

(2011) 03 BOM CK 0142

In the Bombay High Court

Case No : Writ Petition No. 2195 of 2010

Commissioner of Central Excise

APPELLANT

Vs

Micro Inks Ltd. and Joint Secretary, Govt. of India,
Department of Revenue

RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 57(1), 57F(1)
Central Excise Rules, 2002 — Rule 18
CENVAT (Credit) Rules, 2002 — Rule 3(1), 3(4), 3(5)
CENVAT (Credit) Rules, 2004 — Rule 3(5), 3(6)
Customs Act, 1962 — Section 3, 4, 4A

Citation : (2011) 270 ELT 360

Hon'ble Judges : Roshan Dalvi, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Pradeep S. Jetly, for the Appellant; Prakash Shah, instructed by PDS Legal, for the Respondent

Judgement

J.P. Devadhar, J.—Heard. Rule. By consent the petition is taken up for final hearing.

2. The Commissioner of Central Excise, Raigad is aggrieved by the order dated 4th June 2010 passed by the Joint Secretary to the Government of India whereby the revision application filed by the Respondent No. 1 ("Assessee" for short) against the order passed by the Commissioner of Central Excise (Appeal) on 30th April 2008 is allowed and it is held that the Assessee is entitled to the rebate of duty paid on export of inputs/capital goods by reversing the amount equal to the amount of Cenvat credit taken on the said inputs/capital goods.

3. The Assessee is engaged in manufacturing of printing ink. The Assessee had purchased various inputs/capital goods from domestic suppliers and manufacturers and subsequently exported the same on payment of duty by reversing the credit of duty availed on those inputs/capital goods under Rule 3(4) of the Cenvat Credit Rules 2002. Thereafter, the Assessee filed rebate of duty

paid on inputs/capital goods as per Rule 18 of Central Excise Rules 2002. The said rebate claim was rejected by the adjudicating authority by order in original dated 19th July 2007. Challenging the aforesaid order the Assessee filed an appeal before the Commissioner Central Excise (A) who by his order dated 30th April 2008 upheld the order in original and rejected the rebate claim of the Assessee.

4. On a revision application filed by the Assessee, the Joint Secretary to the Government of India by the impugned order dated 4th June 2010 held that the Assessee was liable to be treated as a deemed manufacturer in respect of the inputs/capital goods exported by the Assessee and hence entitled to the rebate claim. Challenging the aforesaid order the present petition is filed by the Revenue.

5. Mr. Jetly learned Counsel appearing on behalf of the Petitioner submitted that the Assessee is not entitled to claim rebate, because firstly, as per notification No. 41/1994 dated 12th September 1994, circular No. 294/1997 dated 30th January 1997 and notification No. 19/2004 dated 6th September 2004 the rebate of duty on exports is allowable only if the exports on payment of duty are made directly from the factory or warehouse. In the present case the Assessee is neither the manufacturer of the goods exported nor the goods are exported directly from the factory/warehouse which is a mandatory condition for grant of rebate under the aforesaid notifications/circular. In support of the aforesaid contention Mr. Jetly relied upon the judgment of the Himachal High Court in the case of CCE, Chandigarh v. Indian Overseas Corporation reported in 2009 234 E.L.T. 405 (HP) .

6. Secondly, Mr. Jetly submitted that clearance of inputs/capital goods for export by reversing the amount equal to the credit availed on those inputs/capital goods cannot be said to be clearance on payment of duty as contemplated under Rule 18 of the Central Excise Rules 2002 and therefore rebate of duty could not be allowed. Thirdly, Mr. Jetly submitted that in the absence of establishing identity of exported inputs/capital goods with the duty paid inputs/capital goods, the rebate claim could not be allowed.

7. Mr. Shah learned Counsel appearing on behalf of the Assessee submitted that in the present case exports were effected during the period 2003 to 2005 and therefore the Assessee was entitled to claim rebate of duty under Rule 18 of Central Excise Rules 2002 read with Rule 3(4) & Rule 3(5) of Cenvat Credit Rules 2002/Rule 3(5) & Rule 3(6) of Cenvat Credit Rules 2004. As per Rule 3(4) & 3(5) of the Cenvat Credit Rules 2002 the Assessee is liable to be treated as a deemed manufacturer when duty paid inputs or capital goods the credit of which is taken are cleared for export on payment of duty by reversing the amount equal to the credit availed. In support of the above submission Mr. Shah relied upon Government of India Circular No. 283/96 dated 31st December 1996.

8. Mr. Shah further submitted that in the present case the exports were effected

under ARE 1 form duly certified by the authorities under the Customs Act. The ARE 1 form is prescribed with a view to enable the exporter to claim rebate of duty. Therefore, when exports are effected under ARE 1 form, with full description and other particulars it is not open to the rebate sanctioning authority to contend that the identity of the goods has not been established.

