(2014) 04 AHC CK 0049

In the Allahabad High Court

Case No : Central Excise Reference No. 123 of 2000

Commissioner of C. Ex. APPELLANT

Vs

Bhushan Steel and Strips Ltd. RESPONDENT

Date of Decision : 21-04-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2(f), 3A
Customs Tariff Act, 1975 — Section 3

Citation : (2014) 304 ELT 327 : (2014) 28 GSTR 290

Hon'ble Judges : Shashi Kant, J;Rajesh Kumar Agrawal, J

Bench : Division Bench

Advocate : Ashok Singh, SSC, Advocate for the Appellant; A.P. Mathur, Counsel, Advocate for the Respondent

Judgement

1. This is reference at the instance of Revenue. Tribunal has referred the following question [2000 (120) ELT 431]:

Whether in view of the specific provisions under Rules 173H and 173L of the Central Excise Rules, 1944, re-making, refining, reconditioning, repairing or similar processes on defective goods returned to the manufacturer of the final products can be treated as an input for purpose of Rule 57A of the Central Excise Rules, 1944.

Brief facts of the case are that the respondent is the manufacturer of C.R. Coils/ sheets and G.P. Coils/sheets received certain consignment of C.R. Coils/sheets and G.P. Coils/sheets, which are excisable under Chapter 72 of Schedule to the Central Excise Tariff Act, 1985. The respondent has received C.R. Coils/sheets and G.P. Coils/sheets from different parties being defective and claimed Modvat credit on the value of such goods, amounting to Rs. 6,88,548/- during the period September, 1995 to March, 1996 under Rule 57A read with Rule 57G of Central Excise Rules, 1944 (hereinafter referred to as "Rules"). Assistant Commissioner issued show cause notice on the ground that C.R. Coils/sheets and G.P. Coils/ sheets are finished goods and are not raw material and, therefore, the modvat credit on such goods could not be available. The respondent submitted the reply that such goods had undergone processing of redrawing to reduce thickness, softening, smoothing, hardness, etc., resulting new finished product, which have been cleared on payment of duty. Assistant Commissioner has not accepted the plea of the respondent and has disallowed the credit of Rs. 6,88,548/- and confirmed the demand under Rule 57-I of the Rules vide order dated 30-9-1996. Against the said order, the respondent filed appeal, which has been allowed vide order dated 30-5-1997. Being aggrieved the Revenue filed appeal before the Tribunal, which has been dismissed vide order dated 4-12-1998. At the instance of the Revenue, the aforesaid question has been raised.

2. Sri Ashok Singh, learned Senior Standing Counsel submitted that in case of goods returned, the respondent should claim the refund of the duty paid on such goods under Rule 173L of the Rules. Since the goods returned was the final product by itself and not input/raw material, therefore, modvat credit under Rule 57A could not be claimed. He further submitted that both the so-called input and finished goods fall under the same Tariff Entry of the same Chapter.

3. Sri A.P. Mathur, learned counsel appearing on behalf of the respondent submitted that finished goods may be input in the hand of manufacturer in case such goods is being used as raw material for the manufacturing of another final product. Therefore, C.R. Coils/sheets and G.P. Coils/sheets, etc., which have been manufactured by the respondent, and have been subsequently, returned being defective and used in the manufacturing of final product, is eligible for the modvat credit under Rule 57A of the Rules. He further submitted that under Notification No. 5/94-C.E. (N.T.), dated 1-3-1994 as amended time to time. All goods mentioned in the Schedule of Central Excise Tariff are notified for the modvat credit, unless specifically excluded. The goods used by the respondent are manufactured goods and were not covered under the excluded goods and, therefore, they were eligible for the modvat credit. In case of goods returned, the refund of duty could be claimed under Rule 173L of the Rules but if it has not been claimed, it will not take away the right to claim modvat credit under Rule 57A of the Rules.

4. We have considered the rival submissions.

5. Rule 57A and Rule 173L of the Rules read as follows:

Rule 57A. Applicability.-(1) The provisions of this section shall apply to such finished excisable goods (hereafter, in this section, referred to as the final products) as the Central Government may, by notification in the Official Gazette, specify in this behalf for the purpose of allowing credit of any duty of excise or the additional duty u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter, in this section, referred to as the specified duty) paid on the goods used in the manufacture of the said final products (hereinafter, in this section, referred to as the inputs).

(2) The credit of specified duty allowed under sub-rule (1) shall be utilised

towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the notification issued under sub-rule (1) and subject to the provisions of this section and the conditions and restrictions, if any, specified in the said notification.

(3) The Central Government may also specify in the said notification the goods or classes of goods in respect of which the credit of specified duty may be restricted.

(4) The credit of specified duty under this section shall be allowed on inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not.

(5) Notwithstanding anything contained in sub-rule (1), the Central Government may, by notification in the Official Gazette declare the inputs on which declared duties of excise or additional duty (hereinafter referred to as declared duty) paid shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification and allow the credit of such declared duty deemed to have been paid in such manner and subject to such conditions as may be specified in the said notification even if the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products.

Explanation.-For the purposes of the sub-rule, it is clarified that even if the declared inputs are used directly by a manufacturer of final products, the credit of the declared duty shall, notwithstanding the actual amount of duty paid on such declared inputs, be deemed to be equivalent to the amount specified in the said notification and the credit of the declared duty shall be allowed to such manufacturer.

(6) Notwithstanding anything contained in sub-rule (1), the Central Government may, by notification in the Official Gazette, declare the inputs on which the duty of excise paid u/s 3A of the Central Excise Act, 1944 (1 of 1944), shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said notification, and allow the credit of such duty in respect of the said inputs at such rate or such amount and subject to such conditions as may be specified in the said notification:

Provided that the manufacturer shall take all reasonable steps to ensure that the inputs acquired by him are goods on which the appropriate duty of excise as indicated in the documents accompanying the goods, has been paid u/s 3A of the Central Excise Act, 1944 (1 of 1944).

