicable to the present case. In this case, the GP coils, GP sheets and aluminum sections etc. have admittedly been used for manufacturing an air duct which has been affixed with the humidification machine. The Tribunal had proceeded on the premise that these ducts when installed with the humidification machine had taken shape of the plant and since the word “plant” had been omitted from the definition of capital goods, therefore, these ducts were not eligible for any cenvat credit. In our opinion, the Tribunal had wrongly held so in view of the ratio of law as laid down in **Rajasthan Spinning & Weaving Mills Ltd.’s** case (Supra). In this context, we also rely upon the observations made by High Court of Judicature at Madras in **Thiru Arooran Sugars’s** case (Supra) wherein the appellant Company which was engaged in the business of manufacturing of cement and clinker, was expanding its plant and for this purpose, it had purchased plant and machinery equipments and component from different suppliers. Foundations had been constructed which required use of cement, steel, MS plates, angles and channels etc. The appellant availed cement credit not only qua cement and steel but also vis-a-vis MS plates, angles and channels etc. as they were duty paid inputs. The revenue found fault with the same and issued show cause notices. It was held that the structures which was used to keep in position the plant and machinery, cement, as also, iron and steel which were used to erect foundations to hold the plant and machinery could not only be treated as “capital goods” but also be treated as “inputs” as these items supported the plant and machinery that was used in manufacturing process and were an integral part of the plant and machinery. Accordingly, the assessee was held entitled to get benefit of cenvat credit on the same as they fell within the scope and ambit of Section

2 (a) (A) and 2 (k) of the Rules, 2004. Similar observations were made by the High Court of Chhattisgarh in **M/s Vandana Global Limited's** case (Supra), by High Court of Gujarat at Ahmedabad in **Mundra Ports & Special Economic Zone Ltd.'s** case (Supra) and by High Court of Madras in **Commissioner of Central Excise & Service Tax, Tiruchirapalli v. CESTAT, Chennai's** case (Supra).

14. In the instant case, the GP sheets etc. are required for proper functioning of air humidifiers machine which ultimately supports the working of machinery and plant etc. of the appellant Company used in manufacture of cotton yarn and, therefore, they are integral part of the machinery as well as capital goods, as these ducts hold the air humidifier machine in position which ultimately helps in proper manufacturing of final product. It is not the case of the revenue that these items were not required to be used for making ducts. They might not be falling under Rule 2 (a) (A) (i) of the Rules, 2004 but they certainly fall under Rule 2 (a) (A) (iii) of the Rules, 2004 and can also be treated as spares and accessories of the capital goods i.e. humidifier machine.

15. Apart from this, in our opinion, the GP sheets and GP coils etc. used as ducts for the humidifier machine also fall within the definition of 'inputs' as given in Rule 2 (k) of the Rules, 2004 which says that input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. Learned counsel for the revenue had vehemently argued that this explanation was no more available to the appellant in view of amendment dated 07.07.2009 in Explanation 2 of Rule 2 (k). As per this amendment, the inputs only include goods used in the manufacture of capital goods which are further used in the factory of the

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manufacturer but does not include cement, angles, channels, Centrally Twisted Deform bar (CTD) or Thermo Mechanically Treated bar (TMT) and other items used for construction of factory shed, building or laying of foundation or making of structures for support of capital goods. The argument raised by learned counsel for the revenue was that the amendment made in Explanation 2 of Rule 2 (k) of the Rules was clarificatory in nature only and hence the same was retrospective in operation and could be applied in the present case and if that was so, then the case of the appellant did not fall within the definition of inputs. Learned counsel for the appellant has vehemently refuted this argument by submitting that the amendment in Explanation 2 of Rule 2 (k) was neither clarificatory in nature nor retrospective in operation and was not applicable to the case of the appellant as it was during the period from August 2006 to April 2007 i.e. prior to the amendment dated 07.07.2009. In this regard, he has placed reliance upon **Thiru Arooran Sugars's** case (Supra) wherein the High Court of Madras observed that the amendment dated 07.07.2009 as made in Rule 2 (k) of Rules, 2004 could not be made clarificatory, upon **Mundra Ports & Special Economic Zone Ltd.'s** case (Supra) and **M/s Vandana Global Limited's** case (Supra) wherein similar observation was made. Learned counsel for the revenue could not point out any proposition of law to the contrary. Even otherwise, on a perusal of the notification whereby the amendment dated 07.07.2009 had been brought into force, there is no mention that it was either clarificatory in nature or retrospective in operation. Hence, we find no force in the argument that the Explanation 2 as which existed prior to the amendment dated 07.07.2009 and which included goods used in manufacture of capital goods which are further used in factory of the

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manufacturer as inputs should not be considered. On applying the user test also, the case of the appellant can be stated to be squarely covered with the ratio of law as laid down in the above cited authorities. As such, there cannot be any hesitation to hold that the GP coils, GP sheets or aluminum sections which were used for preparing air ducts for the humidifier machine installed in the factory premises of the appellant were not only inputs but could also be treated as components or accessories of the humidifier machine and as falling within the definition of Rule 2 (a) (A) (iii) of the Rules, 2004 and were entitled to cenvat credit.

16. In view of the above discussion, it is held that the Tribunal was not justified in rejecting the claim of the appellant for availing cenvat credit in respect of aforementioned GP sheets and coils etc. by treating them as capital goods and as a consequence thereof, the revenue was also not entitled to claim any interest or impose any penalty on the amount of cenvat credit as taken on GP coils, GP sheets and aluminum sections etc. The question formulated by us is, therefore, answered in favour of the appellant assessee and against the revenue. Consequently, the appeal is allowed and the order passed by the Tribunal is set aside. There is no order as to costs.

17. All miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

05.05.2023
manju

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No