
(2012) 08 GUJ CK 0053
In the Gujarat High Court
Case No : Tax Appeal No. 794 of 2006

Commissioner of Central Excise	Vs	APPELLANT
Delta Corporation		RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Central Excise Rules, 1944 — Rule 57A

Citation : (2013) 287 ELT 15 : (2013) 21 GSTR 305

Hon'ble Judges : Harsha Devani, J; Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : R.J. Oza, for the Appellant; Paresh M. Dave, for the Respondent

Final Decision : Dismissed

Judgement

Akil Kureshi, J.—Revenue is in appeal against the judgment of the Customs Excise & Service Tax Appellate Tribunal ("CESTAT" for short) dated 6-9-2005. At the time of admission of the appeal, following substantial question of law was framed:

(A) Whether the Tribunal was justified to treat the impugned goods as "inputs" and decide the issue by invoking the provisions relating to the removal of inputs, without determining as to how the impugned goods qualified to be the inputs?

Briefly stated facts are as under.

1.1 Respondent-assessee is engaged in the manufacturing activity of an item called "P.D. Pumps". On purchase of such pumps, the respondents availed of Modvat credit under Rule 57A of the Central Excise Rules, 1944. Revenue however, was of the opinion that the respondent did not carry out any manufacturing activity on the PD pumps purchased exclusively from its sister concern before clearance. The respondent was therefore, required to reverse such credit.

1.2 A show cause notice on this basis was issued on 18-10-1994 why the credit

taken should not be reversed and penalty should not be imposed. Respondent opposed such proceedings contending that the credit was taken as per the rules. It contended that respondent had carried out manufacturing activity on the pump sets purchased by it and on the value addition had also paid excise duty. Case of the respondent also was that if as contended by the Revenue there was no manufacturing activity, question of payment of excise duty itself would not arise.

1.3 The Adjudicating Authority however, was not convinced by such arguments. Assistant Commissioner therefore, passed two separate orders dated 10-4-1997 and 31-9-1998, confirming duty demand of Rs. 3,36,667/- and Rs. 33,750/- respectively. He also imposed penalty of Rs. 1 lakh on the respondent.

1.4 These orders were challenged by the assessee by filing two separate appeals. Commissioner by his common order dated 19-1-1999 dismissed both the appeals. He was of the opinion that the assessee had never declared the manufacturing process or any alteration or modification to be carried on PD pumps received by it. Only intention of the respondent was to show Modvat credit and to adjust the same against other products manufactured in the factory. He was of the opinion that under Rule 57A of the Rules, the assessee could not avail Modvat credit.

1.5 Assessee preferred two separate appeals before the Tribunal against such common order of the Commissioner. The Tribunal by its impugned common order dated 6-9-2005 allowed the appeals and reversed the orders passed by the Revenue Authorities. The Tribunal held as under:

5. The Department's contention that the appellants did not file a declaration under Rule 57G is not correct. We have perused the declaration filed by the appellants. They have clearly declared their inputs and outputs as P.D. pumps. Further, the Tribunal in the case of Rico Auto Industries Ltd. v. CCE, New Delhi-III [2003 (57) RLT 271] held that when inputs are subjected to certain processed and the processed inputs were cleared on payment of duty which was more than the credit taken, Modvat credit cannot be denied on the ground that the processes undertaken did not amount to manufacture. The ratio of this decision applies to the present case. This admitted fact that the appellants paid duty when they cleared the final output. This duty happened to be more than the credit taken.

2. Revenue has filed the present appeal challenging the orders passed in both the proceedings by the Tribunal contending that since no manufacturing activity was carried out by the respondent on the PD pumps purchased from its sister concern, was not entitled to avail modvat credit thereon.

3. We have heard learned counsel for the parties and perused the relevant rules.

4. Rule 57A of the Rules was part of Chapter VAA to the Rules pertaining to credit of duty paid on excisable goods used as inputs. Sub-rule (1) of Rule 57A provided that the provisions of the said chapter shall apply to such finished

goods as the Central Government may by notification specify for the purpose of allowing credit of any duty of excise or the additional duty as may be specified in the said notification paid on the goods used in the manufacture of the final products. Sub-rule (2) provided that the credit of specified duty allowed under sub-rule (1) shall be utilised towards payment of duty of excise leviable on the final products.

