(2010) 02 DEL CK 0101

In the Delhi High Court

Case No : CEAC 2 of 2007

Commissioner of Central Excise APPELLANT

Vs

M.B. Dyers RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : (2010) 173 ECR 183 : (2010) 253 ELT 402

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Baldev Malik, for the Appellant; Sanjay Grover, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—Admit.

2. The following substantial question of law arises for our consideration:

Whether the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) was right in allowing deemed credit in respect of the fibre/yarn used in the grey fabric which was an indirect input in the assessee''s final product- processed fabric, in view of the Notification No. 06/2002-CE(NT) dated 1st March, 2002?

3. Counsel for the parties are agreed that this appeal can be taken up straightaway and, therefore, they addressed arguments at this stage itself. Since the question was one of interpretation of the notification, counsel for the parties also submitted that there is also no necessity of filing any paper book inasmuch as the relevant documents are already on record.

4. We have heard the counsel for the parties.

5. The learned Counsel appearing on behalf of the Revenue/appellant contended that the said notification referred to a table of inputs and final products. According to him the input of the respondent-manufacturer was grey fabric and not yarn/fibre. Grey fabric is not referred to in the table of inputs mentioned in

the said notification and, therefore, the respondent would not be entitled to claim the benefit of the said notification in respect of its manufactured products-processed fabrics.

6. On the other hand the learned Counsel for the respondent submitted that the notification read with Rule 11 of the Cenvat Credit Rules, 2002 make it absolutely clear that as long as the input referred to in the table given in the notification are used in the manufacture of the final product mentioned in the said notification, the manufacturer would be entitled to take deemed credit in respect of those inputs irrespective of the fact as to whether those inputs have been used directly or not. The learned Counsel for the respondent submitted that there are two types of mills producing processed fabrics. They are- composite mills and "other than composite mills", which are commonly referred to as non-composite mills. He submitted that the said notification specifically referred to both composite mills as well as non- composite mills. He also contended that that the difference between the two kinds of mills is that, in the case of composite mills the input is yarn/fibre which is converted by the said mills into the intermediate product-grey fabric which is further converted, after a series of processing activities, into processed fabric. On the other hand, in non-composite mills, the direct input is grey fabric which is processed to manufacture the final product-processed fabric. However, the grey fabric which is directly used as an input, in turn, contains fibre/ yarn which is a direct input insofar as grey fabric is concerned. A reference was also made by the learned Counsel to the Circular No. 702/18/2003-CX dated 13th March, 2003, which was in connection with an issue which arose with regard to refund of unutilized deemed credit of Cenvat on grey fabrics used in the processed fabrics exported under bond. In that context the circular discussed Notification No. 29/96-CE (NT) dated 3rd September, 1996 which was the predecessor notification to the present Notification No. 6 pertaining to availment of deemed credit. While examining the issue, the Central Board of Excise and Customs, by virtue of the said circular, observed that although grey fabrics are not included as the declared inputs in the said notification, they are made out of duty paid yarn/fibres, which are declared inputs and have suffered appropriate excise duty. The Board also reiterated its earlier view and observed that the refund of the said unutilized deemed credit of grey fabric was admissible. According to the learned Counsel for the respondent, in view of the clarification given by the Board, it is clear that inputs which formed part of the intermediate products namely grey fabrics were to be considered for the purposes of deemed credit in terms of the Notification No. 6 referred to above.

7. Rule 11 of the said Cenvat Credit Rules, 2002 reads as under:

11. Power of Central Government to notify goods for deemed CENVAT credit. - Notwithstanding anything contained in Rule 3, the Central Government may, by notification in the Official Gazette declare the inputs on which the duties of excise, or additional duty of customs paid, shall be deemed to have been paid at such rate or equivalent to such amount as may be specified in the said

notification and allow CENVAT credit of such duty deemed to have been paid in such manner and subject so such conditions as may be specified in the said notification even if the declared inputs are not used directly by the manufacturer of final products declared in the said notification, but are contained in the said final products

8. It is pertinent to note that the said rule makes it clear that Cenvat credit is to be allowed in respect of the inputs even if the declared inputs are not used directly by the manufacturer of the final products declared in a notification under Rule 11 but are contained in the final products.

9. Notification No. 6/2002-CE(NT) dated 1st March, 2002 to the extent relevant is set out herein below:

Notification: 6/2002-CE(NT) dated 01-Mar-2002

Deemed credit for independent textile processors and composite mills -

Notification No. 53/2001-C.E. (N.T.), superseded

In exercise of the powers conferred by Rule 11 of the CENVAT Credit Rules, 2002, and in supersession of the notification of the Government of India in the ministry of Finance (Department of Revenue) No. 53/2001-Central Excise (N.T.), dated the 29th June, 2001, published in the Gazette of India vide number G.S.R. 497(E), dated the 29th June, 2001, except as respects things done or omitted to have been done before such supersession, the Central Government, hereby declares the following inputs (hereinafter referred to as the "declared inputs") and final products falling within the first Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereafter referred to as the said First Schedule), as specified in the Table below, namely:

S.No.

Inputs

Final products

(1)

(2)

(3)

(1)

Goods falling within heading No. 51.05, 51.06, 51.07, 52.05, 52.06, 53.06, 53.07, 53.08, 54.02, 54.03, 54.04, 54.05, 55.01, 55.02, 55.03, 55.04, 55.05, 55.06, 55.07, 55.09, 55.10, 56.04, 56.05 or 56.06 of the said First Schedule.,

The following goods manufactured by a composite mill, namely:-

(i) Processed fabrics falling under Chapters 52 (except sub-heading Nos.

