

Central Excise – Modvat - assessee was entitled to avail of MODVAT credit in respect of steel plates and M S channels used in fabrication of chimney for diesel generating set, by treating these items as capital goods- Supreme Court

THE issue involved is MODVAT credit in respect of steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods in terms of Rule 57Q of the Central Excise Rules, 1944. Period involved is prior to August 1999.

The Tribunal has come to the conclusion that since the chimney is used as an accessory to the diesel generating set, and steel plates and M.S. channels were used in the fabrication of chimney these items also fall within the ambit of serial No.5 of the Table and therefore, MODVAT credit on these items could not be denied.

Not being satisfied with the order of the Tribunal, the Revenue is before the Supreme Court.

The Supreme Court observed, “The language of Rule 57Q is clear and unambiguous. It applies to the final products described in column (3) of the Table under the Rule as also to other goods, referred to as "capital goods", described in the corresponding entry in column (2) of the said Table, used in the factory of the manufacturer of final product. The parties are ad idem that diesel generating set falls under Chapter 85 under Heading No. 85.02, as described at serial No.3 of the afore-extracted Table. Similarly there is no dispute that chimney attached with the generating set is covered by the items described in serial No.5 thereof. However, the controversy centres around the question whether the steel plates and M.S. channels used in the fabrication of chimney would fall within the purview of serial No.5 of the Table below Rule 57Q.”

Having examined the question in the light of the language employed in Rule 57Q and the case law on the point, the Supreme Court was of the opinion that the appeal is devoid of any merit.

Applying the "user test" on the facts in hand, the court had no hesitation in holding that the steel plates and M.S. Channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. It is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of serial No.5 of the goods described in column (2) of the Table below Rule 57Q.

The Supreme Court was of the opinion that the Tribunal was correct in law in holding that the assessee was entitled to avail of MODVAT credit in respect of the subject items viz. steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods in terms of Rule 57Q of the Rules.

The Court found no substance in the appeal preferred by the Revenue. The same is dismissed accordingly.

**IN THE SUPREME COURT OF INDIA
Civil Appeal No. 3760 OF 2003
COMMISSIONER OF CENTRAL EXCISE, JAIPUR
Vs
M/s RAJASTHAN SPINNING & WEAVING MILLS LTD**

D K Jain And C K Prasad JJ.,

Dated: July 9, 2010

Central Excise – Modvat - assessee was entitled to avail of MODVAT credit in respect of steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods: steel plates and M.S. Channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. It is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of serial No.5 of the goods described in column (2) of the Table below Rule 57Q.

Case Law Referred:

Commissioner of Central Excise, Coimbatore & Ors. Vs. Jawahar Mills Ltd. & Ors. para 6 - followed

JUDGEMENT

Per: D K Jain J.:

1.Challenge in this appeal, by special leave, is to the order dated 11th June, 2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (for short "the Tribunal"), as it existed then, in Appeal No.E/725/2001-NB(SM). By the impugned order, the Tribunal has held that the respondent (for short "the assessee") is entitled to avail of MODVAT credit in respect of steel plates and M.S. channels used in the fabrication of

chimney for the diesel generating set, by treating these items as capital goods in terms of Rule 57Q of the Central Excise Rules, 1944 (for short "the Rules").

2. Briefly stated, the material facts, giving rise to the present appeal, are as follows:

The assessee is a public limited company engaged in the manufacture of yarn. They availed MODVAT credit on "capital goods" described in the Table given below Rule 57Q in respect of steel plates and M.S. channels used by them for erection of chimney for the diesel generating set, falling under Chapter 85 of the Central Excise Tariff Act, 1985 (for short "the Tariff Act").

3. A show cause notice, dated 20th August 1999, was issued to the assessee, alleging therein that MODVAT credit availed of on steel plates and M.S. channels used in the fabrication of chimney, was inadmissible as the subject items were not "capital goods", as described in the said Table. Therefore, MODVAT credit had been wrongly availed of by the assessee. In reply to the show cause notice, the assessee pleaded that the items in question being components of chimney which in turn was an accessory of the diesel generating set, falling under heading 85.02, they also qualify the test of "capital goods" specified against serial No.5 of the Table, and therefore, MODVAT credit in respect of the said items was clearly admissible. It was asserted that chimney was a vital part of the generating set for discharge of gases arising out of burnt fuel, mandatory under the Pollution Control laws.

4. The Assistant Commissioner was of the view that since steel plates and M.S. channels were not used as input in the manufacture of final product, these could not be covered under any of the chapter headings in the Table under Rule 57Q, MODVAT credit on the said items was inadmissible. He, accordingly, disallowed the MODVAT credit amounting to Rs.1,16,650/- availed of by the assessee and imposed a penalty of Rs.2000/- . Being aggrieved, the assessee filed an appeal before the Commissioner (Appeals) but without any success on the question of MODVAT credit. The Commissioner (Appeals), however, deleted the penalty levied on the assessee. The assessee took the matter further in appeal to the Tribunal. The Tribunal has come to the conclusion that since the chimney is used as an accessory to the diesel generating set, and steel plates and M.S. channels were used in the fabrication of chimney these items also fall within the ambit of serial No.5 of the said Table and therefore, MODVAT credit on these items could not be denied. Not being satisfied with the order of the Tribunal, the Revenue is before us in this appeal.

5. Mr. Harish Chandra, learned Senior Counsel appearing for the Revenue submitted that the Tribunal has failed to appreciate that "capital goods" as described in the Table under Rule 57Q would include only those goods which are specified against serial Nos.1 to 4 of the said Table and, thus, the

"capital goods" in the present context cover only the diesel generating set and its components, spares and accessories and not steel plates or M.S. channels, which are independently classifiable under Chapter Sub-heading 7208.11 and 7216.10 respectively.

