SUPREME COURT OF INDIA

Saraswati Sugar Mills

Vs.

Commissioner of Central Excise, Delhi-III

C.A.No.5295 of 2003

(D.K.Jain and H.L.Dattu,JJ.,)

02.08.2011

JUDGMENT

H.L.Dattu,J.,

I. This appeal is directed against the final Order of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi [hereinafter referred to as 'the Tribunal'] dated 10.12.2002. By the impugned order, the Tribunal has confirmed the order passed by the Commissioner of Central Excise (Appeals), which has affirmed the order of the Assistant Commissioner of Central Excise, levying the duty and penalty under the Central Excise Act, 1944 (hereinafter referred to as 'the Act').

THE ISSUE:

2. The bone of contention between the Appellant-assessee [hereinafter referred to as 'the assessee'] and the Respondent [hereinafter referred to as 'the Revenue'] can be crystallized thus: Whether the Iron and Steel structures manufactured and used captively in the factory for installation of the Sugar manufacturing plant by the assessee can be classified as capital goods under Rule 57Q of the Central Excise Rules, 1944 [hereinafter referred to as "the Rules"].

THE FACTS :

3. The relevant facts for the purpose of this appeal are:- The assessee is the manufacturer of Sugar and Molasses. The assessee is availing MODVAT credit facility on the excise duty paid for the capital goods used in the factory for manufacturing process under Rule 57Q of the Rules. In April 1999, the assessee, in order to modernize the manufacturing process of sugar and molassess, has installed new machineries by replacing the old one. However, certain machineries like cane milling plant, clarification plant, evaporator and pan boiling plant, power generation plant etc., which are specified as capital goods in terms of Serial Nos. 2 and 3 of the Table below Sub-Rule 1 of Rule 57Q of the Rules, required the support

of structural items for their installation. In view of this, the assessee started the manufacturing of iron and steel structures, after purchasing excise duty paid iron and steel sheets, angles, nuts and bolts etc. for the installation of the said machineries. Thereafter, the assessee has filed a declaration under Rule 57Q of the Rules declaring Iron and Steel structures under sub-heading 7308.90 of Chapter 73 as capital goods. The assessee has also filed classification declaration under Rule 173B of the Rules dated 09.07.1999 for the Iron and Steel structures classifying it under sub-heading 7308.90 of Chapter 73 and claiming exemption under the Notification No. 67/95-CE dated 16.03.1995 [hereinafter referred to as "Notification"]. The said Notification exempts the capital goods, as defined in Rule 57Q of the Rules, manufactured and used within the factory from the excise duty leviable on such goods as specified in the schedule to the Central Excise Tariff Act, 1985 [hereinafter referred to as "the Tariff Act"]. Subsequently, the Assistant Commissioner, Central Excise Division, Ambala vide Office letter dated 20.01.2000 has issued a Show Cause Notice to the assessee for short payment of excise duty to the tune of ' 28,14,464/- for the period July, 1999 to September, 1999 as Notification is not applicable to the iron and steel structures. The said Show Cause Notice was replied by the assessee vide its reply a dated 24.02.2000 claiming the benefit of Exemption Notification. The assessee has also produced various photographs, drawings and Certificate of the Chartered Engineers during the personal hearing before the Assistant Commissioner dated 21.03.2000 in order to show that the iron and steel structures are components of machinery and quintessential for its effective functioning. However, the Assistant Commissioner, vide its order dated 31.03.2000, confirmed the duty demand and imposed a penalty of ' 5,0, 000/- on the ground that the Notification is not applicable to the said Iron and Steel structures as they are neither inputs used in relation to the manufacture of final product nor capital goods as defined in Column 2 of the Table given below Sub-Rule (1) of Rule 57Q of the Rules. The assessee, aggrieved by the order of Assistant Commissioner, preferred an appeal before the Commissioner of Central Excise (Appeals). The Commissioner (Appeals), vide its order dated 23.11.2011, confirmed the order of the Assistant Commissioner and rejected the appeal on the ground that the said Iron and Steel structures form the part of the building. Being aggrieved, the assessee preferred an appeal before the Tribunal, the same was partly allowed. The Tribunal, vide its impugned order dated 10.12.2002, reduced the amount of penalty to ' 1,00,000/- and affirmed the demand of duty on the ground that Chapter 73 of Schedule to the Tariff, Act under which the said Iron and Steel structures fall, has not been specified in the Table below Rule 57Q of the Rules and the machineries purchased by the assessee were complete in itself. The reasoning of the Tribunal is as under:

