(2013) 02 GUJ CK 0033

In the Gujarat High Court

Case No : Tax Appeal No. 53of 2013 in Civil Application No. 26 of 2013 and Tax Appeal No. 54 of 2013 in Civil Application No. 27 of 2013

Commissioner of Central Excise APPELLANT

Vs

Man Inds. (I) Ltd.
 CCE Vs Sanghi Indl. Ltd. RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Citation : (2013) 19 GSTR 430

Hon'ble Judges : S.G. Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Y.N. Ravani for the Department, for the Appellant;

Judgement

Akil Kureshi, J.—The Revenue is in appeal against the judgment of the Customs, Excise and Service Tax Appellate Tribunal ("the Tribunal" for short) dated June 11, 2012 raising the following questions for our consideration:

(i) Whether the Tribunal was legal and correct in allowing the utilisation of Cenvat Credit in the month of December, 2005 which ought to have been taken and utilised in the month of November, 2005 as per the provisions of Notification No. 39/2001-CE, dated July 31, 2001?

(ii) Whether by holding supra, the Tribunal is right in reading down the provisions of Notification No. 39/2001-CE, dated July 31, 2001, as amended, and thereby rendering the said provisions redundant?

Briefly stated, the issue is that the respondent-assessee while availing of duty exemption for industry situated in Kutch area under Notification No. 39/2001, dated July 31, 2001, had claimed refund of a sum of Rs. 4,29,44,310. The adjudicating officer restricted such claim to Rs. 60,50,093 and disallowed the remaining amount of refund claim of Rs. 3,68,94,217. Aggrieved by such decision, the assessee carried the matter in appeal. The Commissioner (Appeals) reversed the order of the adjudicating officer and allowed the remaining claim as well, upon which the Department approached the Tribunal. The Tribunal confirmed the view of the appellate authority.

2. In a nut-shell, the dispute between the Department and the assessee was with respect to interpretation of paragraph 1A of the exemption notification which was introduced under an amendment Notification No. 65/2003, dated August 6, 2003.

3. Having perused the documents on record with the assistance of the learned counsel for the Department, we notice that there was no dispute that the goods manufactured by the assessee and cleared were covered under such exemption notification. The only question was whether the assessee fulfilled the conditions, in particular/condition contained in paragraph 1A mentioned above, relevant portion of which reads as under:

1A. In cases where all the goods produced by a manufacturer are eligible for exemption under this notification, the exemption contained in this notification shall be available subject to the condition that, the manufacturer first utilises whole of the Cenvat credit available to him on the last day of the month under consideration, for payment of duty on goods cleared during such month and pays only the balance amount in cash.

It is the case of the Department that the respondent did not utilise the Cenvat credit accumulated during the months of March to November, 2005, instead did so in the month of December, 2005 and the short-fall was paid through personal ledger account which was in breach of the above noted condition. Before the authority, the assessee had, however, pointed out that there are various factors which do not permit the assessee to take the Cenvat credit on the inputs on capital goods immediately, such as, duty-paying documents are available, the goods are as per the required specification, genuineness of the duty-paying document is tested as required under the rules, etc. On account of such factors, the assessee could not avail of the Cenvat credit immediately. It was, in fact, stated that for the period between March, 2005 and November, 2005, due to combination of such factors, though the goods were received in the factory, but Cenvat credit was not available and therefore, no entries could be made for crediting the same in the Cenvat account.

4. In this context, the first appellate authority held and observed as under:

The issue in this appeal is not related to admissibility of Cenvat credit but whether the conditions stipulated in Notification No. 39/2001 fulfilled or not before sanctioning of the refund of amount paid under P.L.A. under the said notification. It is evident from the records that the appellants had taken the input/capital goods/service tax credit of Rs. 70,93,637 in their credit account in December, 2005 and utilised the same for payment of duty on the goods cleared during December, 2005. Further there is no dispute on the fact that the appellants had first utilised the entire Cenvat credit available in their Cenvat account as on the last day of December, 2005 and the credit balance was nil and the balance duty amount of Rs. 4,29,44,310 paid in P.L.A. account. Therefore the appellants have complied the condition 1A of the said notification and eligible for refund of the amount paid through P.L.A.

Further when the appellants have not taken the credit of Rs. 60,50,903 in the Cenvat Credit Account in November, 2005, the lower adjudicating authority assumption that there was closing balance of credit in November, 2005 is not justified and not backed by law. Apparently the lower adjudicating authority has not disputed the admissibility of Cenvat credit or otherwise on the invoices pertaining to the month of March, 2005 to November, 2005 which is outside the scope of the present appeal. So long as the conditions of the said notification fulfilled and the credit balance was nil on the last date of December, 2005 the amount paid in P.L.A. during December are liable to be refunded in full.

5. This view is confirmed by the Tribunal in the impugned judgment.

6. In our opinion, the above view does not suffer from any illegality. What paragraph 1A introduced by way of amendment in the exemption notification under consideration required was the assessee to make first utilisation of the whole of the Cenvat credit available on the last date of the month under consideration for payment of duty on goods cleared during such month and then pay the balance amount in cash. To begin with, nothing has emerged from the record to suggest that the assessee had Cenvat credit for the period between March, 2005 and November, 2005 which the assessee did not utilise, but paid duty in cash. In fact, what emerges is that for various procedural reasons though capital goods were received, credit was not available since for want of completion of formalities, entries could not be made in the Cenvat account. Only in the month of December when the credits were available, the same were first utilised by exhausting the entire balance before making payment by cash. In our opinion, therefore, such condition was fulfilled, as was rightly held by the Commissioner (Appeals) and the Tribunal.

7. In the result, no question of law arises. The tax appeal is, therefore, dismissed. In view of the order in the main matter, the civil application does not survive and is disposed of accordingly.