9. We have considered the rival submissions.

10. Under the Central Excise law the manufacturer of a final product is entitled to take credit of specified duties paid on inputs or capital goods used in the final product (called Cenvat credit) and utilize the said credit to pay the excise duty payable on the final products by reversing the input credit. Mode and manner of availing/utilizing the credit of duty paid on inputs/capital goods were set out in Cenvat Credit Rules 2002 which are now replaced by Cenvat Credit Rules 2004. Since the provisions relating to availment and utilization of credit of duty paid on inputs/capital goods under the Cenvat Credit Rules 2002 as well as Cenvat Credit Rules 2004 are identical, for the sake of convenience, we refer to the rules under the Cenvat Credit Rules 2002 (2002 Rules for short).

11. Rule 3(1) of 2002 Rules sets out the categories of duties paid on any input or capital goods the credit of which can be taken when received in the factory of manufacturer of final product.

12. Rule 3(4) & Rule 3(5) of the 2002 Rules to the extent relevant read thus:

Rule 3(4) When inputs or capital goods, on which CENVAT credit has been taken, are removed a such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under subsection (2) of section 3 or section 4 or section 4A of the Act, as the case may be, and such removal shall be made under the cover of an voice referred to in rule 7.

Rule 3(5) The amount paid under subrule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under subrule (4).

13. Thus, under the 2002 Rules, a manufacturer who takes credit of duty paid on inputs or capital goods, subsequently removes the inputs/capital goods from the factory without utilizing the same in the manufacture of final product then, such manufacturer, is required to pay under Rule 3(4) an amount equal to the duty of excise leviable on such inputs/capital goods and under Rule 3(5) the amount paid under Rule 3(4) is liable to be treated as duty paid on clearance of inputs/capital goods.

14. Even under the MODVAT Scheme (now Cenvat Scheme) similar provisions were contained in Rule 57F(1)(ii) of the Central Excise Rules 1944. Doubts had arisen under the MODVAT Scheme as to whether a manufacturer who has taken credit of duty paid on inputs/capital goods, when clears said inputs/capital goods (without utilizing the same in the manufacture of final products) for export on

payment of an amount equal to duty payable on such inputs/capital goods at the time of clearance for export is entitled to claim rebate of that amount.

15. The Central Government considered the dispute and by its Circular No. 286/1996 dated 31st December 1996 held that when duty paid inputs/capital goods credit of which is taken are cleared for export as inputs/capital goods on payment of the amount as specified under Rule 57F(1)(ii) as amended, then such manufacturer shall be deemed to be the manufacturer of the exported inputs/capital goods and consequently entitled to claim rebate of the amount paid under Rule 57F(1)(ii) of the Central Excise Rules 1944.

16. Since Rule 3(4) of the 2002 Rules is *pari materia* with Rule 57(1)(ii) of the Central Excise Rules 1944 it is evident that inputs/capital goods when exported on payment of duty under Rule 3(4) of 2002 Rules, rebate of that duty would be allowable as it would amount to clearing the inputs/capital goods directly from the factory of the deemed manufacturer. In these circumstances, the decision of the Joint Secretary to the Government of India that the Assessee who has exported inputs/capital goods on payment of duty under Rule 3(4) & 3(5) of 2002 Rules (similar to Rule 3(5) & 3(6) of 2004 Rules) therefore entitled to rebate of that duty cannot be faulted.

17. The contention of the revenue that the payment of duty by reversing the credit does not amount to payment of duty for allowing rebate is also without any merit because, firstly there is nothing on record to suggest that the amount paid on clearance of inputs/capital goods for export as duty under Rule 3(4) & 3(5) of 2002 Rules cannot be considered as payment of duty for granting rebate under the Cenvat Credit Rules. If duty is paid by reversing the credit it does lose the character of duty and therefore if rebate is otherwise allowable, the same cannot be denied on the ground that the duty is paid by reversing the credit. Secondly, the Central Government by its circular No. 283/1996 dated 31st December 1996 has held that amount paid under Rule 57 F (1)(ii) of Central Excise Rules 1944 (which is analogous to the Cenvat Credit Rules 2002/ Cenvat Credit Rules 2004) on export of inputs/capital goods by debiting RG 23A part II would be eligible for rebate. In these circumstances denial of rebate on the ground that the duty has been paid by reversing the credit cannot be sustained.

18. The argument of the Revenue that identity of the exported inputs/capital goods could not be correlated with the inputs/capital goods brought in to the factory is also without any merit because, in the present case the goods were exported under ARE 1 form and the same were duly certified by the Customs Authorities. The certificate under the ARE 1 form is issued with a view to facilitate grant of rebate by establishing identity of the duty paid inputs/capital goods with the inputs/capital goods which are exported.

19. For all the aforesaid reasons, we see no infirmity in the order passed by the Joint Secretary to the Government of India. Accordingly rule is discharged with no order as to costs.