

CASE NO.:
Appeal (civil) 5168-5170 of 2001

PETITIONER:
Collector of Central Excise, Bangalore

RESPONDENT:
Vs.
M/s. Escorts Mahle Ltd.

DATE OF JUDGMENT: 06/05/2003

BENCH:
M.B. SHAH & ARUN KUMAR

JUDGMENT:

J U D G M E N T

With Civil Appeals Nos. 443/2002, 2128/1997,
968/2003, 1122/2003 & 1810/2003

ARUN KUMAR, J.

These appeals are directed against the judgment of the Karnataka High Court while answering a Reference made under Section 35(G) of the Central Excise and Salt Act, 1944. The question relevant for our purpose is reproduced as under :

"Whether on the facts and in the circumstances of the case the appellate Tribunal is right in law in holding that the applicants are not eligible to MODVAT Credit in respect of Ramming Mass, Fibre glass and filter mesh used in or in relation to the manufacture of pistons on the ground that they are covered under Proviso to Rule 57A of the Central Excise Rules."

In order to appreciate the controversy, the relevant facts are that the assessee claimed benefit of MODVAT Credit in respect of Ramming Mass, Fibre glass and filter mesh. These items are used in the process of manufacture of steel and without the use of these items the end product cannot be produced. The assessee in these cases are engaged in the manufacture of items of steel like pistons in the Escort's case. The manufacture takes place in electric arc furnace refractories. It is submitted on behalf of the assessee that during the course of manufacture steel is melted at a very high temperature. Steel produces acidic vapours when melted at such a high temperature. To contain the vapour and neutralise them, chemicals like dolomite or magnesite are used during the course of manufacturing process. Ramming Mass, fibre glass and filter mesh are processes in which chemicals are used to line the furnaces to neutralise the effect of acidic vapours produced during the course of melting steel. Unless these chemicals are used, the furnace may burst. Accordingly, it is submitted on behalf of the assessee that these chemicals being necessary inputs in the process of manufacture of steel items, MODVAT Credit has to be allowed on them.

In respect of this contention that it is necessary to use such processes like Ramming Mass, the learned counsel appearing for the assesses drew our attention to a book titled as "Electric Furnace Steel Making (American Institute of Mining)" wherein while dealing with electric arc furnace refractories, it is stated on page 157 as under :

"It is well known that much of steel making and refining is concerned not only with the removal of carbon to steel chemistry ranges but also with the removal of phosphorus and sulfur to appropriately low values. Since phosphorus and sulfur are chemically acidic materials, their removal from the melt is effected by combining them with the basic material lime (CaO) which holds them in the slag. However, for the lime to function in this role it must be allowed to react with the sulfur or phosphorus in the melt and not with the silica from the refractories a more acidic material than phosphorus or sulfur. Accordingly, a basic refractory-lined container (of dolomite or magnesite) is provided to allow the removal of the undesirable phosphorus and sulfur from the melt to the slag without excessive corrosion of the refractory lining."

Keeping the aforesaid manufacturing process in view and also bearing in mind that it is essential to control the acidic vapours generated during the steel manufacturing process, this Bench has held in C.A. No.6615/2003 [Collector of Central Excise vs. Steel Authority of India Limited] that use of such chemicals is essential for the manufacturing process. Specifically, it was observed that :

"As discussed by the concerned authority burnt dolomite is used so as to neutralize the acid which is formed at the time of manufacturing steel. This burnt dolomite is, therefore, used in relation to manufacturing of the final product. It has been rightly pointed out that respondent is using burnt dolomite in relation to manufacture of final product so that it may combine with acid which is formed at the time of manufacture of the steel and neutralize the said acid so that it may prevent damage to the furnace. But the used burnt dolomite is for neutralizing the acid form in the course of manufacture of steel. Hence, the judgment cannot be said to be, in any way, illegal or erroneous. The appeal is, therefore, dismissed. There shall be no order as to costs."

Manufacturing process being the same in these cases, we hold that the assesses are entitled to MODVAT Credit on Ramming Mass, Fibre glass and filter mesh.

The appeals are accordingly dismissed with no order as to costs.

JUDIS