(2015) 04 MP CK 0149

In the Madhya Pradesh High Court

Case No : Tax Reference No. 04 of 2011

Bharat Heavy Electricals Limited APPELLANT

Vs

CEC RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Citation : (2016) 332 ELT 411

Hon'ble Judges : Rajendra Menon, J;S.K. Gangele, J

Bench : Division Bench

Advocate : Z.U. Alvi, Counsel, for the Appellant; S. Dharmadhikari, Counsel, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. This is a Reference made by the Central Excise and Gold Appellate Tribunal, at the instance of the assessee, referring the following questions for consideration:-

"(i) Whether right (to the credit under the MODVAT Scheme as it stood on 29.06.1995) "accrued to an assessee on the date when they paid the tax on the raw materials or inputs?, as held by Hon''ble Supreme Court in para 6 of Eicher Motors Limited and Another Vs. Union of India and Others Etc., AIR 1999 SC 892 : (1999) 81 ECR 7 : (1999) 106 ELT 3 : (1999) 1 JT 205 : (1999) 1 SCALE 230 : (1999) 2 SCC 361 : (1999) 1 SCR 295 : (1999) AIRSCW 563 and that such right gets crystallized in his favour "instantaneously once the input is received in the factory on the basis of the existing scheme''?

(ii) Whether act of making such receipt of the inputs in Part-I of the single comprehensive RG-23A account evidences comprehensive RG-23A account evidences such crystallization of the right to MODVAT credit in favour of assessee and thus amounts to "taking of the credit'' as envisaged in the Scheme or only the second (accounting) entry in the Part-II of the same RG-23A Account only constitutes the act of availment of right to the already accrued credit?

(iii) Whether the credit held by the CEGAT in para 5 of the final order to have been accrued to the applicant can be denied in law by CEGAT simultaneously holding it to be inadmissible."

2. By an order passed, the Tribunal on 17.10.2000, in Appeal No.E/1136/96-NB, contention of the assessee - M/s. Bharat Heavy Electricals Limited, challenging disallowance of MODVAT credit to the tune of Rs. 35,07,645/- and recovery of the same under Rule 57-I of the Central Excise Rules and imposition of penalty was rejected.

3. The assessee is engaged in manufacturing of various excisable goods. They are availing the facility of MODVAT credit of duty paid on inputs, in terms of the provisions of 57A of the Central Excise Rules. It was found on the basis of the duty paying documents that in the months of July, August and September 1995, the assessee had taken MODVAT credit to the tune of Rs. 35,07,645/- on the strength of duty paying documents which was found to have been issued more than six months prior to the date on which credit was taken. It was the case of the Revenue that under Rule 57G(2), the manufacturer is required to file a declaration under Rule 57G(1) after obtaining the dated acknowledgement, take credit of the duty paid on inputs received and in accordance to the second proviso to sub-rule, the manufacturer is restrained from taking credit after six months of the date of issuance of any documents specified. It was found that in the entries made in the documents maintained under RG-23 A - Part I & II, even though in Part I the entry is made showing date of taking availment of MODVAT credit within the stipulated period of six months, but in Part II as the date was beyond six months, the Tribunal held that the facility of MODVAT cannot be extended as the assessee has not shown availing of the benefit in accordance to the requirement of the Rule.

4. Accordingly, by making the following observations -

"In support of this contention, the appellants cited and relied upon the judgment of the Hon''ble Supreme Court in the case of Eicher Motors. We find that RG 23 A - Part I and Part II is a consolidated record. There are columns of credit and debit of duty only in Part II of RG-23A and not in Part I of RG-23A. Thus, we note that the entry in RG-23A Part II is the entry which is to be taken as the entry for computing the period of six months. The contention of the appellant that a right accrues, there is no denial of this contention. The right no doubt accrues but here the limited question is from which date the period of six months is to be counted. Since date of entry of credit taken is provided for only in RG-23A Part II and, therefore, this entry is material for our purpose. In the present case, the duty paying documents when examined in the light of entry in RG-23A Part II go beyond a period of six months. Therefore, following the ratio of the decision of the Larger Bench of this Tribunal in the case of Kusum Ingots & Alloys Limited, we hold that no MODVAT credit will be admissible on the duty paying documents in the present case. The appeal is, therefore, dismissed."

the appeal was dismissed. Now, in this reference, we are required to consider the questions as referred to.

5. Having heard learned counsel for the parties, we find that section 57A of the Central Excise Rules, 1945 provides for admissibility of credit on duty paid on specific inputs used in manufacturing of a specified final product. The second proviso to sub-rule 57G(1) inserted with effect from 29.6.1995 contemplates as under:

" ....The manufacturer shall not take credit after six months from the date of issue of any of the documents specified in the first proviso to this sub-rule".

(Emphasis supplied)

For availing of the aforesaid benefit, consequential accounting entries are to be made about the running total of the credit balance and the account input credit entries in RG-23A Part I & Part II respectively.