> "We have considered the submission of both the sides. The Ld. Advocate had shown us certain photographs where the impugned structures were used. According to him these structures form integral part of the machinery concerned without which the machinery cannot function. On query from the Bench, the Ld. Advocate has fairly conceded that the various machineries, which have been purchased by them, were complete. Accordingly, we do not find any substance in his submissions that these structures are components of the various machine/machineries. Notification No.67/95-CE provides exemption from payment of duty to the capital goods as

defined in Rule 57Q if they are used in or in relation to the final products which are chargeable to duty. The appellants have not succeeded in establishing that the impugned structures are components of the capital goods as specified in the table below Rule 57Q of the Central Excise Rules. Chapter 73 of the Central Excise Tariff under which the impugned goods fall has also not been specified in the table below Rule 57Q. The ratio of the decision in the case of Bhanu Steels is not applicable as therein the appellants had explained that the goods were spare parts for plant and machinery installed in their factory. In the present matter, the appellants have not proved that the impugned goods are components of the machines/machineries. The ratio of the decision in the case of Wainganga is not applicable as the goods were manufactured in the factory and further these were not trusses, column andpurlines as was the fact in the Wainganga case. We, therefore, hold that the benefit of Notification No.67/95 is not available to the appellants. Accordingly, we uphold the demand of duty of Excise confirmed against them. However, taking into consideration the facts and circumstances of the case, we are of the view that the penalty imposed is on the higher side and the interest of justice will be met, if the Appellants are directed to pay a penalty of only Rs.1 lakh. We order accordingly. The appeal is thus partly allowed.

THE COMPETING ARGUMENTS :

4. The learned counsel Shri. V. Lakshmi Kumaran submits that the Iron and Steel structures are fabricated by the assessee in its factory and subsequently, used within the factory for installation and effective functioning of the sugar manufacturing machineries which falls under Serial NoS. 2 and 3 of the Table to Rule 57Q as capital goods. The said Iron and Steel structures are in the nature of components of the sugar manufacturing plant. Therefore, the said structures are capital goods in terms of Serial no. 5 of the Rule 57Q of the Rules. He further submits that the Tribunal has grossly erred in observing that Chapter 73 of Schedule to the Tariff Act, under which the said Iron and Steel structures fall, has not been specified in the table below Rule 57Q of the Rules. In this regard, he contends that so long as the Iron and Steel Structures are used as component or accessory of the eligible machines falling under Serial No. 2 and 3, irrespective of its classification under the Tariff Act, it would be treated as capital goods as covered by Serial No. 5 of the table below Rule 57Q. In support of this argument, the learned counsel, placing reliance on the Circular dated 02.12.1996, issued by Central Board of Excise and Customs [hereinafter referred to as "the CBEC"], submits that the components, spares and accessories to the eligible capital goods under Rule 57Q have been specified as capital goods on the basis of their description, instead of classification under the Tariff Act. He further submits that the said Iron and Steel structures, once used for the installation of various machineries, become part and parcel of the sugar manufacturing plant and without the help of said structures, the machineries cannot be installed and made functional. In other words, the said structures are also in the nature of components to the sugar manufacturing plant. He also submits, by placing reliance on Section Note 5 to Section XVI of the Tariff Act, that the expression 'machine' has to be construed as plant and any component of the machine, being part of the machine, will also become part of the plant. He