5207.20, 5208.20 and 5209.10), 54 (except sub-heading Nos. 5406.10 and 5407.10), 55 (except sub-heading Nos. 5511.10, 5512.10, 5513.10 and 5514.10), 60.01 or 60.02 (except sub-heading No. 6002.10); or

(ii) Fabrics of cotton or man-made fibres, whether or not processed, falling under heading Nos. 58.01, 58.02 or 58.06 (except sub-heading No. 5806.20) of the said First Schedule.

(2)

(i) Goods falling within heading No. 51.05, 51.06, 51.07, 52.05, 52.06, 53.06, 53.07, 53.08, 54.02, 54.03, 54.04, 54.05, 55.01, 55.02, 55.03, 55.04, 55.05, 55.06, 55.07, 55.09, 55.10, 56.04, 56.05 or 56.06 of the said First Schedule;

The following goods manufactured by a manufacturer other than a composite mill, namely:-

(i) Processed fabrics falling under Chapters 52 (except sub-heading Nos. 5207.20, 5208.20 and 5209.10), 54 (except sub-heading Nos. 5406.10

6. The provisions of this notification shall not apply to final products on which duty of excise leviable under the Central Excise Act, 1944, or as the case may be, the additional duty leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957, has not been levied or paid or has been short-levied or short paid or erroneously refunded by reason of fraud, collusion or any wilful mis-statement or suppression of facts, or contravention of any provisions of the Central Excise Act or of the rules made thereunder with intent to evade payment of duty.

Explanation 1.- It is clarified that even if the declared inputs are used directly by a manufacturer of final products the credit of the declared duty shall, notwithstanding the actual amount of duty paid on such declared inputs, be deemed to be equivalent to the amount specified in this notification and the credit of the declared duty shall be allowed to such manufacturer.

Explanation 2.- For the purposes of this notification, "composite mill" means a manufacturer who is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics within the same factory and includes a multi-locational composite mill, i.e., a public limited company which is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics in one or more factories owned by the same public limited company.

Explanation 3.- For the removal of doubt it is clarified that the provisions of this notification shall not apply where processed fabric itself is used as an input for further processing.

....

....

10. A plain reading of the said notification shows that a distinction has been drawn out between the composite mills and other than composite mills. Explanation 2 to Clause (6) of the notification makes it clear as to what is meant by a composite mill. It means, a manufacturer who is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics within the same factory etc. The respondent, as already mentioned above, is not a composite mill. It manufactures its final product-processed fabrics not by spinning of the yarn from fabrics but from grey fabric purchased from the market. Explanation 3 is also relevant inasmuch as it clarifies that the provisions of the notification would not apply where the processed fabric itself is used as an input for further processing. The consequence of this explanation and clarification is that if there is any processed fabric and the same is further processed into the final product namely processed fabric, the same would not be eligible for the benefit under the said notification. However, insofar as yarn/fibre is concerned the same, admittedly, finds mention in the table of inputs in Column-2 of the said notification.

11. We have examined the decision of the Tribunal and we are in agreement with the conclusion as well as the reasoning adopted by it. The Tribunal was of the view that Rule 11 of the Cenvat Credit Rules, 2002 empowers the Central Government to declare the inputs on which the duty of excise or additional duty of customs shall be deemed to have been paid at such rate as may be specified in the notification and to allow Cenvat credit of such duty deemed to have been paid even if the declared inputs are not used directly by the manufacturer of final products declared in the notification but are contained in the final products. The Tribunal went on to examine the said Notification No. 6/2002 (NT) in the light of Rule 11 as also in the light of the clarification given in the circular of 13th March, 2003. Thereafter the Tribunal came to the conclusion that the contention of the Revenue was not correct inasmuch as the said Notification No. 6/2002 had been issued under Rule 11 of the Cenvat Credit Rules, 2002, which clearly provided that the deemed credit would be available even if the declared inputs are not used directly by the manufacturer of the final products declared in the notification but are contained in the said final products.

12. In fact the provisions of Rule 11 are very clear. Grey fabrics in the present case, though not mentioned in the table of inputs referred to in the notification, comprised of yarn/fibre which are the inputs in respect of grey fabrics. Grey fabrics are also not processed fabrics and, therefore, are not covered by Explanation 3 to Clause (6) of the said notification. The processed fabrics are the final products containing the yarn/fibre which is the requirement under Rule 11. Thus, although the yarn/fibre is contained in the final product, they are not directly used by the respondent-manufacturer in its manufacturing process. It comes in indirectly being a constituent of grey fabric. The requirement of Rule 11 stands satisfied.

13. We are also of the view that if the interpretation sought to be given by the Revenue is to be accepted then Serial No. 2 of the table in the notification would become redundant because there would be no non- composite mill which could take the benefit of the notification inasmuch as all the inputs refer only to yarn/ fibre and do not include the intermediate product-grey fabric. The very fact that yarn/fibre is mentioned as an input in respect of non-composite mills also makes it clear that the notification was to allow deemed credit in respect of such inputs although they were not to be used directly by the non-composite mills. We, therefore, decide the question against the Revenue and in favour of the respondent-assessee.

14. The appeal is dismissed.

