(2002) 09 BOM CK 0047

In the Bombay High Court

Case No : Writ Petition No. 2391 of 1989

Bharat Bijlee Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57G
Constitution of India, 1950 — Article 226

Citation : (2002) 105 ECR 577 : (2003) 154 ELT 564

Hon'ble Judges : V.C. Daga, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : D.B. Shroff and P.V. Mehta, instructed by Malvi Ranchhodas and Co, for the Appellant; R.V. Desai, S.V. Bharucha and N.V. Masurkar, for the Respondent

Judgement

J.P. Devadhar, J.—In this Petition, the Petitioners have challenged the three show cause notices issued by the Respondents wherein the Petitioners have been called upon to show cause as to why excise duty should not be collected from the Petitioners for wrongly availing the Modvat credit during the periods set out in each of those show cause notices.

2. The facts having bearing on the subject matter of the present petition are as follows :-

(a) The Petitioners inter alia manufacture final products falling under Chapter 84 & 85 of the Central Excise Tariff. In the budget for the financial year 1986-87, the Central Government introduced Modvat procedure by Introducing Rules 57A to 57J to the Central Excise Rules. Under Rule 57A, the Central Government was empowered to issue a notification specifying the inputs on which the credit of duty paid thereon would be available to the final products and for utilising such credits towards payment of duty leviable on the final products as specified in the notification. The Modvat procedure was introduced in a phased manner and during the year 1986-87 only 37 Chapters of the Scheduled to the Central Excise

Act were covered by the Notification No. 177 of 1986, dated 1-3-1986 issued by the Central Government.

(b) In the light of the aforesaid provisions, the Petitioners by their letter dated 1-3-1986 informed the excise authorities that they are entitled to the benefit under the Modvat Scheme and thereafter on 20-3-1986, the Petitioners filed requisite declarations for availing Modvat credit under Rule 57G of the Central Excise Rules. The said declarations were unconditionally accepted by the excise authorities and the Petitioner No. 1 was permitted to avail the Modvat benefit in respect of the products manufactured by them. Even the Central Excise Revenue Auditors checked the records of the Petitioners from time to time and have certified that the Modvat credit availed by the Petitioners is proper and there is nothing wrong in it. Accordingly, the Petitioners continued to avail Modvat credit on the basis of the declaration already filed by them.

(c) However, by the impugned show cause notices, dated 5-4-1989, 6-5-1989 and 4-7-1989 the Respondents called upon the Petitioners to show cause as to why the Modvat credit availed by them during the period from October, 1988 to May, 1989 should not be held to be wrong and excise duty should not be recovered and why penal action should not be initiated against the Petitioners. The principle reason for issuing show cause notices was because the Petitioners had not Indicated the description of the inputs specifically in their declaration filed with the department and instead, the Petitioners have deliberately indicated in their declaration, the Chapter numbers and the Chapter description of the Central Excise Tariff Act, 1985, which according to the Respondents fall to answer the descriptions of the inputs as required under Rule 57A of the Central Excise Rules.

(d) The Petitioners replied to the two show cause notices stating that the declaration filed by the Petitioners was proper arid in the absence of any specific format prescribed in the Rule 57G(1) of the Central Excise Rules, no action can be taken against the Petitioners. It was submitted that all the basic conditions of Modvat have been fulfilled and having accepted the declarations for all these years, it was not open to the revenue to deny Modvat credit at this stage, that too on a technical ground that the declaration is not proper. Instead of adjudicating the two show cause notices to which reply has been filed, the Respondents have issued third show cause notice for the subsequent period. Hence the Petitioners have approached this Court by filing this Writ Petition.

3. Mr. Shroff, Learned Counsel for the Petitioners urged before us that the issue raised in the petition is covered by the decision of this Court in the case of Park Products Ltd. v. Union of India and Ors. (Writ Petition No. 3332 of 1987), decided on 6-2-1996 wherein, this Court had set aside that part of the show cause notice which sought to deny the benefit of Modvat credit on the ground that the declaration does not specifically set out the list of final products and the inputs to be used in respect of each final product. It was submitted that in spite of the detailed reply filed to the two show cause notices, the Respondents even without

considering the said reply purported to issue the third show cause notice. It was submitted that since the declarations filed by the Petitioners have been accepted by the Respondents as well as the Central Excise Revenue Auditors, the show cause notices issued are without any merit and the same are liable to be quashed and set aside.

4. Mr. Desai, learned Counsel for the revenue on the other hand contended that the Petitioners are entitled to raise all these contentions before the adjudicating authority and no interference is called for at the show cause notice stage.

5. We wanted to know from the counsel for the revenue as to whether the Petitioners were being denied the Modvat benefit solely on account of technical breach of not filing proper declaration or on merit the Modvat benefit was not available to the products manufactured by the Petitioners. The Counsel for the revenue informed us that without adjudication, it will not be possible for the revenue to make any statement in that behalf. Since the Petitioners had filed declaration before availing the Modvat credit and the same was accepted by the Respondents as well as the Central Excise Revenue Auditors, we hold that the Respondents cannot deny the benefit of Modvat credit to the Petitioners on the ground that the declaration filed by the Petitioners was defective, especially when there is no format prescribed in the statute. Although, it is contended by the revenue that the Petitioners were repeatedly called upon to revise their declaration in the format issued by the Respondents, there is nothing on record to show that any such letter was in fact addressed by the Respondents to the Petitioners. In the absence of any particular format prescribed by the Rule and in the absence of any proof that the Petitioners declined to file the declaration in the format issued by the Respondents, it will not be proper to deny the benefit of Modvat merely on the ground that the declaration is not in accordance with the format and penalise the Petitioners.

6. In the circumstances, the petition partly succeeds. The impugned show cause notices dated 5-6-1989, 5-6-1989 and 4-7-1989 being Exhibits ''E'', ''G'' & ''I'' to the petition are quashed and set aside, insofar as they purport to deny benefit of Modvat to the goods manufactured and cleared by the Petitioners during the period from Dec., 1988 to May, 1989 on the ground that the declaration filed by the Petitioners is not in proper format or that the description of the inputs have not been specifically indicated in the declaration. However, it will be open to the Respondents to adjudicate upon the admissibility of Modvat credit to the Petitioners on merits. The Petitioners are at liberty to file additional reply to the show cause notices and the Respondents shall adjudicate the matter in accordance with law, after giving personal hearing to the Petitioners.

Petition is disposed of in the above terms. However, in the facts of the case, there will be no order as to costs.