Rule 173L. Refund of duty on goods returned to factory.-(1) The (Commissioner) may grant refund of the duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the same or any other factory for being remade, refined, reconditioned or subjected to any other similar process in the factory:

Provided that -

(i) such goods are returned to the factory within one year of the date of payment of duty or within such further period or periods not exceeding one year, in the aggregate, as the (Commissioner) may, on sufficient cause being shown, permit in any particular case;

(ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry (or within such further period not exceeding ten days, as the (Commissioner) may, on sufficient cause being shown, permit in any particular case) (to enable the proper officer to verify the particulars of such goods within forty-eight hours of receipt of the information);

(iii) the assessee stores the said goods separately pending their being remade, refined, reconditioned or subjected to any other similar process in the factory unless otherwise permitted by the (Commissioner) by an order in writing and makes such goods available for inspection by the proper officer when so required;

(iv) the amount of refund payable shall in no case be in excess of the duty payable on such goods after being remade, refined, re-conditioned or subjected to any other similar process in the factory:

Provided further that in relation to the declared excisable goods, for clause (ii) of the first proviso, the following clause shall be substituted, namely:-

(ii) the assessee gives information of the re-entry of each consignment of such excisable goods into the factory to the proper officer in writing in the proper form within twenty-four hours of such re-entry [or within such further period not exceeding ten days, as the [Commissioner] may, on sufficient cause being shown, permit in any particular case.

(2) The assessee shall maintain a detailed account of the returned goods and the processes to which they are subjected, after their return to the factory in the proper form.

(3) No refund under sub-rule (1) shall be paid until the processes mentioned therein, have been completed and an account under sub-rule (2) having been rendered to the satisfaction of the [Commissioner] within six months of the return of the goods to the factory. No refund shall be admissible in respect of the duty paid,-

(i) in respect of opened packages containing goods with concessional rates of duty or partial exemption for the small or cottage sector, as set forth in the [Schedule to the Central Excise Tariff Act, 1985 (5 of 1986))], or by a notification issued under rule 8 [or section 5A of the Act];

(ii) if the amount of refund payable on the goods is less than rupees fifty;

(iii) on goods which are disposed of in any manner other than for production of goods of the same class;

(iv) on the unmanufactured tobacco from which cigars, cheroots and cigarettes so returned to the factory have been produced;

(v) if the value of the goods at the time of their return to the factory is, in the opinion of the [Commissioner], less than] the amount of duty originally paid upon them at the time of their clearance from the factory.

Explanation.-In this clause, "value" means the market value of the excisable goods and the ex-duty value thereof.

(4) The [Commissioner] may, for reasons to be recorded in writing, relax the provisions of this rule for the purpose of admitting a claim for refund.

(5) The provisions of this rule shall not apply to excisable goods manufactured, -

(i) in a free trade zone and returned to a factory in any other place in India; or

(ii) by a hundred per cent export-oriented undertaking and returned to another factory in any place in India.

6. Admittedly, the goods which have been treated as input and finished goods are covered under the notification issued under Rule 57A of the Rules. Therefore, the goods namely, C.P. Coils/sheets and G.P. Coils/sheets were eligible for modvat credit. Merely because they were finished goods. Modvat credit could not be denied under Rule 57A of the Rules. C.R. Coils/sheets and G.P. Coils/sheets are finished goods but in the hand of respondent, being defective it was used as raw material/input and has been used in the manufacturing of final product. There is no dispute that duty has been paid on the final product, which has been manufactured by the use of defective C.R. Coils/sheets and G.P. Coils/sheets, etc. The claim of modvat credit has been introduced to avoid cascading effect of the tax namely that the duty should not be charged both on the raw material as well as on finished goods. Under the Rule whatever duty has been paid on the raw material/input, the same was liable to be adjusted with the amount of duty payable on the finished goods. To allow modvat credit under Rule 57A of the Rules essential ingredient appears to be namely, that the goods should be specified under the notification issued under Rule 57A of the Rules; such input are being used in or in relation to the manufacture of final products is subject to excise duty. Finished goods is only subject to excise duty when it is manufactured as a result of manufacturing process. If the process undertaken by the party amounts to manufacturing of the goods, the duty on the said process is liable to be paid.

7. In the present case by process of redrawing, reducing the thickness, softening, smoothing hardness, etc., a new final product was being obtained and had been cleared on payment of duty. Such process has been treated as manufacturing by the party as well as by the respondent. If such process would not have been treated as manufacturing the final product would not have been

taxed and would be exempted from payment of duty. It is not the case of Revenue that such process has not been treated as manufacturing and duty has not been assessed.

8. In the circumstances, we are of the view that modvat credit claimed by the party cannot be said to be erroneous. Under Rule 173L of the Rules, the party could claim the refund in case of goods returned but merely because that the refund of the duty paid on the finished goods, which have been returned being defective has not been claimed under Rule 173L of the Rules, the claim of the modvat credit under Rule 57A of the Rules cannot be denied

9. The question referred is answered as: that the defective goods, may be final product, have been subjected to such process which amount to manufacturing within the definition of manufacture u/s 2(f) of the Central Excise Act and as a result of such process a final product is obtained which is subjected to excise duty. The modvat credit under Rule 57A of the Rules is admissible, if other conditions of Rule are fulfilled and claimed cannot be denied on the ground that the assessee would have claimed refund of duty paid under Rule 173L of the Rules. In view of the above, the question referred hereinabove answered in favour of the respondent and against the Revenue.