(2011) 05 GUJ CK 0025

In the Gujarat High Court

Case No : Tax Appeal No. 1714 of 2010

Commissioner of C. Ex., Ahmedabad-III APPELLANT

Vs

Nirma Ltd. RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:
CENVAT (Credit) Rules, 2004 — Rule 6

Citation : (2012) 281 ELT 654

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Darshan M. Parikh, for the Appellant; B.L. Narasimhan, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Revenue is in appeal against the judgment of the CESTAT, dated 12-11-2009 [2010 (261) E.L.T. 635 (Tri.-Ahmd.)] raising following questions for our consideration :

(i) Whether the CESTAT was right in law in holding that in terms of Rule-6 of Cenvat Credit Rules, 2004, contrary to the ratio laid down in the judgments in cases of Maruti Suzuki Ltd. Vs. Commissioner of Central Excise, Delhi-III, and Commnr. of Central Excise Vs. Gujarat Narmada Fertilizers Co. Ltd., , the Assessee was not required to pay Excise duty @ 10% of the value/price of the by-product namely Spent Acid cleared by them without payment of Excise Duty while availing benefit of exemption under Notification No. 6/2002 -C.E., dated 1-3-2002?

(ii) Whether the Tribunal was entitled to pass a Non-speaking order without discussing facts?

Heard learned counsel for the parties.

2. Counsel for the Revenue was confronted with the decision of this Court in Tax

Appeal No. 1736 of 2009 wherein though the products under consideration were different, legal issue was similar. We find that a Division Bench of this Court in the case of Commissioner of C. Ex. and Customs, vadodara-I Vs. Sterling Gelatin, was considering a product, i.e. mother liquor as a by-product in manufacture of gelatin. Referring to rule 6 of the Cenvat Rules, the Division Bench opined as under :

8. Thus, on a plain reading sub-rule (1) of rule 6, it is apparent that CENVAT credit is admissible in respect of the inputs used in the manufacture of dutiable goods and is inadmissible on such quantity of inputs which is used in the manufacture of exempted goods. Sub- rule (2) imposes an obligation on the manufacturer who manufactures final products and exempted goods from the common input to maintain separate accounts for receipt, consumption and inventory of inputs. Examining the applicability of the aforesaid rules to the facts of the present case, as noted hereinabove, it is not as if more quantity of Hydrochloric Acid is used than that required for manufacturing Gelatin or that by using a smaller amount of Hydrochloric Acid, the production of Mother Liquor could be averted. In the manufacturing process adopted by the assessee, it is not possible to manufacture Gelatin without Mother Liquor coming into existence. Thus, when the entire quantity of input viz. Hydrochloric Acid is used in the manufacture of the final product being Gelatin which is a dutiable product, the mere fact that a by-product emerges during the process, would not bring the by-product within the ambit of Rule 6 of the Rules so as to call for maintaining separate accounts in respect of the same. When the entire quantity of input is used in the manufacture of Gelatin, the question of maintaining separate accounts or of paying a percentage of the total price of the exempted goods would not arise. In the peculiar facts of the present case, sub-rule (1) of rule 6, itself would not come into play inasmuch the manufacturer does not deliberately use any quantity of the inputs, viz. Hydrochloric Acid for manufacturing Mother Liquor, the entire Hydrochloric Acid is used in the manufacture of Gelatin. Thus, when no input is specifically used for the purpose of manufacturing Di-Calcium Phosphate, there would be no question of maintaining separate accounts for receipt, consumption and inventory of input.

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13. Insofar as reliance placed upon the decision of the Bombay High Court in the case of Commissioner of Central Excise, Thane-1 v. Nicholas Piramal (India) Ltd. (supra) is concerned, the same would have no applicability to the facts of the present case inasmuch as in the facts of the said case, common input had been consciously used in the manufacture of two final products, whereas in the facts of the present case, the input Hydrochloric Acid is used for the manufacture of Gelatin alone, however during the course of manufacturing process a by-product viz. Mother liquor also emerges.

We are, of course, concerned with different products in the present case. The assessee in the process of manufacturing soap uses acid slurry and in the process Spent sulphuric acid gets generated as a bye product. Though the products may be different, the ratio laid down by this Court would apply to the facts of the present case. We, therefore, do not think that the Tribunal committed any error in holding against the revenue. Tax Appeal is therefore, dismissed.

