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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3976 OF 2007

RAMALA SAHKARI CHINI MILLS LTD., U.P. -- APPELLANT

VERSUS

COMMISSIONER CENTRAL EXCISE, MEERUT-I -- RESPONDENT

WITH

CIVIL APPEAL NO.3747 OF 2007,
CIVIL APPEAL NO.4704 OF 2007,
CIVIL APPEAL NO.5896 OF 2008 &
CIVIL APPEAL NO.5894 OF 2008

O R D E R

D.K. JAIN, J.:

1. Challenge in these civil appeals, filed under Section 35(L) of the Central Excise Act, 1944 (for short "the Act") is to the orders passed by the Customs, Excise and Service Tax Appellate Tribunal (for short "the Tribunal"), inter alia, holding that welding electrodes used in the maintenance of machines were not eligible for credit as "inputs" under the CENVAT Credit Rules, 2002 (for short "the 2002 Rules").

2. In view of the order we propose to make in all these appeals, at this stage, we deem it unnecessary to narrate the facts in each

of the tagged appeals. However, in order to comprehend the controversy in these appeals, a brief reference to the facts in Civil Appeal No.3976 of 2007 would suffice:

The appellant viz. Ramala Sahkari Chini Mills, (hereinafter referred to as "the assessee") engaged in the manufacture of V.P. sugar and molasses, availed of CENVAT credit on welding electrodes, falling under sub-heading 8311.00 of the Central Excise Tariff Act, 1985 (for short "the Tariff Act"), under Rule 2 of the 2002 Rules. The Range Superintendent, vide his letter dated 21st November, 2002

asked the assessee to furnish details of use of welding electrodes in their factory. The assessee replied to the said letter on 28th November, 2002 stating that the said goods are used in the maintenance of their plants and machinery.

3. Thereafter, three show cause notices dated 4th October 2002, 3rd April 2003 and 7th July 2003 were issued to the assessee for the periods February 2002, March 2002 to October 2002 and November 2002 to April 2003, respectively proposing to recover the wrongly availed credit amount for those periods amounting to a total of ‘1,33,871/- together with interest and penalty.

4. The Assistant Commissioner, Central Excise, Meerut, vide Order-in-Original dated 20th August 2004 confirmed the demand of ‘1,33,871/-. The Assistant Commissioner also imposed a penalty of

equal amount under Rule 13 of the 2002 Rules and charged interest under Section 11AB of the Act.

5. Being aggrieved by the said order, the assessee preferred an appeal before the Commissioner (Appeals), Customs and Central Excise, Meerut, who rejected the same vide his order dated 31st March 2005.

6. The assessee, thereafter, carried the matter in appeal before the Tribunal. The Tribunal, vide its order dated 12th February 2007, dismissed the appeal of the assessee, inter alia, observing that:

> "4. The adjudicating authority, on the basis of material on record and the decision of the Tribunal in CCE, Belgaum Vs. Panyam Cements & Mineral Inds. 2003 (54) RLT 557, has held that welding electrodes used for maintenance of machines were not eligible modvat credit. It was found that the welding electrodes were used for repair and maintenance of machinery for welding purposes. The adjudicating authority also noted that in Kanoria Sugars & General Manufacturing Co. Vs. CCE 1996 (16) RLT 571, the Tribunal had held that welding electrodes used only for the purpose of welding were not eligible for modvat credit as also in CCE, Noida Vs. DCM Ltd., decided by the Tribunal on 27.5.2003. Following the decision of the Larger Bench in Jaypee Rewa case reported in

2003(57)RLT739, the adjudicating authority came to the conclusion that welding electrodes were not eligible inputs under Rule 2 of the Cenvat credit rules. The Commissioner (sic) (Appeal) upheld these findings by applying the ratio of the said decisions and held that welding electrodes were not eligible for credit either as input or as capital goods. This issue has been concluded by the Larger Bench in Jaypee Rewa Plant which has been followed in J.P. Cement Works Vs. CCE, Jaipur decided by the Tribunal by order dated 11.12.2006 in Excise Appeal Nos. 99 and 109 of 2005-SM Branch. The authorities below

have therefore, rightly held that welding electrodes which were used by the appellant were not eligible for credit either as capital goods or as inputs.

5. As regards the issue of penalty, it was contended by the learned counsel for the appellant that there was conflict amongst the judicial pronouncements on the issue and, therefore, no intention to evade duty could be inferred. Considering the issue of penalty, the Commissioner (Appeals) has held that the appellant was aware that Cenvat credit on the said item was not available and despite that they availed credit to evade payment of duty. In fact, the appellant did not respond to the letters of the Superintendent sent on 5.04.2002, requiring them to reverse the credit as it was not admissible. The appellant cannot rely upon a self-created uncertainty when the provisions of law were (sic) clear and by the decision of the Tribunal rendered as far as back in 1996 in CCE, Belgaum Vs. Panyam Cements & Mineral Inds., it was held that welding electrodes used for maintenance of machines were (sic) not eligible for Modvat credit. The authorities below have made the impugned orders imposing penalty and directing interest to be recovered for valid reasons, warranting no interference by this Court. The appeal, is, therefore, dismissed."

