
(2013) 07 MAD CK 0352

In the Madras High Court

Case No : C.M.A. No. 3754 of 2005 and CMP. No. 18794 of 2005

Commissioner of C. Ex.

APPELLANT

Vs

Ilgin Automotive (P) Ltd.

RESPONDENT

Date of Decision : 18-07-2013

Acts Referred:

Citation : (2014) 299 ELT 129

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : Mahadevan, SCGSC, for the Appellant; R. Renganath for R. Raghavan, for the Respondent

Judgement

Chitra Venkataraman, J.—This Civil Miscellaneous Appeal is filed at the instance of the Revenue as against the order of the 2004 (114) ECR 1 042 , by raising the following substantial questions of law:--

1. Whether the CESTAT, Chennai, herein was right in holding that the first respondent can take Modvat credit in respect of capital goods (Machinery falling under Chapters 84 and 85 of the Central Excise Tariff Act, 1985) received from M/s. Hyundai Motors India Limited and not owned/acquired by them as required under Rule 57Q of the Central Excise Rules, 1944 which was in force at the material period?
2. Whether the CESTAT Chennai herein was right in holding that there was no suppression on the part of the first respondent and they had complied with all the formalities when the facts on the record show that the declaration filed by the first respondent under the erstwhile Rule 57-T of Central Excise Rules, 1944 did not disclose the fact of the ownership or type of acquisition of the capital goods as required under the declaration?

The assessee herein is engaged in the manufacture of automobile components falling under Chapter sub-heading 8708.00 of the Central Excise Tariff Act, 1985, for M/s. Hyundai Motors (India) Limited. The assessee availed Modvat credit in

respect of machineries falling under Chapters 84 and 85 of the Central Excise Tariff Act, 1985 to the tune of Rs. 1,09,39,967/- which were lent by M/s. Hyundai Motors India Limited to the assessee. It is stated that M/s. Hyundai Motors India Limited had removed the said capital goods by reversing the applicable excise duties as per the provisions of Rule 57-S(I)(ii) of the Central Excise Rules, 1944, as it originally stood. The assessee herein had received the said capital goods under a leave and licence agreement with M/s. Hyundai Motors India Limited, and as per the agreement, the ownership of the said capital goods rested with M/s. Hyundai Motors India Limited and the assessee was not the owner of the said capital goods at any point of time. Hence, they were not eligible for Modvat credit for the said goods as per Rule 57Q of the Central Excise Rules, 1944, as it stood then. The proceedings were initiated calling upon the assessee to show cause as to why Modvat credit to the tune of Rs. 1,09,39,967/- should not be disallowed under Rule 57U(2) of the Rules. Consequently, it proposed to impose penalty u/s 57U(6) of the Central Excise Rules read with Section 11AC of the Central Excise Act and Rule 173Q of the Central Excise Rules, apart from charging of interest thereon. The assessee filed its reply denying the allegations and submitted that it had not suppressed details as regards the machineries received in terms of invoice issued under Rule 52A of Central Excise Rules, 1944 by Hyundai Motors India Limited after payment of duty. The assessee had also filed necessary declaration along with RT-12 returns with extract of RG-23C Part-I and Part-II/Rule 52A of the Central Excise Rules. Further submission of learned counsel for the assessee is that the condition of ownership was not required under Modvat rules for the purpose of getting relief under the Act. Consequently, the reversal of credit was not sustainable in law.

2. After hearing the assessee, the adjudicating authority rejected the claim of the assessee holding that the rule did not recognize acquisition by a "leave and license" agreement. Since, the modes under the Rule recognised hire-purchase, lease or by a loan agreement from a finance company as other modes of acquisition, "leave and licence" agreement not being one such recognition, the benefit of availing of Modvat credit was not sustainable in law. Aggrieved by this, the assessee preferred an appeal before the Commissioner of Central Excise. As against the order of the Commissioner dismissing the appeal, the assessee went on appeal before the Customs, Excise and Service Tax Appellate Tribunal.

3. On hearing the claim of the assessee, the Tribunal pointed out that the copy of the agreement on "leave and licence", as regards supply of import goods were not made available to the Department at any point of time; however, ongoing through the agreement produced before it, the Tribunal found that the capital goods were given to the assessee for its permissive possession. Although ownership of the capital goods was not the criteria for taking credit, going by the amended Rules that it allowed credit of duty on goods acquired by the manufacturer on lease, hire-purchase or on loan agreement and that Rule did not include permissive possession or leave and licence agreement, the manufacturer was nevertheless required to make a declaration regarding ownership. It pointed

out that the assessee had not given any declaration about the nature and the type of acquisition of the capital goods. Consequently, the assessee withheld this information. The Tribunal further considered the decision rendered in the case of *Sharda Motors Industries v. CCE, Chennai-II* reported in 2002 (51) RLT 33 (CEGAT-Del.) : 2002 (150) E.L.T. 759 (Tri.-Del.), relied on by the assessee, in a similarly placed assessee's case receiving capital goods belonging to Hyundai Motors under the leave and licence agreement and held that the details regarding the claim were not there before the Tribunal to apply the decided case to the case on hand. Ongoing through the decision reported in *Rolling Mills Private Limited v. CCE, New Delhi* reported in 1997 (20) RLT 753, the Tribunal observed that Modvat credit was allowed to the job worker in respect of inputs received from the principal on stock transfer basis. Thus, the said decisions could not be applied to the case on hand. The Tribunal held that in order to avail Modvat credit on capital goods, the assessee should be either an owner of the goods or should have acquired capital goods on lease or on hire purchase or on loan basis. Having thus held, it further pointed out that copy of the agreement produced before it was intended to cover up the illegal transactions. In the circumstances, there was conscious attempt to hold back vital information from the Department. Consequently, the Tribunal upheld the contention of the Revenue. It may be of relevance to note herein that there was difference of opinion on this before the Technical Member and Judicial Member, who held that there was no suppression of facts. Learned Judicial Member held that the assessee was entitled to avail Modvat credit on the goods received from Hyundai Motors India Limited on job work basis. Thus, in view of the difference of opinion, the matter was referred to a third member, who concurred with the Judicial Member holding in assessee's favour.

