(2011) 06 BOM CK 0030

In the Bombay High Court

Case No : Central Excise Appeal No. 139 of 2008 with Cross Objection No. 5 of 2008

Commissioner of C. Ex., Raigad — APPELLANT

Vs

Ispat Industries Ltd. — RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:
CENVAT (Credit) Rules, 2001 — Rule 4(2)

Citation : (2012) 275 ELT 79

Hon'ble Judges : D.Y. Chandrachud, J;Anoop V. Mohta, J

Bench : Division Bench

Advocate : A.S. Rao, instructed by, M.M. Goswami, for the Appellant; Vikram Nankani with Krishna Kumar, Vipinkumar Jain and P.K. Shetty, for the Respondent

Judgement

1. Though six questions of law have been formulated in the Appeal by the Revenue, Counsel appearing for the Appellant has, at the hearing, confined his submissions to questions (a), (b) and (c).

2. Rule 4(2)(b) of the Cenvat Credit Rules as it stood at the material time provided as follows :

The balance of Cenvat Credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, if the capital goods other than components, spares and accessories, refractories and refractory materials and goods falling under Heading No. 68.02 and sub-heading No. 6801, 10 of the First Schedule to the Tariff Act are in the possession and use of the manufacturer of final products in such subsequent years.

3. In the present case, it is not in dispute that the assessee received capital goods for the Hot Strip Mill-Phase II project during the year 2001-02 and in terms of the provisions of Rule 4(2) availed of fifty per cent of the duty paid on the capital goods as credit. The balance of fifty per cent was availed of in the

subsequent financial year 2002-03. According to the Revenue, the assessee was not entitled to avail of the balance fifty per cent credit during the year 2002-03 since the capital goods were still at the stage of erection and had not actually been put to use. From the order of the Commissioner, it appears that the finding of the Commissioner is that the availment of the credit was premature.

4. The Tribunal has held that the expression "possession and use of the manufacturer of final products" have to be read together and would denote that the goods were available for use in the manufacture of the final products. In the present case, there is a finding of fact that the capital goods were lying in the factory for installation and the process of erection was being carried out. In this view of the matter, the requirement that the goods were in the possession and use of the manufacturer in the year in which the balance of credit was availed of has been fulfilled. In this factual background, we are of the view that no substantial questions of law would arise. The interpretation which has been placed by the Tribunal on Rule 4(2)(b) would, in these facts, not give rise to a substantial question of law. The issue of limitation therefore is also of no practical relevance. The Appeal is accordingly dismissed. There shall be no order as to costs.

5. In view of disposal of the Appeal filed by the Revenue, Counsel appearing for the Applicant does not press the Cross Objection No. 5/2008 which is accordingly disposed of.