It was argued that both the subject items were not used as input in manufacture of final product so as to make them eligible for MODVAT credit in terms of serial No.5 of the said Table. Learned counsel thus, urged that the order of the Tribunal deserves to be set aside.

6.Per contra, Mr. B.L. Narsimhan, learned counsel appearing on behalf of the assessee supported the decision of the Tribunal. He submitted that the issue sought to be raised by the Revenue in this appeal stands concluded in favour of the assessee by a decision of this Court in *Commissioner of Central Excise, Coimbatore & Ors. Vs. Jawahar Mills Ltd. & Ors.*(2001) 6 SCC 274 wherein observing that the exemption notification must be so construed as to give due weight to the liberal language it uses and that any goods that may be used in the factory of the manufacturer of final product would be "capital goods" and would be entitled to MODVAT credit. It was, thus, asserted that the said items used in the fabrication of chimney, which in turn is an important component of diesel generating set, qualify the test of "capital goods" and would be entitled to MODVAT credit.

7.The short question arising for determination is whether the assessee was right in availing MODVAT credit in respect of the afore-stated items by treating them as "capital goods" in terms of Rule 57Q ?

8.Rule 57Q was substituted by Notification No.6/97-C.E. (N.T.) dated 1st March, 1997. It enables the manufacturers of specified goods to claim MODVAT credit of duty paid on capital goods used by them in the factory for manufacture of final product. The Rule, insofar as it is relevant for this case, reads as under:

"RULE 57Q. Applicability.- (1) The provisions of this section shall apply to goods (hereafter in this section, referred to as the "final products") described in column (3) of the Table given below and to the goods (hereafter, in this section, referred to as "capital goods"), described in the corresponding entry in column (2) of the said Table, used in the factory of the manufacturer of final products.

TABLE

| S.No | Description of capital goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the factory of the manufacturer | Description of final products |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| (1) | (2) | (3) |
| 1. | | |
| 2. | | |
| 3. | All goods falling under chapter 85 (other than those falling under heading Nos. 85.09 to 85.13, 85.16 to 85.31, 85.39 and 85.40); | |

| | | |
|----|------------------------------------------------------------------------------------------|--|
| 4. | | |
| 5. | Components, spares and accessories of the goods specified against S. Nos. 1 to 4 above;" | |

9. The language of Rule 57Q is clear and unambiguous. It applies to the final products described in column (3) of the Table under the Rule as also to other goods, referred to as "capital goods", described in the corresponding entry in column (2) of the said Table, used in the factory of the manufacturer of final product. The parties are ad idem that diesel generating set falls under Chapter 85 under Heading No. 85.02, as described at serial No.3 of the afore-extracted Table. Similarly there is no dispute that chimney attached with the generating set is covered by the items described in serial No.5 thereof. However, the controversy centres around the question whether the steel plates and M.S. channels used in the fabrication of chimney would fall within the purview of serial No.5 of the Table below Rule 57Q.

10. Having examined the question in the light of the language employed in Rule 57Q and the case law on the point, we are of the opinion that the appeal is devoid of any merit.

11. In Jawahar Mills Ltd. (supra), heavily relied upon by the learned counsel for the assessee, the question which came up for consideration was whether the claim of MODVAT credit by some manufacturers in respect of certain items by treating them as capital goods in terms of Rule 57Q was in order. Some of the items under consideration were power cables, capacitors, control panels, cable distribution boards, air compressors, etc.

The Court examined the question in the light of the definition of capital goods given in Explanation to Rule 57Q, which read as follows:

"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 weighbridges used in the factory of the manufacturer."

12. Inter alia observing that capital goods can be machines, machinery, plant, equipment, apparatus, tools or appliances if any of these goods is used for producing or processing of any goods or for bringing about any change in the substance for the manufacture of final product, although this view was expressed in the light of the afore-noted definition of

"capital goods" in the said Rule, which is not there in Rule 57Q, as applicable in the instant case, yet the "user test" evolved in the judgment, which is required to be satisfied to find out whether or not particular goods could be said to be capital goods, would apply on all fours to the facts of the present case. In fact, in para 6 of the said judgment, the Court noted the stand of the learned Additional Solicitor General, appearing for the Revenue, to the effect that the question whether an item falls within the purview of "capital goods" would depend upon the user it is put to.

13. Applying the "user test" on the facts in hand, we have no hesitation in holding that the steel plates and M.S. Channels, used in the fabrication of chimney would fall within the ambit of "capital goods" as contemplated in Rule 57Q. It is not the case of the Revenue that both these items are not required to be used in the fabrication of chimney, which is an integral part of the diesel generating set, particularly when the Pollution Control laws make it mandatory that all plants which emit effluents should be so equipped with apparatus which can reduce or get rid of the effluent gases. Therefore, any equipment used for the said purpose has to be treated as an accessory in terms of serial No.5 of the goods described in column (2) of the Table below Rule 57Q.

14. We are, therefore, of the opinion that the Tribunal was correct in law in holding that the assessee was entitled to avail of MODVAT credit in respect of the subject items viz. steel plates and M.S. channels used in the fabrication of chimney for the diesel generating set, by treating these items as capital goods in terms of Rule 57Q of the Rules.

15. For the foregoing reasons, we find no substance in the appeal preferred by the Revenue. The same is dismissed accordingly. Parties are left to bear their own costs.