6. In this case, it is found that all the requirements of the statutory rules are met with by the assessee company, but it is only with reference to accounting and making entries in the RG-23 A - Part II that the dispute has risen. Even though in the entries made under Part I with regard to account of inputs, the entry is made showing a date within six months, but in Part II - the entry number showing the date is beyond six months and it is only because of this entry made in Part II that MODVAT credit has been denied to the assessee.

7. Admittedly, the Tribunal in its order on 17.10.2000 and in the portion reproduced hereinabove, has clearly held that RG-23 A Part I & Part II is a consolidated record, but it refused to grant MODVAT credit to the assessee because of the entry made in Part II, which was beyond six months.

8. In the case of Eicher Motors Limited and Another Vs. Union of India and Others Etc., AIR 1999 SC 892 : (1999) 81 ECR 7 : (1999) 106 ELT 3 : (1999) 1 JT 205 : (1999) 1 SCALE 230 : (1999) 2 SCC 361 : (1999) 1 SCR 295 : (1999) AIRSCW 563 , it has been held that the provisions for facility of credit is as good as tax paid till adjustment of tax on future goods based on various commitments are made. It has been held that the provision for facility of credit granted to an assessee is a right accrued to the assessee on the date when they paid the tax on the raw material or the inputs and this right would continue until the facility available thereto gets worked out or until those goods existed. In paragraph 6, the Hon''ble Supreme Court has dealt with the matter in the following manner:

"6. ... Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue until the facility available thereto gets worked out or until those goods existed. Therefore, it becomes clear that Section 37 of the Act does not enable the authorities concerned to make a rule which is impugned herein and, therefore, we may have no hesitation to hold that the rule cannot be applied to the goods manufactured prior to 16.3.1995 on which duty had been paid and credit facility thereto has been availed of for the purpose of manufacture of further goods."

9. The matter was again considered by the Supreme Court in the case of Collector of Central Excise, Pune v. Dai Ichi Karkaria Limited, 1992 (112) ELT 353 (SC), and after relying upon the judgment in the case of Eicher Motors Limited (supra), in paragraphs 17 and 18, the principle has been so crystallized:

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which even it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

18. It is, therefore, that in the case of Eicher Motors Limited (supra) this Court said that a credit under the MODVAT Scheme was "as good as tax paid''."

(Emphasis supplied)

10. Therefore, in the case of Baroda Rayon Corporation Ltd. Vs. Union of India and Others, (2013) 20 GSTR 616 , the Gujarat High Court has considered question identical in nature as is posed before us. In the case of Baroda Rayon Corporation Limited also, the benefit of MODVAT credit was denied to the assessee only because of an entry made in RG-23 A Part I & Part II, showing a date beyond six months. In the said case, the principle of law governing grant of MODVAT credit; the requirement of Rules 57A and 57G; the law laid down in the case of Eicher Motors Limited (supra) and Dai Ichi Karkaria Limited (supra) have all been considered and it has been held by the Gujarat High Court in the aforesaid case has held that merely because the entry of date made in Part II is beyond six months, the benefit of MODVAT credit cannot be denied when from all other material available, including the entry made in Part I, it is found that the benefit can be granted to the assessee.

11. We are in full agreement with the principle laid down by the Gujarat High Court wherein also under similar circumstances, identical action has been quashed and MODVAT credit extended. We agree with the Gujarat High Court when it says that the right to avail all credit conferred under Rule 57A and Rule 57G only provides the procedure to be observed by the manufacturer. Therefore,

when power is exercised under Rule 57G, the Central Government is not empowered to curtail any right conferred by the substantive provision of Rule 57A and, therefore, the Notification issued under Rule 57G prescribing the time limit for taking the credit as found by the High Court of Gujarat is found to be ultra vires, as it is beyond the power and is in conflict to the impugn provision of Rule 57A, these are based on the principle laid down by the Hon''ble Supreme Court in the cases of Eicher Motors Limited (supra) and Dai Ichi Karkaria Limited (supra).

12. Accordingly, in the facts and circumstances of the case, we are of the considered view that when the assessee was entitled to avail the MODVAT credit under Rule 57A, merely because of the time frame fixed in making the entries in Part II of RG-23A, and only because of some error in making the entry, denial of the benefit cannot be permitted.

13. As such, we answer the question formulated and referred to us by hold that the right to the credit under the MODVAT Scheme accrued to the assessee on the date when they paid the tax on the raw material or inputs and when such a right gets crystallized in their favour once the input is received in the factory on the basis of the existing Scheme.

14. We further hold that the act of the assessee in making such receipt of input in Part I of a single comprehensive RG-23 A action is evidence enough with regard to crystallization of right to MODVAT credit and merely because in second accounting entry of Part II, there is some inconsistency, the right accrued already to receive the credit cannot be taken away.

15. We further hold that the credit which had accrued to the assessee could not be denied in law by the CEGAT holding it to be inadmissible merely because of the error in making entry in Part II of RG-23A.

16. Accordingly, quashing the impugned order of the Tribunal, the Reference is answered by holding that the assessee was entitled to avail of the credit and all benefits accruing to them thereto should now be granted.

17. Reference stands answered and accordingly disposed of.

