(2008) 11 GUJ CK 0038

In the Gujarat High Court

Case No : Tax Appeal No. 1657 of 2007

Commissioner of Central Excise APPELLANT

Vs

Gulf Oil India Ltd. RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 57D, 57D(1)

Citation : (2011) 264 ELT 382

Hon'ble Judges : D.A. Mehta, J;Abhilasha Kumari, J

Bench : Division Bench

Advocate : Harin P. Raval, for the Appellant; Paresh V. Sheth, for the Respondent

Final Decision : Dismissed

Judgement

D.A. Mehta, J.—Appellant Revenue has proposed the following two questions:

(a) Whether, in the facts and circumstances of the case, the Tribunal is justified in holding that credit on duty could not be denied or varied since the revenue could not rebut the contention of the disputed plastic containers got damaged during the process of packing lubricants?

(b) Whether, in the facts and circumstances of the case, the Tribunal is justified in confirming the order of the appellate authority setting aside the demand of duty, interest and penalty despite the fact that MODVA Table inputs of which CENVAT/MODVAT credit was availed of were not used in or in relation to manufacture of final product and were disposed of as waste and scrap after charging the cost of such material without payment of central excise duty?

2. Heard learned Counsel for the Appellant. It was submitted that Respondent-Assessee is engaged in manufacture of automobile and industrial lubricants. For the purposes of packing the final manufactured product, namely, lubricant oil, Respondent-Assessee had purchased plastic containers and availed MODVAT Credit for the same. That it was the case of Respondent-Assessee that during the process of filling the lubricants in the containers, some containers were found to

be leaky and unusable. After segregating such containers, Respondent-Assessee cut the same into pieces and disposed of as waste and scrap of plastic. According to Adjudicating Authority, such an exercise could not have been carried out without either reversal of MODVAT Credit or payment of duty. That Central Excise Duty was leviable on the clearance of such waste and scrap and thus Respondent-Assessee rendered itself liable. That after issuing show cause notice, an order was made to recover duty along with interest and penalty under different provisions as stated in order in original. For this purpose, reliance was placed by the authority on erstwhile Rule 57-A of the Central Excise Rules, 1944. The learned Counsel, therefore, submitted that in the aforesaid fact situation, both Commissioner (Appeals) and the Tribunal had erred in coming to the conclusion that the Assessee was not required to either reverse the credit or pay duty on such containers sold as waste and scrap. That the reliance on Apex Court decision by both the authorities in the case of Commissioner of Central Excise Vs. West Coast Industrial Gases Ltd., and Circular No. 721/37/2003-CX., dated 6-6-2003 was misconceived. It was submitted that the case before the Apex Court was in relation to empty barrels of inputs received and was not in relation to empty containers in which finished product was required to be filled up and cleared. The learned Counsel, therefore, urged that the impugned order of Tribunal gave rise to a substantial question of law.

3. Having heard the learned Counsel, it is not possible to hold that the impugned order of Tribunal suffers from any legal infirmity so as to warrant interference. The Tribunal has confirmed the findings recoded by Commissioner (Appeals), who recorded as under:

Further, either from the SCN or from the impugned OIO, it is not cleared as to whether the plastic container purchased for filling/packing of finished goods were found leaky and unusable before the process of filling/packing was started. From the defence submission recorded in the impugned OIO the Appellant has stated that "at times these containers get damaged during the process of packing and thereafter they can not be used for packing of lubricants. In such situation they are to be disposed of by them being unfit for packing, "from this contention it can be derived that the disputed plastic containers have got damaged during the process of packing of lubricants. The adjudicating authority has not rebutted the aforesaid contention of the Appellant, in his finding. Therefore, the Appellant is not required to reverse the credit in respect of the plastic containers. This position is also covered by Rule 57D(1) of Central Excise Rules, 1944. Rule 57D of Central Excise Rules, 1944 read as under:

I find that the case of the Appellant clearly falls under this provisions as during the course of filing of lubricant some containers damaged thus resulted waste, refuse and therefore should be treated as waste arise during he manufacture of final product.

4. Thus the undisputed fact, as recorded both by Commissioner (Appeals) and the Tribunal, is that the containers got damaged during the process of packing

and become unusable for packing the lubricants. The only course, thereafter, which was open to the Assessee was to dispose of the said containers as being unfit for packing. Admittedly, the Respondent-Assessee had sold three types of packing material; (a) sale of empty barrels (in which inputs were received), (b) sale of mutilated HDPE containers and (c) sale of poly-bags (in which packing materials were received). It is an accepted position that insofar as Item Nos. (a) and (c) are concerned, the ratio of the Apex Court decision would squarely govern the said items and the learned Counsel was not in a position to dispute the same. Therefore, it becomes clear that any packing material like barrels or poly-bags in which duty paid goods are received, whether by way of inputs or by way of packing material for finished products, on disposal of such material an Assessee is not required to either reverse the MODVAT/CENVAT credits or pay duty on such items. Thus, there can be no difference when empty containers, which have become unfit for the purpose for which the containers were purchased, are disposed of as scrap and waste. The distinction sought to be drawn by Revenue vis-a-vis the ratio of the Apex Court judgment is a distinction without difference in these circumstances.

5. Hence, in absence of any error in the concurrent findings recorded by Commissioner (Appeals) and the Tribunal, the impugned order of Tribunal does not give rise to any question of law, much less a substantial question of law. The appeal is accordingly dismissed.