further submits that this Court in Commissioner of Central Excise, Jaipur v. Rajasthan Spinning and Weaving Mills Ltd., 2010 (255) E.L.T. 481 (SC) held that the steel plates and M.S. Channels, used in the fabrication of chimney, which is integral part of the diesel generating set, are capital goods in terms of Serial No. 5 of the Table below Rule 57Q the Rules. In other words, the individual items used for fabricating the component of the eligible capital goods under Serial Nos. 2 and 3, are qualified as capital goods in terms of Serial No. 5 of the Table below Rule 57Q of the Rules. The learned counsel, citing the decision of the *Tribunal in Simbhaoli Sugar Mills Ltd. V. Commissioner of Central*[1], (Tri.-Del), submits that the said decision deals with exactly the same Structural Items, under Chapter heading 73.08, which are in issue before this Court and used for installation of Sugar Manufacturing Plant. He further submits that on issue of whether the Iron and Steel items fabricated at site for raising the structure to support the sugar manufacturing plant are capital goods or not under Rule 57Q, the Tribunal answered that items used for fabricating the structures, which are in the nature of components or part of the machines, are also capital goods in terms of Rule 57Q and allowed MODVAT credit on the said items. He further submits that the Special Leave Petition against this decision of Tribunal, preferred by the Revenue, has been dismissed by this Court. Drawing strength from the above decisions of this Court and the Tribunal, the learned counsel submits that the assessee is better placed as the iron and steel structures in issue form the integral and quintessential part of the Sugar manufacturing Plant and the whole machinery is so designed that without the said Iron and Steel structures, the sugar plant cannot function. He further submits that when individual items used for fabricating the structures in the nature of components to support the machinery are treated as capital goods in terms of Rule 57Q, then it will be against logic to say that structures are not components of the machines. The learned counsel submits, by referring to a circular dated 05.08.1997 issued by the CBEC, that in case of a Wind Mill, the tower acting as a structure to support the Wind Mill constitutes an essential component of the Wind Mill. Therefore, the support tower can be treated as capital goods and the assessee can claim exemption, if provided. Drawing an analogy from the example of Wind Mill, the learned counsel submits that the Iron and Steel structures are the components or parts of the Sugar manufacturing plant and qualify as capital goods in terms of Serial No. 5 of the Table below Rule 57Q of the Rules. Arguendo, the learned counsel submits that the Iron and Steel structures are fabricated at the site of work for use in the construction or erection of the various machineries, therefore, can be classified under sub-heading 7308.50 under Chapter 73 of the Schedule to the Tariff Act which attracts Nil rate of duty. Alternatively, the learned counsel submits, by placing reliance on the judgment of this Court in *Commissioner of Central Excise v. Wainganga Sahkari S. Karkhana Ltd.*[2], that no excise duty is payable on structural items fabricated at site and used within the site.

5. Per contra, Shri. K. Swami, learned counsel for the Revenue, supports the findings and conclusion reached by the Tribunal and the department. He further submits that the Iron and Steel structures which fall under Chapter Heading 73 of the Schedule to the Tariff Act, is neither mentioned in the Notification nor in the Table below Rule 57Q of the Rules. According to learned counsel, the Exemption Notification only exempts the capital goods as defined in Rule 57Q of the Rules. The learned counsel also argues that by applying "user

test" theory, the Iron and Steel structures cannot be considered as components of the sugar manufacturing plant. It is also submitted that the Notification requires to be strictly construed and since the assessee does not fall within the ambit of the Notification, it is not entitled for the benefit of the Notification.

THE NOTIFICATION :

6. To resolve the controversy, we need to notice the relevant Notification and Rule 57Q of the Rules. The relevant portion of Notification No.67/95-CE dated 16.03.1995 is as under:-

> "In exercise of the powers conferred by sub¬section (1) of Section 5A of the Central Excise Act, 1944. the Central Government being satisfied that it is necessary in the public interest so to do hereby exempts
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> (1) capital goods as defined in Rule 57Q of the Central Excise Rules 1944 manufactured in a factory and used within the factory ofproduction;
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> (ii) ... from the whole of the duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of1986)."
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> THE RULES :
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> Rule 57Q of the Central Excise Rules, 1944 reads:-
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> "(1) All goods falling under heading Nos.82.02 to 82.11;
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> (2) All goods falling under Chapter 84 (other than internal combustion engines falling under heading No.84.07 and 84.08 and of a kind used in motor vehicles, compressors falling under heading No.84.14 and of a kind used in refrigerating and air-conditioning appliances and machinery, heading or sub-heading Nos.84.15, 85.18, 8422.10, 8424.10, fire extinguishers falling under sub-heading No.8424.80, 8424.91, 8424.99, 84.29 to 84.37, 8440, 84.50, 8452, 84.69 to 84.73, 84.76, 84.78, expansion valves and solenoid valves falling under sub-heading No.8481.10 of a kind used for refrigerating and air-conditioning appliances and machinery);
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> (3) All goods falling under Chapter 85 (other than those falling under heading Nos.85.09 to 85.13, 85.16 to 85.31 and 85.40);
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> (4) All goods falling under heading Nos.90.11 to 90.13, 90.16, 90.17, 98.22 (other than for medical use), 90.24 to 90.31 and 90.32 (other than of a kind used for refrigeration and air- conditioning appliances and machinery);
>
> (5) Components, spares and accessories of the goods specified against S. Nos.1 to 4 above. "

