(2015) 01 BOM CK 0171

In the Bombay High Court

Case No : Central Excise Appeal No. 102 of 2004

Commissioner of Central Excise	APPELLANT
Vs	
Godrej And Boyce Mfg. Co. Ltd.	RESPONDENT

Date of Decision : 23-01-2015

Acts Referred:

Citation : (2015) 318 ELT 417

Hon'ble Judges : S.P. Deshmukh, J.;S.C. Dharmadhikari, J.

Bench : Division Bench

Advocate : A.S. Rao and Jitendra B. Mishra, for the Appellant; R.D. Sawant instructed by Ricab Chand, Advocates for the Respondent

Judgement

1. By this Appeal, the Appellant-Revenue challenges the order passed on 30th April, 2004 by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench, Mumbai.

2. The Appeal has been admitted only on one substantial question of law, which reads as under:-

Whether Rule 57F (4) of the Central Excise Rules is mandatory or directory? 3. The few facts necessary for answering this question according to the Revenue are that the Respondent is a company incorporated and registered under the Indian Companies Act, 1956. It manufactures machines and mechanical appliances falling under Chapter Heading 8419 of the Schedule to the Central Excise Tariff Act, 1985. The Respondent availed credit facilities under Rule 57A and 57AB of the Central Excise Rules then prevailing. The Respondent had sent the inputs to job workers under Annexure-II Challan on payment of 10% of the value of the input as provided under Rule 57F of these Central Excise Rules. However, from January 2000 onwards, the Respondent appears to have willfully and deliberately contravened the provisions of Rule 57F (4) read with Rule 57A of these Rules. The Respondent did not pay central excise duty on these inputs received after the job work under Rule 57F (4). Those were received after the stipulated period of 180 days in terms of Rule 57F (11) of the Rules. The central excise duty on the goods was computed at Rs. 41,828/- for the period July 1999 to November 1999. The Respondent also availed irregular/inadmissible MODVAT credit of Rs. 69,715/-. The total MODVAT credit irregularly availed was arrived at Rs. 1,11,543/-. That is how the show cause notice dated 1st May, 2001 was issued calling upon the Respondent to show cause as to why irregular/ inadmissible credit availed intentionally should not be demanded and recovered and a penalty should not be imposed for the illegality. The Respondent was called upon to pay interest as well.

4. The show cause notice was adjudicated and an order of adjudication was passed confirming the demand on 5th December, 2001 (Annexure-B).

5. Being aggrieved and dissatisfied with this order, the Respondent- Assessee preferred an Appeal before the Appellate Authority, namely, Commissioner (Appeals) who allowed it by his order dated 28th March, 2002. The Tribunal has dismissed the Revenue''s Appeal by the impugned order.

6. Mr. Rao, learned counsel, appearing for the Revenue in support of this Appeal, submits that the substantial question of law needs to be answered in favour of the Revenue and against the Assessee. He relied upon the wording of the Rules to urge that the Tribunal completely misread and misinterpreted these Rules. If the Rules contemplate that the inputs or capital goods are cleared to a job worker and they must be received back within 180 days, then, the said period is nothing but mandatory. Thereafter, MODVAT credit was not admissible. This view of the Revenue is in consonance with the language of the Rules. This language denotes as to how manner of utilization of inputs and credit allowed in respect of duty thereon has to be determined. If any disregard to the Rules results in refusal of MODVAT credit, then, the Tribunal should not have accepted the case of the Assessee. Besides that Tribunal''s order is very cryptic and virtually unreasoned, it cannot be sustained.

7. On the other hand, Mr. Sawant, learned counsel, appearing on behalf of the Respondent supports the impugned order. He submits that the several contentions were raised before the Tribunal as also the adjudicating authority. The show cause notice was completely without jurisdiction and void ab intio. The MODVAT Rules have since been replaced by Cenvat Credit Rules. Neither the Rules framed earlier nor any substantive power in terms of the Act and the Rules is saved after such repeal or replacement. In these circumstances, the show cause notice itself could not have been issued. Secondly, the demand was barred by limitation. That was pointed out as well. Thirdly, on merits no other view is possible because the intent is not to deny MODVAT credit after the inputs which have been sent out for job work are received after 180 days. The MODVAT credit will have to be apportioned and for the period after 180 days there could be a corresponding debit or refusal or denial but to a limited extent. In these circumstances, the view taken by the Tribunal is imminently possible. The Tribunal''s order cannot be termed as perverse or vitiated by any error of law

apparent on the face of the record. Therefore, the Appeal be dismissed.