4. Learned third member held that the decision of *Sharda Motors Industries v. CCE, Chennai-II* reported in 2002 (51) RLT 33 (CEGAT-Del.) : 2002 (150) E.L.T. 759 (Tri.-Del.), applied to the assessee's case who is similarly placed like the assessee in the decided case having a leave and licence agreement with Hyundai Motors. Thus, learned Third Member pointed out that the facts in *Sharda Motors Industries* were identical to that of the present assessee's case. The assessee therein viz., *Sharda Motors Industries* also obtained capital goods from M/s. *Hyundai Motors* under the leave and licence agreement, like the assessee herein. Having regard to the above, the Third Member (Technical Member) agreed with the view taken by the Judicial Member and allowed the appeal. Having regard to the majority view, agreeing with the assessee, the present appeal is preferred by the Revenue.

5. Learned standing counsel appearing for the Revenue submitted that the Tribunal committed serious error in allowing the assessee's appeal. Rule 57U of the Central Excise Rules is very clear that the relief thereon would not be available to the persons other than those who are enumerated therein; thus, the question of granting the relief to the petitioner did not arise. He further submitted that Rule 57U of the Central Excise Rules was amended later on, as

per which, the benefit would be available to the job worker only subsequently thereon. In the circumstances, as per the law then available, the assessee was not entitled to claim benefit on Modvat credit.

6. Per contra, learned counsel appearing for the assessee produced before us the copy of the decision of Sharda Motors Industries, wherein the facts are not different from that of the present case. A reading of the said order shows a reference to the clarificatory letter issued to M/s. Maruti Udyog Limited and M/s. TELCO viewing that Modvat credit could be taken in respect of Jigs and moulds sent to job worker. Considering the said clarification, we sought for the copy of the same. Learned counsel for the assessee produced the copy of the clarificatory letter dated 12-8-1999 before this Court, which reads as under:--

F No. 267/71/99-CX.8 Government of India Ministry of Finance Department of Revenue Central Board of Excise and Customs New Delhi, dated 12-8-1999

To

Shri A.R. Halasyam Director (Finance) Maruti Udyog Limited 11th Floor, Jeevan Prakash 25, Kasturba Gandhi Marg New Delhi 110001. Sub : Clarification on Modvat on Dies & Moulds,

Sir,

I am directed to refer to your representation dated 22nd July, 1999 on the subject cited above and to say that the matter has been examined. It is for information that moulds and dies imported by M/s. Maruti can be cleared on payment of duty under Rule 57S(I)(ii) of the Central Excise Rules, 1944, and the credit of the duty so paid can be availed by the job worker provided he follows the procedure laid down the Modvat scheme.

Yours faithfully, Sd/- (P.K. SINHA) UNDER SECRETARY TO THE GOVT. OF INDIA

7. Going by the said clarificatory letter, which clearly indicates the intention of the Revenue to grant relief in respect of job worker and to the persons who obtained capital goods, we agree with the submission made by learned counsel appearing for the assessee that the benefits extended to Sharda Motors Industries Limited as well as to other assessees, merit to be given here too.

8. As already pointed out earlier, the case in Sharda Motors Industries Limited is identical to that of the case on hand. The assessee herein as well as the assessee in Sharda Motors Industries Limited were manufacturers of automobile components for M/s. Hyundai Motors India Limited, from whom, both the assessees received capital goods under leave and licence agreement. The assessee availed Modvat credit on capital goods belonging to M/s. Hyundai Motors India Limited. The leave and licence agreement in both the assessee's case are identical.

9. In fact, in the reply dated 31-10-2001 to the show cause notice, Hyundai Motors India Limited made a specific mention about the fact that M/s. Hyundai

Motors India Limited had given its capital goods under leave and licence agreement and that the capital goods originally received by Hyundai Motors were entered in the books of accounts and showed as availing of credit therein. While transferring the capital goods to the job worker, necessary intimation under Rule 57-S(1) of the Central Excise Rules were also filed by Hyundai Motors. The Bills of Entries and invoices had been defaced after examining the Registers by the Department at various points of time. M/s. Hyundai Motors had also filed tabular statement correlating the receipt of the capital goods and their transfer to the job workers.

10. Having regard to the above said fact, which was already considered in the similarly placed assessee's case, we do not find any ground to disturb the order of the Tribunal, more so in the context of the Central Board's clarification issued on 12-8-1999 that the job workers were entitled to claim Modvat credit as per the Board's circular. We hold that with such understanding indicated in its clarification by the Board contrary to the intention declared therein, it is not open to the Revenue to challenge the order of the Tribunal herein before us. It is a matter of relevance to note that the decision of the Delhi High Court in Sharda Motors Industries Limited has attained finality and the Department has also accepted the same. When that being the case, we do not find any justification in the Department taking a diametrically opposite view. Consequently, the question raised herein merits to be answered in favour of the Revenue.

11. Even though we have answered the question on limitation in favour of the Revenue, on merits, we do not find any justifiable reason to accept the case of the Revenue in the background of its clarification note as well as the decision of the Delhi Tribunal in the case of Sharda Motors Industries Limited, with which we agree. In the circumstances, the above appeal stands dismissed. No costs. Consequently, connected CMP is closed.