

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5509-5510 OF 2003

M/S. KCP Ltd.

.....APPELLANT

VERSUS

**Commissioner of Central Excise,
Chennai**

....RESPONDENT

JUDGMENT

ANIL R. DAVE, J.

1. Being aggrieved by the Final Order Nos. 301 & 302/2003 dated 2.5.2003 passed by the Custom, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'the CEGAT'), South Zonal Bench, Chennai, the instant two civil appeals have been filed by the appellant-assessee. As facts of both the appeals are similar, these have been heard and finally decided together.

2. The circumstances in which the appeals have arisen, in a nutshell, are as under:

The appellant-assessee is a manufacturer of machinery for sugar and cement plants and parts thereof falling under Chapter 84 of the Central Excise Act, 1944. The appellant not only sets up sugar and cement manufacturing plant as per the specifications of the clients in India but also sets up such plants in foreign countries and here we are concerned with a plant which was set up in Vietnam.

3. The appellant-assessee entered into a contract with M/s Vina Sugars, Vietnam for supply and installation of a sugar plant at Vietnam with a capacity of 1250 TCD (Tons crushed per day). For the said purpose, the appellant had manufactured certain machines in its own factory which were to form part of the sugar plant and certain machinery, including electric cables etc., which were necessary for the plant were purchased by the appellant from other dealers-manufacturers and the said machines-equipments-cables etc., which had been purchased from others, along with appellant's manufactured items, had been put in a container and the

containers were transported to Vietnam so that the different parts of the machinery can be assembled and the plant can be set up at Vietnam.

4. In the course of its business, the appellant had availed the MODVAT credit on certain goods under the provisions of Rule 57 Q of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules') declaring them as 'capital goods' which had been purchased by the appellant from other manufacturers-dealers in the country and had sent to Vietnam along with other parts of machinery manufactured by the appellant.

5. The respondent-department was of the view that the MODVAT credit availed by the appellant on goods, parts of machinery & cables etc. purchased by it from local market and transported in a container along with other parts of machinery manufactured by it was not justified for the reason that the appellant had wrongly described such parts-equipments-cables etc. as 'capital goods' though the said goods were not covered under the definition of 'capital goods' under the provisions of Rule 57 Q of the Rules. The department was of the view that none of such purchased items had been used by the appellant in its factory premises in relation to manufacture of the final product manufactured by the appellant.

6. For the afore-stated reasons, show cause notices dated 29.03.1996 and 03.03.1997 were issued to the appellant, which had been dropped on considering the reply of the appellant. Upon review of the orders whereby the show cause notices had been dropped, the Central Board of Excise and Customs directed the Commissioner to file an appeal before the CEGAT and therefore, the Commissioner filed the appeals.

7. It was mainly submitted in the appeals on behalf of the department that the goods in respect of which the MODVAT credit was availed by the appellant, were not capital goods as per the provisions of Rule 57Q of the Rules. It was also submitted that such goods were not used in the factory premises of the appellant in any manufacturing process and therefore, the said goods were not capital goods as claimed by the appellant. It was also the case of the department that the said goods had been exported by the appellant along with parts of machinery manufactured by the appellant in a container and the said parts i.e. the parts purchased by the appellant had been exported in the same condition i.e. even without opening the packages or testing them. Thus, the role of the appellant was merely like a trader who had purchased certain goods including parts of machinery, cables etc. from dealers in our country and thereafter exported the same in the exact condition in special containers along with the machinery manufactured by it.

8. The department was also of the view that the parts of machinery which had been exported by the appellant could not have been said to be in Completely Knocked Down condition because the parts manufactured by the appellant and the parts purchased by the appellant from other dealers in the country had never been assembled in the appellant's factory and they were exported in the same condition as stated hereinabove and it was also pertinent to note that the parts so purchased were packed in such a way so as to keep the parts in good condition even after it is transported from India to Vietnam by sea.

9. The department was also of the view that the parts so purchased by the appellant could not have been treated even as 'inputs' as the said parts had not been used by the appellant in the process of manufacturing the machinery. The appeals were heard by the CEGAT and ultimately the CEGAT allowed the appeals by remanding the cases to the original authority for computing and confirming the amount of the MODVAT credit irregularly availed by the appellant and also for imposition of appropriate penalty after affording effective opportunity of hearing to the appellant in accordance with law.

10. Being aggrieved by the afore-stated orders passed by the CEGAT in Final Order Nos. 301 & 302 of 2003, the present appeals have been filed by the appellant.

11. The learned senior counsel appearing for the appellant had submitted that the impugned orders passed by the CEGAT are bad in law as the CEGAT did not appreciate the facts and law correctly.

12. He had submitted that the MODVAT credit availed by the appellant was just and proper and therefore, there was no question of re-calculating or recovering the amount of the MODVAT credit availed by the appellant.

13. He thereafter submitted that upon correct interpretation of Rule 57Q read with Rule 57A of the Rules, the goods in respect of which the MODVAT credit was availed by the appellant were 'capital goods'. The reason for making such a submission was that the appellant was to set up a sugar plant at Vietnam and for that purpose parts of machinery including electric cable etc. were purchased by the appellant and along with parts of machinery manufactured by the appellant, the parts so purchased by the appellant had been put in one container which had been then transported to Vietnam by sea so as to enable the appellant to set up a sugar plant there.