8. With the assistance of the Advocates appearing for both sides, we have perused this memo of Appeal and all annexures thereto. The show cause notice was issued to the Respondent- Assessee calling upon it to show cause as to why the MODVAT credit should not be denied. The adjudicating authority found that the inputs were sent for job work. They were received after 180 days in contravention of provisions of Rule 57F (4) of the Central Excise Rules, 1944. If this is the admitted and undisputed fact, then, the Assessee failed to comply with the Rules. After 1st March, 2000, there is no time limit for availing of the credit or inputs received on completion of job work. Only the job work input received within 180 days is eligible for the MODVAT credit. The annexures to Challans issued pertain to July 1999 to November 1999. There was no provision prior to 1st March, 2000 to allow MODVAT credit on inputs received after lapse of 180 days. Thus, there is a contravention of Rule 57F (4) read with Rule 57-A of the Central Excise Rules. Aggrieved by such an order passed on 5th December, 2001 an Appeal was preferred to the Commissioner (Appeals) by the Respondent-Assessee. He passed an order thereon dated 28th March, 2002/20th June, 2002. He held that the undisputed facts would show that the goods were cleared as per provisions of Rule 57F (4) by debiting 10% of the value inputs. The Assessee availed credit on the goods received back from the job worker after the stipulated period of 180 days. The credit had been taken only after receipt of the goods. The receipt of the goods and the credit taken have also been mentioned in the statutory record, namely, RG 23A Part-I and II. These documents have been submitted by the Assessee to the Department along with their monthly returns. Therefore, the facts were known to the Department. This factual position is not disputed. The dispute is, the time period, during which the goods ought to have been received. However, once the basics of MODVAT Cenvat Rules are understood the delay in receipt of the goods is only a procedural infirmity which should not come in the way of taking legitimate credit which is otherwise admissible to the Assessee. The principle applied was when substantive provisions of law have been complied with, then, noncompliance with the procedural provisions does not result in denial of a relief or benefit which is otherwise and legitimately due to a party. In this view of the matter, he allowed the Appeal and set aside the order in Original.

9. It is in the facts set out in this Memo of Appeal that the Department/Revenue approached the Tribunal and the Tribunal has confirmed the view taken by the Commissioner (Appeals).

10. Rule 57F (4) and at the relevant time read as under:-

The inputs can also be removed as such or after they have been partially processed by the manufacturer of the final products to a place outside his factory under the cover of a challan specified in this behalf by the Central Board of Excise and Customs, for the purposes of test, repair, refining, re-conditioning or carrying out any other operation necessary for the manufacture of the final products or for manufacture of intermediate products necessary for the manufacture of final products and return the same to his factory (within one hundred and eighty days) for,-

(i) further use in the manufacture of the final product; or

(ii) removing after payment of duty for home consumption; or

(iii) removing the same without payment of duty to a unit in a free trade zone or to a hundred per cent export oriented undertaking or to a unit in an Electronic Hardware Technology Park or Software Technology Parks or supplied to the United Nations or an international organisation for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 108/95 Central Excises, dated the 28th August, 1995; or

(iv) removing the same without payment of duty under bond for export.

[Provided that the Commissioner of Central Excise having jurisdiction over the factory of manufacturer of the final products who has sent the inputs or partially processed inputs outside his factory to a job-worker may, by an order in each removal of such inputs or partially processed inputs, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow finished goods to be cleared from the premises of the job worker .]

[4A * * * *].

11. A bare perusal thereof would indicate that the inputs on which credit has been taken may be used in or in relation to the manufacture of final products. The inputs may be removed for home consumption or for export under bond. By sub-Rule (3) all removals of inputs for home consumption shall be made on payment of duty equal to the amount of credit availed in respect of such inputs and under the cover of invoice prescribed under Rule 52A.