ANALYSIS OF THIS MATERIAL:

7. The Tariff Act prescribes the rate of duty for each chapter head and sub-head. The Tariff Act has authorized the Central Govt. to modify the rates/duty by issuing notifications. Since exemption notifications are issued under delegated legislative power, they have full statutory force. The Notification No.67/95- CE dated 16.03.1995 specifically exempts capital goods as defined in Rule 57Q of the Rules. The other condition that is envisaged in the Notification is that the 'capital goods' should be manufactured in a factory and used within the factory of production. If these twin conditions are satisfied, the capital goods are exempt from payment of excise duty. A party claiming exemption has to prove that he/it is eligible for exemption contained in the notification. An exemption notification has to be strictly construed. The conditions for taking benefit under the notification are also to be strictly interpreted. When the wordings of notification is clear, then the plain language of the notification must be given effect to. By way of an interpretation or construction, the Court cannot add or substitute any word while construing the notification either to grant or deny exemption. The Courts are also not expected to stretch the words of notification or add or subtract words in order to grant or deny the benefit of exemption notification. In Bombay Chemicals (P) Ltd. vs. CCE - (1995) Supp (2) SCC 646, a three Judge Bench of this Court held that an exemption notification should be construed strictly, but once an article is found to satisfy the test by which it falls in the notification, then it cannot be excluded from it by construing such notification narrowly.

8. Now coming to Rule 57Q of the Rules, these rules are framed under the Statute. While interpreting the Rules, which are framed under the Statute, they should be read as a part of the Statute itself and require to be interpreted as intra vires to the Act under which they have been issued. Having said that, now let us consider the submission of learned counsel Shri Lakshmikumaran for the assessee who contends that Iron and Steel structurals manufactured by the assessee within its factory used for the purpose of installation of sugar manufacturing plant are components of the capital goods and therefore, exempt from payment of excise duty by virtue of Notification No.67/1995- CE dated 16.03.1995. However, Shri Swami, learned counsel for the Revenue contends that the items in dispute are independent goods manufactured by the assessee, though in its factory from the goods on which excise duty is paid cannot be construed as component parts of sugar manufacturing plant and therefore, is not entitled for the benefit of Notification No.67/1995 dated 16.03.1995.

9. As per Notification No.67/1995 dated 16.03.1995, capital goods as defined in Rule 57Q of the Rules manufactured in a factory and used within the factory of production are exempt from payment of Excise Duty. Rule 57Q of the Rules, specifies various items of goods falling under different chapter headings and sub¬headings of the Tariff Act as capital goods. It is not the case of the assessee that Iron and Steel Structures manufactured by it in its factory are the goods which fall under Items 1 to 4 of Rule 57Q, though sugar manufacturing unit would fall under Item Nos. 2 and 3 of the Table to Rule 57Q of the Rules. It is the specific stand of the assessee that the goods in dispute are components of the goods specified in Items 2 and 3 of the Table to Rule 57Q of the Rules and since the capital goods include

components and accessories, the Iron and Steel Structures manufactured within the factory are exempt from excise duty.