5. It is the case of the Revenue that in terms of such Rules since the respondent did not carry out any manufacturing activity on the PD Pumps purchased before clearance of home consumption, Modvat credit could not be availed. We however, notice that under Rule 57F(1) as applicable at the relevant time, it was provided as under:

Rule 57F. Manner of utilisation of the inputs and the credit allowed in respect of duty paid thereon.-(1) The inputs in respect of which a credit of duty has been allowed under rule 57A may-

(i) be used in, or in relation to, the manufacture of final products for which such inputs have been brought into the factory; or

(ii) shall be removed, after intimating the Assistant Collector of Central Excise having jurisdiction over factory and obtaining a dated acknowledgment of the same, from the factory for home consumption or for export under bond, as if such inputs have been manufactured in the said factory.

Provided that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty of excise shall in no case be less than the amount of credit that has been allowed in respect of such inputs under rule 57A.

6. Upon perusal of such provision, it emerges that inputs in respect of which credit is allowed under Rule 57A, may be used in or in relation to manufacture of a final product or could also be removed under intimation to the specified authority for home consumption in the said factory.

7. From the above rules, it would emerge that if the respondent assessee had carried out manufacturing activity in PD Pumps brought in the factory, his case would be covered under clause (i) of Rule 57F(1). If on the other hand Revenue was correct in contending that no such manufacturing activity was carried out, nevertheless, his case would fall under clause (ii) of Rule 57F(1). In such a case, limitation for availing Modvat credit would be that in case of inputs removed for home consumption on payment of excise duty, such duty should not be less than the amount of Modvat credit allowed in terms of Rule 57A.

8. It was in this context that the Tribunal in the impugned judgment referred to and relied upon the decision of the Tribunal in case of 2003 (110) ECR 455 , in which it was held that when inputs are subjected to certain process and the processed inputs are cleared on payment of duty which was more than credit taken, Modvat credit cannot be denied on the ground that the processes

undertaken by the assessee did not amount to manufacture.

9. We are informed that such decision of the Tribunal in case of Rico Auto Industries Ltd. (supra) was carried in appeal before the Punjab and Haryana High Court. Appeal was disposed of remanding the proceedings for fresh consideration before the Tribunal. In the second round, the Tribunal once again ruled in favour of the assessee which decision is reported in 2007 (210) E.L.T. 583 (Tri.-Del.) in case of Rico Auto Industries Ltd. v. Commissioner of Central Excise, New Delhi. The Tribunal observed as under:

7. Apart from the fact that the assessee had satisfactorily established the nature of manufacturing processes to which these two items had undergone before they were removed on payment of excise duty on the value added basis, it is also not disputed that the total amount of excise duty paid was much higher than the Modvat credit availed in respect of these items.

7.1 Under the proviso to sub-rule (1) of Rule 57F, where the inputs were removed from the factory for home consumption on payment of duty of excise, such duty of excise shall be the amount of credit that has been availed in respect of such inputs under Rule 57A.

Therefore, the rule contemplated removal of inputs in respect of which a credit of duty had been allowed where they are not used in relation to manufacture of final products with a condition that on their removal, the excise duty shall be paid to the tune of the credit availed under Rule 57A for such inputs. In the present case, admittedly by the excise duty paid on the ROFs/GSDs removed as finished goods was higher than the Modvat credit availed on these inputs. Therefore, there was no liability to pay additional duty when these goods were removed. Even if were to be held that no process was undertaken on these goods, then obviously there was no liability to petitioner pay excise duty on the footing that these goods were manufactured by the appellant, because if they were already brought as inputs from other manufacturer and no further process was undertaken, they would obviously be not liable for payment of excise duty on the ground that manufacturing process was undertaken. Therefore, in either event, no duty liability arose on the part of the appellant.

10. Counsel for the assessee submitted that to his latest information, Revenue did not challenge such decision of the Tribunal further.

11. The Tribunal in the impugned judgment has also recorded that it is admitted fact that the assessee paid duty when they cleared final output. Such duty was more than the credit taken.

12. In view of above situation, we find no merits in the appeal. We therefore, answer the question in the affirmative i.e. against the Revenue and in favour of the assessee. Appeal is dismissed.