14. He had further submitted that the parts of machinery so purchased were to form part of the entire plant, which was set up by the appellant at Vietnam and therefore, it was to be treated as inputs or part of capital goods and therefore, the appellant had rightly claimed and availed the MODVAT credit.

15. He had further submitted that the entire sugar machinery plant was to be sent to Vietnam in Completely Knocked Down condition. After receipt of the complete machinery in Vietnam, the plant was to be set up and therefore, even the machinery which had been purchased by the appellant from other manufacturers or dealers and which had been transported to Vietnam by sea was part of the inputs. In the circumstance, without considering whether the plant set up in Vietnam was movable or immovable, the respondent authorities ought to have given the benefit of the MODVAT credit to the appellant.

16. According to the learned counsel for the appellant, the whole sugar machinery was cleared from the factory in unassembled or dis-assembled condition. In view thereof, it was not open to the respondent Authorities to contend that parts of machinery which had been purchased by the appellant from other manufacturers would not form part of the inputs.

17. To substantiate his submissions, the learned counsel had cited several judgments.

18. The learned Additional Solicitor General appearing for the Revenue had repeated all submissions made before the Tribunal and therefore, I do not repeat the same here.

19. Upon hearing the learned counsel appearing for both sides and upon perusal of the relevant facts and legal position, we are of the view that the Tribunal had rightly come to the conclusion that the appellant was not entitled to the MODVAT credit as prayed for.

20. We find much substance in what has been observed by the Tribunal while coming to the conclusion that the MODVAT credit could not have been granted to the appellant.

21. It is pertinent to note that the most important object concerning grant of the MODVAT credit is to see that cascading effect of the duty imposed on the final product cleared at the time of sale is removed. If some duty is levied on the inputs, raw materials etc. and if the final product is also dutiable, then the duty levied on inputs i.e. raw materials is to be reduced

from the duty ascertained on the final product. Thus, there are two conditions for getting the MODVAT credit benefit:

- (i) On the raw materials i.e. on the inputs, the manufacturer must have paid duty and such raw material must have been used in the process of manufacturing the final product in his factory or premises.
- (ii) Excise duty must have been levied on the final product. If there is no duty levied on the final product, there would not be any question of grant of any relief because in that case there would not be any cascading effect on the duty imposed.

22. Looking at the above stated clear legal position, one may see here that no duty was paid by the appellant on the final product i.e. on the sugar plant which had been set up in Vietnam. For time being, let us forget the fact whether the plant is movable or immovable – the fact remains that no duty was paid on the said plant and therefore, there would not be any question with regard to getting credit on the duty paid on the inputs, especially when the appellant had not used the machinery manufactured by other manufacturers in its factory premises while manufacturing machinery which had been transported along with machinery manufactured by the appellant in a common container which had been sent to Vietnam by sea.

23. In our opinion, the above stated reason is quite sufficient for denying any MODVAT credit to the appellant. While dealing with a similar issue, this Court had observed in para no.15 of the judgment delivered in the case of **Madras Cements Ltd.** v. **CCE**, 2010 (6) SCC 606 as under:

“15. In order to avail of MODVAT/CENVAT credit, an assessee has to satisfy the assessing authorities that the capital goods in the form of components, spares and accessories had been utilized during the process of manufacture of the finished product. Admittedly, in this case the appellant was not able to identify the machinery for which the goods in question had been used. In the absence of such identification, it was not possible for the assessing authorities to come to a decision as to whether MODVAT credit would be given in respect of the goods in question.”

Looking to the above legal position, in our view, the impugned orders passed by the Tribunal cannot be said to be incorrect.

24. It is also not in dispute that the appellant had purchased some machinery from others and such machinery had not even been unpacked by it and in the exact condition it had been transported along with the machinery manufactured by it to Vietnam. Thus, the appellant did not use the purchased machinery in its premises or in its factory and therefore, necessary condition incorporated in the Rules for availing credit of the MODVAT had not been complied with. To avail the MODVAT credit, the input on which excise duty is paid must be used in the manufacture of the

final product in the factory of the assessee. The machinery purchased by the appellant had not even been tested or was not even unwrapped in the factory of the appellant. In case of such an admitted fact, it cannot be said that the machinery so purchased from others was used by the appellant in the manufacture of the sugar plant.

25. In the instant case, the appellant had only acted as a trader or as an exporter in relation to the machinery purchased by it, which had been exported and used for setting up a sugar plant in a foreign country. In any case, it cannot be said to have manufactured that plant in its factory.

26. Moreover, it is also clear that the appellant-assessee did not pay any excise duty on the sugar plant set up by it in Vietnam and therefore, there cannot be any question of availing any MODVAT credit.

27. For the aforestated reasons as well as for the reasons stated by the Tribunal in the impugned order, we are of the view that the Tribunal had come to a correct conclusion and the conclusion so arrived at by the Tribunal does not require any interference.

28. The appeals are, therefore, dismissed with no order as to costs.

.....J.
(H.L. DATTU)

.....J.
(ANIL R. DAVE)

New Delhi
September 03, 2013

SUPREME COURT OF INDIA



JUDGMENT