10. The expression "components" is not defined under the Act. Therefore, reference can be made to dictionaries to understand the meaning of the expression "components". In Webster Comprehensive dictionary, it is defined as 'Constituent part\ In Oxford Advanced Learner's Dictionary, Volume 1, International Edition, the word "component" means a 'constituent part'. Further, 'constituent' means 'serving to form or compose as a necessary part'. In Advanced Law Lexicon, 3rd Edition 2005, (by P. Ramanatha Aiyar), the word 'component part' is defined as 'something which becomes an integral part of the goods in question by losing its physical and economic distinctiveness'. It defines 'constituent' (of a component) as 'that helps make up or complete a unit or a whole's one part of something that makes up a whole'. Encyclopaedic Law Lexicon, Volume 2008-09 Edition, by Justice C.K. Thakkar, describes the 'components' as : 'It appears, therefore, that for an article to be called a component part, it is not necessary that even it becomes part of another article, it should still retain its identity. All that is necessary to make an article, a component part is that it goes in to the composition of another article. If an article is an element in the composition of another article made out of it, such an article may well be described as a component part of another article. It may be that the final product made may be in the nature of a compound in which case, the elements forming component parts may not be capable of any more separate identification. Equally, it may be that when a machinery is assembled out of several parts forming that machinery, those machinery, those parts, even after there being filled may retain their individuality or identity'.

11. The meaning of the expression 'components' as defined in the dictionary is accepted and adopted by this Court in the case of *Star Paper Mills Vs. Collector of Central Excise*[3] and the same is quoted with approval in *CCE Vs. Allied Aid Conditioning Corporation* [4]

12. In order to determine whether a particular article is a component part of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not. One must first look at the article itself and consider what its uses are and whether its only use or its primary or ordinary use is as the component part of another article. There cannot possibly be any serious dispute that in common parlance, components are items or parts which are used in the manufacture of the final product and without which, final product cannot be conceived of.

13. The meaning of the expression 'component' in common parlance is that 'component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete'.

14. This Court, in Star Paper Mills (supra) has made a settled distinction while considering whether paper cores are 'components' in the manufacture of paper rolls and manufacture of paper sheets. It is stated that 'paper cores' are component parts in so far as manufacture of roll is concerned, but it is not 'component part' in the manufacture of sheets. It is useful to quote the observations made by this Court :-

> "... paper core would also be constituent part of paper and would thus fall within the term " component parts" used in the Notification in so far as manufacture of paper in rolls is concerned. Paper core, however, cannot be said to be used in the manufacture of paper in sheets as component part. We are conscious that the relevant tariff item uses the word "paper " but since paper in rolls and paper in sheets are nothing but different forms of paper, both of them would be excisable goods as paper under the relevant tariff item."

15. In *Modi Rubber Ltd. v. Union of India*[5], the appellant had set up tyre and tube manufacturing plant and imported various plants and machineries. While using the plants and machineries, PPLF (Polypropylene Liner Fabric) was used as a device in the form of liner components to various machinery units to protect the rubber-coated tyre fabric from atmospheric moisture and dust. This Court held that the PPLF was not a component of the machine itself. It was not a constituent part. It was used as a Liner Fabric not only in tyre production but also in similar other industrial processes.

16. In *Hindustan Sanitaryware & Industries Ltd. & Lakshmi Cement v. Collector of Customs*[6], this Court while drawing a distinction between component and spare parts observed:

> "It pertains to the meaning of the phrase "component parts". The Tribunal, in the impugned order, drew a distinction between component parts and spare parts, following its earlier decision in the case of Vaz Forwarding (P) Ltd. v. Collector of Customs1 Component parts, according to it, were those which were initially used in the assembly or manufacture of a machine and spare parts were those parts which were used for the subsequent replacement therein of worn-out parts. The decision in Vaz Forwarding (P) Ltd1 and other decisions of the Tribunal were considered by a larger Bench of the Tribunal in Jindal Strips Ltd. v. Collector of Customs2. The larger Bench took the view that a spare part was a replacement part to replace a damaged or worn-out component but it was, nevertheless, a component part. "Component" was the genus and "spare" was a species thereof; it was a component which was used for replacement. The larger Bench judgment found that the distinction drawn in Vaz Forwarding (P) LtdX was a distinction without a difference.
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> 2.The larger Bench decision followed decisions of this Court, and we are of the view that its view is correct. A spare part, though fitted into a machine subsequent to its

manufacture, to replace a defective or worn- out part becomes a component of the machine. It is a component part."

17. The issue for our consideration,as we have already noticed, is whether the Iron and Steel Structures are components of the Capital Goods specified in the Table below Rule 57Q of the Rules. This issue can be resolved by looking into the literature which gives some glimpse how sugar is manufactured in a sugar industry and what is the essential machinery for manufacture of sugar.

