(1997) 04 AP CK 0045

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5187 of 1997

Bharat Metal Box Co. — APPELLANT

Vs

CEGAT, Madras — RESPONDENT

Date of Decision : 15-04-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 57F
Central Excises and Salt Act, 1944 — Section 11A, 35G

Citation : (1997) 3 ALD 837 : (1998) 1 AnWR 592 : (1998) 59 ECC 499 : (1998) 98 ELT 68

Hon'ble Judges : T.N.C. Rangarajan, J;Lingaraja Rath, J

Bench : Division Bench

Advocate : C. Kodanda Ram, for the Appellant; P. Innayya Reddy for Central Government, for the Respondent

Judgement

Lingaraja Rath, J.—In this petition under Article 226 of the Constitution of India, the petitioner questions the decision of the respondent-CEGAT allowing the appeal of the Revenue and reversing the decision of the Collector of Central Excise dropping the demands raised against the petitioner but levying the penalty as well as duty for having wrongly availed Modvat credit in respect of certain inputs brought in its Bollaram Unit.

2. Brief narration of the facts are that the petitioner has two Units, one of Chaknavadi and the other of Bollaram respectively referred to as Units 1 and 2. The petitioner addressed a letter to the Collector, Central Excise on 18th November, 1996, informing him the different types of raw materials (inputs) that are used in or in relation to the manufacture of their final products and that all these raw materials are received and taken into account in Unit 2. All the requirements of raw materials at Unit 1 is met by Unit 2. Prior to 1-3-1986, no account in Form IV except an account for their own use was maintained by them in respect of the raw materials. The inputs were being transferred from Unit 2 to Unit 1 under the cover of internal gate passes of the petitioner. After 1-3-1986 they have opted for Modvat scheme and were taking credit of the duty paid on

the inputs received at Unit 2 and utilising the same towards payment of duty after making entries in RG 23A, Part I and Part II registers. It was clearly stated in the letter that they had been receiving inputs only at Unit 2 and availing Modvat facility but were transferring the required raw materials to Unit 1 from the stocks of Unit 2. Informing such facts, the petitioner requested that since the movement of raw materials from Unit 2 to Unit 1 involves inputs on which credit of duty is taken, they should be granted permission to transfer inputs from Unit 2 to Unit 1 under cover of their transfer challans for use only in the manufacture of the final products as per the requirements of Unit 1. A reply was sent by the Collector on 26th November, 1996 stating that as the requirement of inputs of Unit 1 was being met from the material available at Unit 2 and since they have opted for Modvat facility, the inputs cannot be sent out from Unit 2 to Unit 1 under a challan. A provision is provided for under Rule 57F(i) for caring the inputs received under Modvat and the same has to be followed for availing proper credit. They were advised accordingly.

3. Subsequently, a show cause notice was issued on 7-3-1990 seeking to levy the penalty and duty on the inputs transferred to Unit 1 for two periods (a) from 1-12-1988 to 16-8-1989 and (b) 3-3-1986 to 14-5-1986 and from 15th May, 1986 to 17th November, 1986. A reply having been filed and the matter having been already brought to the notice of the authorities, the explanation was not accepted and the penalty and duty were levied. In appeal, the Collector upheld that the demands raised for the first period 1-12-1988 to 16-8-1989 but for the period 3rd March, 1986 to 14th May, 1986, they were barred by limitation. So far as the second period is concerned, the Collector held that the provision of Section 11A of the Central Excise Act could not be put to use as there was no suppression of the fact practised by the petitioner, it having already brought to the notice of the respondents the fact of the removal of inputs from Unit 2 to Unit 1. The Collector held that since the authorities were put on notice on 18-11-1986 of the practice that was being followed by the petitioner and the Department had replied on 27-11-1986, there was not suppression on the part of the petitioner. If suppression was not there, the period does not stand extended to enable the authorities to proceed for evasion of duty u/s 11A of the Act and that the limitation expired on the expiry of six months from 18-11-1986. The petitioner accepted the demand for the first period but the Department carried an appeal in respect of the second period. The Tribunal held that there was suppression on the part of the petitioner for which the extended period of limitation applied u/s 11A of the Act for which the demand for the second period was not barred by limitation. The Tribunal also rejected an application for rectification.

4. Sri Innayya Reddy, learned Standing Counsel for the Central Government urges that in resisting the application, firstly it was not permissible to shift the inputs in respect of which Modvat credit is availed of from one Unit to the other and secondly since the Tribunal has held that there was suppression by the petitioner, the present writ petition could not have been filed as the petitioner

has the alternative remedy u/s 35G of the Act to ask for a reference of the case to this Court.

5. We have heard at length the Counsel for the petitioner as well as the learned Standing Counsel who has filed the counter-affidavit as also the additional counter-affidavit. The entire question involved relates to the appreciation as to the letter dated 18th November, 1986 whereby the petitioner had informed the authorities of the removals effected by it of the inputs from Unit 2 to Unit 1 and whether for such reason it could not be said that there was suppression practised by it. The Collector came to the conclusion that since not only the petitioner candidly stated about the practise adopted by it even before Modvat credit was availed of and also after it sought the permission of the Department to effect the transfers on their own challans, the Department also acknowledged such fact of their having been made aware of the practise adopted by the petitioner of the removals effected by it and also advised him that he was not following the correct procedure as envisaged under Rule 57F(i). The Tribunal observed that in the letter, the petitioner has not brought on record about the actual removals of the quantum involved and that in spite of the fact that the Department intimated them in their letter dated 26-11-1986 about the correct procedure, the petitioner did not rectify the position by paying the duty in terms of Rule 57F(i).

6. We are afraid, the conclusion reached by the Tribunal is not available to be reached by any reasonable process. The letter of 18-11-1986 was a full and complete disclosure by the petitioner of all removals effected by them. It candidly admitted that whatever inputs have been utilised in Unit 1 were only on transfer from Unit 2. There was hence no necessity of intimating any actual quantity of removal. If the Department thought that the petitioner has evaded duty it was open for them to have immediately swung into action, at least within the limitation period to initiate proceedings for imposition of the duty and the penalty. They did not do so. Such inaction by the Department was only at their peril as after the expiry of the limitation, the only power in them to proceed against the petitioner was u/s 11A, which power could not be resorted to unless there was suppression. It is immaterial, in the context, as to whether the petitioner has on its own volunteered the payment of duty, such fact has nothing to do with suppression. Suppression there was not, as the petitioner had brought the full facts to the notice of the Department. This aspect of the Collector''s order, which had clarified the question, was not focused upon by the Tribunal. We would hence consider that the Tribunal''s order was one which suffered from an error apparent on the fact of the record as being not one which could be reached by any reasonable process of logic. The Tribunal Thereupon ought to have rectified its order.

7. As regards the question raised of an alternative remedy available under the provision of Section 35G, we are to observe that though in all cases where a question of law arises, a statement can be called for. But the present case is one where the order itself is bad an account of a patent error committed by the

Tribunal of a conclusion being reached which is not capable of being reached in a logical manner. Considering such fact, we allow this Writ Petition and set aside the order of the Tribunal dated 11-4-1996 itself.

8. No costs.