12. By Rule 57F (4) the inputs are permitted to be removed or after they have been partially processed by the manufacturer of the final products to a place outside his factory under the cover of a challan specified in this behalf by the Central Board of Excise and Customs, for the purposes of test, repair, refining, re-conditioning or carrying out any other operation necessary for the manufacture of the final products or for manufacture of intermediate products necessary for the manufacture of final products and return the same to the factory within 180 days for further use in the manufacture of the final product or removing after payment of duty for home consumption or for removing the same without payment of duty to a unit in a free trade zone or to a hundred per cent export oriented undertaking. They could also be removed under bond for export.

13. The proviso to Rule 57F (4) envisages removal from the factory of manufacturer of the inputs for partial processing outside the factory and to a job

worker. There are further stipulations in terms of Rule 57F (4)(5) and by Rule 57F (6) clause (i) where a manufacturer removes the inputs as such or in the partially processed form to a place outside his factory for the purpose specified in sub Rule (4), the manufacturer shall do so only after debiting the amount equal to 10% of the value of such inputs, or as the case may be, the partially processed inputs declared by him on the challan requisite for clearance.

14. By clause (ii) of sub-rule (6) the debit shall be made in the account maintained under sub-rule (7) to Rule 57G or the account current maintained under Rule 9 or sub-rule (1) of 173G. Thereafter by sub Rule (7), notwithstanding anything contained in Rule 57A, the manufacturer shall be eligible to take credit of an amount equal to the amount debited by him under sub-rule (6) when the inputs or partially processed inputs, as the case may be, are received back in full in his factory. By subrule (8), a manufacturer is enabled to take credit only after the entire quantity of inputs or the partially processed inputs, as the case may be, but excluding the waste, etc. is received back in the factory. The evidence of receipt of the goods back in the factory shall be in terms of sub-rule (9). By sub-rule (10) if the goods are lost in transit, the Excise Authorities can allow the manufacturer of final products to take credit under sub-rule (7) on the basis of triplicate copy of the challan. Then, by sub-rule (11) which is what is applicable in this case the receipt of the inputs sent out if not received back in the factory within a period of 180 days is dealt with. In that event, the manufacturer shall recalculate the amount of actual credit attributable to such inputs or on inputs contained in the partially processed inputs and thereafter he shall adjust the differential amount, if any, after taking into account the amount already debited while sending the inputs or partially processed inputs from his factory.

15. By sub-rule (12), (13) and (14) there are further stipulations and upto sub-rule (21), if all these sub-rules are read together and harmoniously as has been done by the Tribunal, then, no other view of the matter is possible. It is not a mandate flowing from the Rules that if the inputs or partially processed inputs are not received within 180 days in the factory of the manufacturer, then, he be disallowed the Cenvat credit and in totality. The Rules provide for situations under which, if the goods are not received back within 180 days, the credit can be adjusted. The proportionate credit can be denied and by calling upon the manufacturer to debit the account. All this would indicate as to how the makers and framers of the Rule did not intend to deny MODVAT credit simply because the inputs were not received after processing or job work within 180 days. The period of 180 days cannot be held to be mandatory. In the given facts and circumstances and going by the language of the Rule, both Commissioner (Appeals) and the Tribunal were right in concluding that the period is not mandatory. The Tribunal''s reasoning at page 55 of the paper book is in consonance with the language of the Rule and the sub-rules. In these circumstances, the demand made could not have been sustained. The Appeal has rightly been dismissed.

16. Even before us, Mr. Rao could not convince as to how this view taken by the Tribunal can be said to be perverse or vitiated by any error of law apparent on the face of the record. If it was a view which can be taken and in the teeth of the clear language of the Rule and the subrules, then, the substantial question of law as framed will have to be answered against the Revenue and in favour of the Respondent- Assessee. Answering it thus, we proceed to dismiss this Appeal. Once this view is taken, the other contentions of Mr. Sawant need not be gone into. The Appeal is, therefore, dismissed. No orders as to costs.