
(2005) 08 GUJ CK 0006
In the Gujarat High Court
Case No : Tax Appeal No. 490 of 2004

Commissioner of C. Ex. and Cus.

APPELLANT

Vs

Gujarat Narmada Fertilizers Co. Ltd.

RESPONDENT

Date of Decision : 25-08-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 57AA, 57AB, 57AC, 57AD, 57AE
CENVAT (Credit) Rules, 2001 — Rule 8

Citation : (2006) 193 ELT 136

Hon'ble Judges : Harsha Devani, J; D.A. Mehta, J

Bench : Division Bench

Advocate : Jitendra Malkan, for the Appellant; Y.N. Ravani, ASCSC, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—The Appellant Revenue has proposed the following two questions :

11.1 Whether the Tribunal has been right in allowing the appeal and holding that since steam was admittedly manufactured and used within the plant, Mod vat credit could not have been denied? 11.2 Whether the Tribunal has been right in applying the provisions of Rule 57B, when Rule 57B was not in existence during the material period November, 2000 to June, 2001?

2. The respondent-assessee is engaged in manufacture of fertilizers and chemicals. It purchased Low Sulphur Heavy Stock (LSHS) which is already duty paid and used the same as feed/fuel in the manufacture of fertilizers and generation of steam. The steam so generated is utilised for the manufacture of fertilizers, chemicals as well as generation of electricity in captive power plant. According to Revenue, the assessee is not entitled to credit of duty paid on that part of input which had been used in the production of electricity supplied outside.

3. Heard Mr. Y.N. Ravani, learned Addl. Central Government Standing Counsel

appearing for the Appellant-Revenue. The dispute between the parties pertains to the periods between November, 2000 to March, 2001 and April, 2001 to June, 2001. The Revenue raised demand seeking to recover credit under Rule 57AH of the Central Excise Rules, 1944 and Rule 8 of the Cenvat Credit Rules, 2001. It is the case of the Revenue that the credit of duty paid on inputs used in the manufacture of exempted final products is not allowable. The Tribunal has found that in fact the inputs are used as "fuels" and hence the assessee had rightly availed of the credit. The Tribunal has quoted Rule 57B of the Central Excise Rules, 1944 in its impugned order dated 25-2-2004. The entire case of Revenue is thus built on the fact that the said rule was not in existence at the relevant point of time, namely during the period under dispute.

4. However, during the relevant period by virtue of Central Excise [Second Amendment (Amendment)] Rules, 2000 with effect from 1-4-2000 Rules 57AA to 57AK had come on statute book. Rule 57AA clause (d) defines "input". Credit is available under Rule 57AB. The conditions for allowing credit are prescribed by Rule 57AC. Rule 57AD provides for obligation of manufacturer of dutiable and exempted goods. It is stated that Cenvat credit shall not be allowed on quantity of inputs which are used in manufacture of exempted goods, except in circumstances mentioned in Sub-rule (2). Under Sub-rule (2) of Rule 57AD it is provided that where a manufacturer avails of Cenvat credit in respect of any inputs which are used for the manufacture of final products which are chargeable to duty as well as exempted goods, then he has to maintain separate accounts. For the present it is not necessary to deal with the remaining part of Sub-rule (2). However, what is material is that in Sub-rule (2) an exception is carved out in case of inputs intended to be used as fuel. In other words, the necessity of maintenance of separate account or denial of credit cannot be insisted upon in a case where inputs are used as fuel by the manufacturer.

5. In the present case in the impugned order, Tribunal has found in paragraph Nos. 4 and 5 of its order that there is no dispute as to the fact that LSHS is used as fuel/feed for the manufacture of steam which is then utilised in the factory for the manufacture of fertilizers, chemicals as well as for generation of electricity. That the steam so manufactured was admittedly used within the plant. In the circumstances, the only error if it can be termed to be so, committed by the Tribunal is mentioning of incorrect provision namely Rule 57B, instead of Rule 57AD read with definition of "input" under Rule 57AA(d).

6. In light of the aforesaid finding of fact recorded by the Tribunal it is apparent that no substantial question of law arises from the impugned order of Tribunal. The appeal is accordingly dismissed.

7. Before parting it is necessary to record appreciation for the services rendered by Shri Rakesh Gupta as *amicus curiae*.