Court No. - 3

Case :- CENTRAL EXCISE APPEAL No. - 21 of 2012

Appellant :- Commissioner Central Excise 7-A Ashok Marg Lucknow
Respondent :- M/S Bajaj Hindustan Ltd. Khambarkhera, Lakhimpur Kheri
Counsel for Appellant :- Rajesh Singh Chauhan
Counsel for Respondent :- Rajesh Tewari

Hon'ble Sudhir Agarwal,J.
Hon'ble Ravindra Nath Mishra-II,J.

1. This is an appeal under Section 35-G of Central Excise Tax Act, 1944 (hereinafter referred to as "Act, 1944") at the instance of Revenue, i.e., Commissioner, Central Excise, Lucknow. This appeal has arisen from the judgment and order dated 17.05.2012 passed by Custom, Excise and Service Tax Appellate Tribunal, New Delhi *(hereinafter referred to as "Tribunal")* allowing appeal of Assessee holding that 'Welding Electrode' is eligible for CENVAT Credit.

2. The Assessee, i.e., M/s Bajaj Hindustan Ltd., had claimed that 'Welding Electrode' is specified under Head 8311.00 of Central Excise Tariff and used in repair and maintenance of 'Machines', therefore, would fall within the category of 'Capital Goods'. The claim was accepted by Tribunal allowing Assessee's appeal.

3. Before this Court, appellant has contended that 'Welding Electrodes' would not fall in the category of 'Capital Goods' under the provisions of Rule 57-Q of Central Excise Rules, 1944 *(hereinafter referred to as "Rules, 1944")*. The question of law on which this appeal was admitted vide order dated 01.11.2012, required to be decided by this Court, is:

"Whether tribunal suffers from substance, learned counsel keeping in view the fact. It is extremely non speaking?"

4. Learned counsel for the parties, however, submitted that real question up for consideration is, "whether "Welding Electrodes" would come in the category of "Capital goods" as claimed by Assessee and upheld by Tribunal or the Assessee has wrongly claimed CENVAT Credit on use of Welding Electrodes during the period in dispute in this appeal".

5. So far as first question is concerned, Tribunal has followed another judgment dealing with similar question decided by Karnataka High Court in **Commissioner of Central Excise and Service Tax, LTU. vs. ABB Ltd., 2011 (23) STR 97** and it is not shown to this Court that said judgment of Karnataka High Court does not cover dispute in this appeal, therefore, order of Tribunal cannot be said to be bad for want of reasons since reasons contained in the judgment followed by Tribunal would form part of order of Tribunal also. Question-1, therefore, is answered against Revenue.

6. Now we come to second question. The period of dispute for which CENVAT Credit has been accepted is from April, 2007 to December, 2008. This Court finds that in the period of July' 2002 to 09.09.2004, matter of CENVAT Credit was governed by CENVAT Credit Rules, 2002 *(hereinafter referred to as "Rules, 2002")* and thereafter by CENVAT Credit Rules, 2004 *(hereinafter referred to as "Rules, 2004")*. The term 'Capital Goods' was defined in Rule 2 (b) of Rules, 2002 and Rule 2(a) of Rules, 2004 as under:

<u>Rules, 2002:</u>

"*(b) "capital goods" means:-*

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 68.05 and sub-heading No. 6801.10 of the First Schedule to the Tariff Act;

(ii) pollution control equipment;

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

(iv) moulds and dies;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used in the factory of the manufacturer of the final products, but does not include any equipment or appliance used in an office;"

Rules, 2004:

"*(a) "capital goods" means:-*

(A) All following goods, namely:-

(i) all goods falling under Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading No. 6805, ***grinding wheels and the like, and parts thereof falling under heading 6804*** *of the First Schedule of the Excise Tariff Act;*

(ii) pollution control equipment;

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

(iv) moulds and dies; jigs and fixtures;

(v) refractories and refractory materials;

(vi) tubes and pipes and fittings thereof; and

(vii) storage tank,

used-

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

(2) ***for providing output service****;*"

(B) ***motor vehicle registered in the name of provider of output service for providing taxable service as specified in sub-clauses (f), (n), (o), (zr), (zzp), (zzt) and (zzw) of clause (105) of section 65 of the Finance Act;"***

7. It is admitted by the parties that the Heading of Chapter 8311 is not included specifically in the definition of 'capital goods'. The Assessee, however, relied on Rule 2(b)(iii) of Rules, 2002 and Rule 2(a)(A)(iii) of Rules, 2004, and contended that 'Welding Electrodes' would come within the term 'components' so as to fall within the category of 'capital goods'.

8. The definition of 'capital goods' under Rule 2(b) of Rules, 2002 and Rule 2(a) of Rules, 2004 is exhaustive in the sense that it clearly specifies what 'capital goods' would mean. The items which fall under certain chapters of Central Excise Tariff Act are specifiably mentioned in Rule 2(b)(i) of Rules, 2002 and Rule 2(a)(A)(i) of Rules, 2004. Then comes pollution control equipment', moulds and dies, jigs and fixtures, refractories and refractory material, tubes and pipes and fittings thereof and storage tank. All these things, if used in the factory of manufacturer of final products, or, for providing output service, would mean 'capital goods'. However, it would not include any equipment or appliance used in office. There is one more aspect, i.e., Rule 2(b)(iii) of Rules, 2002 and Rule 2(a)(A)(iii) of Rules, 2004, which say that in respect to items mentioned in Rule 2(b)(i) and (ii) of Rules, 2002 and Rule 2(a)(A)(i) and (ii) of Rules, 2004, components, spares and accessories of the goods specified thereunder would also fall within the category of 'capital goods'. Having failed to point out application of any other provision under Rule 2 (b) of Rules, 2002 and Rule 2(a) of Rules, 2004, the stress on the part of Assessee was on the term 'components' under Rule 2 (b)(iii) of Rules, 2002 and 2(a)(A)(iii) of Rules,2004 and it is contended that 'Welding Electrodes', being used for maintenance and repair of machineries and factories, would fall in the category of "components", hence would be entitled for CENVAT Credit being 'capital goods'. We find that 'capital goods' as defined under Rule 2(b) of Rules, 2002 and 2(a) of Rules 2004, in substance, are pari-materia with the

'capital goods' specified in Rule 57-Q of Rules, 1944 and there is no substantial difference therein.

9. Considering a similar argument in the context of Rule 57-Q of Rules, 1944, as it stood in 1999, similar question and submissions have already been considered by this Court recently in **Central Excise Appeal No. 135 of 2005 (M/s Upper Ganges Sugar & Industries Ltd. Vs. Commissioner Customs & Central Excise)** decided on 25.2.2015.

10. For the reasons given in the judgment dated 25.2.2015 in **M/S Upper Ganges Sugar & Industries Ltd. Vs. Commissioner Customs & Central Excise (supra)**, Question-2 is answered in favour of Revenue and against Assessee.

11. Appeal is, accordingly, allowed. The order of Tribunal dated 17.05.2012 is hereby quashed.

12. There shall be no order as to costs.

Order Date :- 10.01.2017

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