18. The process of making sugar commences from the stage of collecting the harvest, cleansing and grinding, juicing, clarifying, evaporation, crystallization, refining and lastly separation and packing. For the purpose of manufacturing cane sugar in a sugar industry, the essential machineries that are required are sugar presses, diffusers, vaccum pans, evaporators and sugar handling equipments, crystallizers, sugar grader, elevator and cooling tower. We can call these machineries as essential items in a sugar manufacturing plant. The assessee also fabricates Iron and Steel Structures for installation of the aforementioned equipments. Even according to learned senior counsel Sri Lakshmikumaran, these Iron and Steel Structures are used for effective functioning of Sugar Manufacturing Plant. Under the Notification, the Central Government had exempted duty in respect of "capital goods", as defined in Rule 57 Q of the Rules if they are utilized in a place where such goods are manufactured and used within the factory of production. The Notification specifically states that what is exempted under the Notification are "capital goods" as defined in Rule 57Q. Rule 57Q specifies five categories of items as capital goods. It is not the case of the assessee or its learned counsel that the exemption claimed was on Items 1 to 4 of the Table to Rule 57Q but as components which would fall under item No.5 of the Table to Rule 57Q. Therefore, in order to get the benefit of non excise duty on Iron and Steel Structures, it had to be established by the assessee that Iron and Steel Structures are utilized as component parts for the finished products, viz. vacuum pan, crystallizers, sugar grader, elevator, cooling tower etc.

OUR ANALYSIS AND CONCLUSION :

19. It appears to us, in the light of the meaning of the expression 'component parts' that the iron and steel structures are not essential requirements in the sugar manufacturing unit. Anything required to make the goods a finished item can be described as component parts. Iron and Steel structures would not go into the composition of vacuum pans, crystallizers etc. If an article is an element in the composition of another article made out of it, such an article may be described as a component of another article. Thus, structures in question do not satisfy description of 'components'. Therefore, in our opinion, the Tribunal was right in the view it took.

20. Sri V. Lakshmi Kumaran, learned senior counsel, submits that the Iron and Steel structures are fabricated at the site of the work for use in the construction of the various machineries and, therefore, can be classified under sub-heading 7308.50 under Chapter 73 of

the Schedule to the Act, which attracts nil rate of duty. Therefore, it is contended that even if his other contention is not accepted, the assessee should not be fastened with any duty liable under the Act. This issue was neither raised nor canvassed by the assessee before the Tribunal. Therefore, we cannot permit the learned counsel to argue this issue before us for the first time. Therefore, this contention of the learned counsel is rejected.

21. Now coming to the last contention canvassed by the learned counsel that the Tribunal is not correct in holding that the assessee failed to establish that the steel structures are components of the capital goods as specified in the Table below Rule 57Q of the Rules and, therefore, are not eligible for exemption under the notification. This issue requires to be answered with reference to Circular No. 276/110/96-TRV dated 02.12.1996 issued by the CBEC. The relevant portion of the Circular is as under :-

> "3.The matter has been examined. With effect from 23-7-1 996, capital goods eligible for credit under Rule 57Q have been specified either by their classification or by their description. Clauses (a) to (c) of Explanation (1) of the said rule cover capital goods by their classification whereas clause (d) covers goods by their description viz, components, spares and accessories of the said capital goods. It may be noted that there is a separate entry for components, spares and accessories and no reference has been made about their classification. As such, scope of this entry is not restricted only to the components, spares and accessories falling under Chapters 82, 84, 85 or 90 but covers all components, spares and accessories of the specified goods irrespective of their classification. The same was the position prior to amendment in Rule 57Q (i.e. prior to 23¬7-1996) when credit was available on components, spares and accessories of the specified capital goods irrespective of their classification.
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> 4. Accordingly, it is clarified that all parts, components, accessories, which are to be used with capital goods of clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any chapter heading are eligible for availment of Modvat credit."