7. Hence, the present civil appeals.

8. Mr. Prakash Kumar Singh, learned counsel appearing on behalf of the appellants while assailing the impugned orders, strenuously urged that in light of the decisions of this Court in Maruti Suzuki Limited Vs. Commissioner of Central Excise, Delhi-III[1] and Vikram Cement Vs. Commissioner of Central Excise, Indore[2], welding electrodes would come within the ambit of "inputs" as defined in Rule 2(g) of the 2002 Rules, in as

[1] (2009) 9 SCC 193

[2] (2006) 2 SCC 351

much as they are used in relation to the manufacture of the

final product.

8. Per contra, Mr. Harish Chander, learned senior counsel appearing on behalf of the revenue urged that the impugned orders deserve to be affirmed.

10. As aforestated "Inputs" are defined under Rule 2(g) of the 2002 Rules as follows:

> "2. Definitions.- In these Rules, unless the context otherwise requires,-.....
> .....
> (g) 'input' means 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 for manufacture of final products or for any other purpose, within the factory of production.
> 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."

11. In Maruti Suzuki Limited (supra), this Court while examining the scope and purport of the term "input" in Rule 2(g) of the 2002 Rules observed that the said definition had three components viz. (i) the specific part, (ii) the inclusive part, and (iii) place of use, and unless all the three parts were satisfied, credit cannot be claimed on a good as an "input". The Court held that:

> "28. Coming to the statutory definition of the word "input" in Rule 2(g) in the CENVAT Credit Rules, 2002, it may be noted that the said definition of the word "input" can be divided into three parts, namely:
> (i) specific part
> (ii) inclusive part
> (iii) place of use
> Coming to the specific part, one finds that the word "input" is defined to mean all goods, except light diesel oil, high speed diesel oil and 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. The crucial requirement, therefore, is that all goods "used in or in relation to the manufacture" of final products qualify as "input". This presupposes that the element of "manufacture" must be present.....

34. In the past, there was a controversy as to what is the meaning of the word "input", conceptually. It was argued by the Department in a number of cases that if the identity of the input is not contained in the final product then such an item would not qualify as input. In order to get over this controversy in the above definition of "input", the legislature has clarified that even if an item is not contained in the final product still it would be classifiable as an "input" under the above definition. In other words, it has been clarified by the definition of "input" that the following considerations will not be relevant:
(a) use of input in the manufacturing process be it direct or indirect;
(b) even if the input is not contained in the final product, it would still be covered by the definition.
These considerations have been made irrelevant by the use of the expression "goods used in or in relation to the manufacture of final product" which, as stated above, is the crucial requirement of the definition of "input."

35. Moreover, the said expression viz. "used in or in relation to the manufacture of the final product" in the specific/substantive part of the definition is so wide that it would cover innumerable items as "input" and to avoid such contingency the legislature has incorporated the inclusive part after the substantive part qualified by

the place of use. For example, one of the categories mentioned in the inclusive part is "used as packing material". Packing material by itself would not suffice till it is proved that the item is used in the course of manufacture of final product. Mere fact that the item is a packing material whose value is included in the assessable value of final product will not entitle the manufacturer to take credit. Oils and lubricants mentioned in the definition are required for smooth running of machines, hence they are included as they are used in relation to manufacture of the final product. The intention of the legislature is that inputs falling in the inclusive part must have nexus with the manufacture of the final product.

36. Coming to the analysis of the inclusive part of the definition one finds that it covers:
(a) lubricating oils, greases, cutting oils and coolants;
(b) accessories;
(c) paints;
(d) packing materials;
(e) input used as fuel;
(f) input used for generation of steam or electricity.

37. In our earlier discussion, we have referred to two considerations as irrelevant, namely, use of input in the manufacturing process, be it direct or indirect as also absence of the input in the final product on account of the use of the expression "used in or in relation to the manufacture of final product". Similarly, we are of the view that consideration such as input being used as packing material, input used as fuel, input used for

generation of electricity or steam, input used as an accessory and input used as paint are per se also not relevant. All these considerations become relevant only when they are read with the expression "used in or in relation to the manufacture of final product" in the substantive/specific part of the definition.

38. In each case it has to be established that inputs mentioned in the inclusive part are "used in or in relation to the manufacture of final product". It is the functional utility of the said item which would constitute the relevant consideration. Unless and until the said input is used in or in relation to the manufacture of final product within the factory of production, the said item would not become an eligible input. The said expression "used in or in relation to the manufacture" has many shades and would cover various situations based on

the purpose for which the input is used. However, the specified input would become eligible for credit only when used in or in relation to the manufacture of final product..... .....
.....
.....
40. As stated, the definition is in three parts, namely, specific part, inclusive part and place of use. All the three parts are required to be satisfied before an input becomes an eligible input."