22. The period in dispute is July 1999 to September 1999. The Circular is dated 02.12.1996. Therefore, it was applicable to the disputed period. It is not disputed and it cannot be disputed that the Circular provides that all parts, components, accessories, which are to be used with the capital goods of Clauses (a) to (c) of Explanation (1) of Rule 57Q and classifiable under any Chapter heading are eligible for availing of MODVAT Credit. However, while denying exemption under the notification, the Tribunal has concluded that the goods in question, which comes under Chapter Heading 73 of the Tariff Act has not been specified in the table below rule 57Q. We do not find fault with the reasoning of the Tribunal, since the Circular, on which reliance is now placed by the learned counsel, was not produced before the Tribunal and, therefore, going by the language employed in Rule 57Q, there is justification for the Tribunal for coming to the aforesaid conclusion. Since in view of the circular, which is now brought to our notice, the Tribunal was not correct to reject the claim of the assessee on the aforesaid ground. However, this finding of ours will not assist

the assessee, since we have held that Iron and Steel structures are not the components of machineries used in the installation of Sugar Manufacturing Plant.

23. Before we conclude, we must further observe that Shri Lakshmikumaran drew our attention to the judgment of this Court in CCE vs. Rajasthan Spinning and Weaving Mills Ltd. (2010) 255 ELT 481 (SC) where the appeal preferred by the Revenue is dismissed. The facts in the said case were that the respondent- assessee availed MODVAT credit on steel plates and M.S. channels, as capital goods in terms of Serial No.5 of the Table given below Rule 57Q, used for erection of the chimney for the diesel generating set. The parties were ad idem that diesel generating set falls under chapter heading 85 which is mentioned at Serial No.3 of the Table and also the chimney is an accessory in terms of Serial No.5 of the Table given below 57Q. The issue which was agitated before the Court was whether the Steel plates and MS Channels used in the fabrication of chimney are capital goods in terms of Serial No.5 of the Table below Rule 57Q. This Court, whilst applying the user test, had held that the steel plates and MS Channels used in the fabrication of chimney are capital goods as contemplated by Rule 57Q as the chimney is not only an accessory but also an integral part of the diesel generating set in the light of the Pollution Control laws mandating that all plants emitting effluents should be equipped with apparatus to reduce or get rid of effluent gases. We are afraid that this decision would assist the appellants in support of the contention canvassed. In this instant case, the Court was considering whether steel plates and M.S. Channels used in fabrication of chimney for diesel generating sets are entitled to avail of MODVAT credit by treating them as capital goods in terms of Rule 57Q of the Central Excise Rules. This Court, applying 'user test', has arrived at a conclusion that Steel Plates and MS Channels are used in the fabrication of chimney which is an integral part of the diesel generating set. Therefore, the test applied by this Court is whether the items that were at issue were integral part of a machinery. If that test is satisfied, there will not be any difficulty to hold a particular item of the machinery is a component part and therefore, will fall within the ambit of the expression 'capital goods'.

24. In *Simbhaoli Sugar Mills Ltd. v. Commissioner of Central Excise, Meerut*[7], the appellant is a manufacturer of sugar and availed a MODVAT credit on the joints, channels, angles and MS Beams used in fabricating supporting structures for installation of equipments such as vacuum pan, crystallizers, sugar grader, elevator, etc., HR plates (black steel) are used in boiler of sugar plant to keep temperature high, MS bars, shapes and sections are used for erection of new cooling tower, chequred plates and ITR plates are used to construct the platforms, the cane carrier chain and spares are used to transfer the raw material/semi processed material from stage to other, as the capital goods in the terms of Rule 57Q, treating these items as the parts and components of the plant. The question which arose before the Tribunal was that whether these items used for fabricating structures to support and install various machineries of the sugar plant are capital goods in terms of the Rule 57Q. The Tribunal while allowing the MODVAT credit found that these items, except MS sections and shapes, used for raising structure to support the various machines, parts of machineries of the plant would be covered by the explanation to Rule 57Q as a capital goods. The Tribunal referred to its own decision in Malavika Steel Limited's case and without semblance of any

discussion, has partly allowed the assessee's appeal. In view of our findings and the conclusion in the earlier part of the judgment, we cannot agree with the reasoning of the Tribunal.

25. In the result, this appeal fails and, accordingly, dismissed. Costs are made easy.

Judgment Referred.

[1]*(2001) 135 E.L.T. 1239*
[2]*(2002) 142 ELT 12 (SC)*
[3]*(1989) 4 SCC 0724*
[4]*(2006) 202 ELT 0209 (SC)*
[5]*(1997) 7 SCC 0013*
[6]*(2000) 10 SCC 0224*
[7]*(2001) 135 ELT 1239 (Tri-Del)*