12. The effect of the afore-mentioned decision is that in order to fall within the ambit of the term "inputs" within the meaning of Rule 2(g) of the 2002 Rules, the goods must be (i) used in or in relation to the manufacture of the final product, whether directly and indirectly, and whether the said goods are contained in the final product or not, (ii) covered within the six categories of goods enumerated in Rule 2(g) and (iii) used within the factory of production. We are constrained to observe that while the subject goods must qualify the first and third parts of the definition, viz. the specific part and location of use, as enumerated in the said judgment, but to confine the goods only to the inclusive part of the definition that is to the six categories of goods mentioned therein may fall foul of the definition of the word "inputs" in Rule 2(g) of the said Rules. Prima facie, we are of the view that the legislature did not intend to restrict the definition of "inputs" to only those six categories.

13. At this juncture, it would be expedient to refer to the observations in The State of Bombay & Ors. Vs. The Hospital Mazdoor Sabha & Ors.3, wherein a three judge Bench of this Court has held that:

> "10. There is another point which cannot be ignored. Section 2(j) does not define "industry" in the usual manner by prescribing what it means; the first clause of the definition gives the statutory meaning of "industry" and the second clause deliberately refers to several other items of industry and brings them in the definition in an inclusive way. It is obvious that the words used in an inclusive definition denote extension and cannot be treated as restricted in any sense. (Vide: Stroud's "Judicial Dictionary", Vol. 2, p.1415). Where we are dealing with an inclusive definition it would be inappropriate to put a restrictive interpretation upon terms of wider denotation."

14. Similarly, in Regional Director, Employees' State Insurance Corporation Vs. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr.4, another three judge Bench of this Court had observed that:

> "The amendment is in the nature of expansion of the original definition as it is clear from the use of the words "include a factory". The amendment does not restrict the original definition of "seasonal factory" but makes addition thereto by inclusion. The word "include" in the statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction. The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used, these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include."

3 AIR 1960 SC 610

4 (1991) 3 SCC 617

15. Therefore, it is trite that generally the word "include" should be given a wide interpretation as by employing the said word, the legislature intends to bring in, by legal fiction, something within the accepted connotation of the substantive part.(Also see: C.I.T., Andhra Pradesh Vs. M/s. Taj Mahal Hotel, Secunderabad5; Indian Drugs & Pharmaceuticals Ltd. & Ors. Vs. Employees' State Insurance

Corporation & Ors.6; T.N. Kalyana Mandapam Assn. Vs. Union of India & Ors.7). It is also well settled that in order to determine whether the word "includes" has that enlarging effect, regard must be had to the context in which the said word appears. (See: The South Gujarat Roofing Tiles Manufacturers Association & Anr. Vs. The State of Gujarat & Anr.8; R. D. Goyal & Anr. Vs. Reliance Industries Ltd.9 and Philips Medical Systems (Cleveland) Inc. Vs. Indian MRI Diagnostic and Research Limited & Anr.10).

16. Thus, as already stated above, having regard to the language of Rule 2(g) of the 2002 Rules, and the analysis of the aforenoted decisions, it appears that by employing the phrase "and includes", legislature did not intend to impart a restricted meaning to the definition of "inputs" and therefore, the interpretation of the said term in Maruti Suzuki Limited (supra), may require reconsideration by a larger bench.

5 (1971) 3 SCC 550
6 (1997) 9 SCC 71
7 (2004) 5 SCC 632
8 (1976) 4 SCC 601
9 (2003) 1 SCC 81
10 (2008) 10 SCC 227

17. Accordingly, we direct that the papers of these cases be placed before the Hon'ble Chief Justice of India for constituting a larger bench.

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(D.K. JAIN, J.)

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(H.L. DATTU, J.)

NEW DELHI;
NOVEMBER 29, 2010

ITEM NO. 1-A COURT No.5 SECTION III
(For Orders)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 3976 OF 2007

Ramala Sahkari Chini Mills Ltd. U.P. .. Appellant(s)

Versus

Commnr. Central Excise, Meerut-I .. Respondent(s)

WITH

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CIVIL APPEAL NO. 4704 OF 2007
CIVIL APPEAL NO. 5896 OF 2008
CIVIL APPEAL NO. 5894 OF 2008

DATE : 29/11/2010 These matters were called on for pronouncement of orders today.

For Appellant(s) Mr. Prakash Kumar Singh, Adv.

For Respondent(s) Mr. B.V. Balaram Das, Adv.

Hon'ble Mr. Justice D.K. Jain pronounced the order of the Bench comprising His Lordship and Hon'ble Mr. Justice H.L. Dattu.

It is directed that the papers of these cases be placed before the Hon'ble Chief Justice of India for constituting larger bench.

[Charanjeet Kaur]
Court Master

[Kusum Gulati]
Court Master

[Signed reportable order is placed on the file]