

(2013) 06 MAD CK 0208

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2533 of 2005 and C.M.P. No. 13308 of 2005

Commissioner of Central Excise

APPELLANT

Vs

Rajshree Sugars and Chemicals Ltd.

RESPONDENT

Date of Decision : 13-06-2013

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 2(c)

Citation : (2014) 299 ELT 277 : (2014) 44 GST 425 : (2013) 22 GSTR 427

Hon'ble Judges : K.B.K. Vasuki, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T. Chandrasekaran, SCGSC, for the Appellant; T. Ramesh, for the Respondent

Judgement

Chitra Venkataraman, J.—This Civil Miscellaneous Appeal, filed by the Revenue as against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, was admitted by this Court on the following substantial questions of law:

1. Whether the Appellate Tribunal is right in allowing the accumulated Modvat Credit on Molasses, after amalgamation, for the payment of duty on Sugar without transferring the corresponding input as required under erstwhile Rule 57F(12) of CER" 44?
2. Whether the Appellate Tribunal has committed an error of law in holding that the transfer of accumulated credit without transfer of input, as required under Rule 57(f)(12)?

The assessee herein is a manufacturer of sugar. The by-products arising on the manufacture of sugar, namely, molasses, was again used by the assessee in the manufacture of Ethyl Alcohol. For the reasons best known to the assessee, originally, although both units are under one Management, it obtained two separate registration certificates, one for sugar unit and another for distillery unit, which is situated adjacent to the sugar unit. Admittedly, the assessee

cleared molasses on payment of duty and availed credit for the distillery unit for payment of duty on the dutiable Ethyl Alcohol. It is stated that over a period of time, there was huge accumulation of credit in the distillery unit and the same remained unutilised. Even though the assessee had two registration certificates, one for sugar unit and another for distillery unit, on 30.6.1999, the assessee requested the Revenue for one single registration certificate for both the units. On getting the same, in respect of the unutilised credit in the distillery unit, the assessee sought to use the same on the duty payable on the manufactured sugar. To avail of the same, the assessee sent a letter on 04.10.1999 to the Deputy Commissioner of Central Excise, Dindigul stating that they had transferred the closing balance of Rs. 1,38,69,137/- as on 30.9.1999 available under RG23-A Pt. II of the distillery division to RG 23 A Pt. II of Sugar division on 01.10.1999. It is stated that the credit involved in the lying stock of molasses was worked out at Rs. 44,06,511/-. On these facts, the Assistant Commissioner of Central Excise issued a show cause notice to the assessee to explain how the assessee would be entitled to the credit of Rs. 94,62,626/- taken to the sugar unit from the distillery unit. The notice pointed out that the assessee had wrongly transferred the entire credit amount and that they would be entitled to a transfer of credit of Rs. 44,06,511/- only. Thus, the excess credit of Rs. 94,62,626/- was liable to be recovered as per Rule 57I of erstwhile Central Excise Rules, 1944 read with Section 11A of the Central Excise Act, 1944. On the above allegation, penalty was also proposed to be imposed on the assessee.

2. The assessee objected to the above-said notice contending that in reality, there existed no two factories, but there is only one factory covered u/s 2(c) of the Central Excise Act, 1944; consequently, there is no such thing as transfer of one unit to the other unit. The assessee further pointed out that as the sugar unit as well as distillery unit are under the same management, granting of two registration certificates, one for sugar division and another for distillery division, was a superfluous one even as per the Board's Or. No. 10/2/69 CX 6 dated 12.5.1971. In the circumstances, the assessee asked for amendment of the registration certificate by adding Ethyl Alcohol Denatured in the schedule to the Registration Certificate No. 1/92 issued for sugar unit. The assessee pointed out that two accounts maintained in respect of these two activities be taken as two different volumes of the same record. They further pointed out that there was no transfer of assets from one unit to other or transfer of management or location of unit, to result in the change in the constitution of the company. In the light of the above facts, the assessee pointed out that when the Revenue had accepted the availability of credit to the extent of Rs. 44,06,511/- on Molasses transfer, the proposal to reject the unutilised credit was without any reason. In the circumstances, they sought for dropping of the proceedings. In this regard, they also referred to the decisions reported in 2001 (96) ECR 273 and 2001 (133) ELT 487 and submitted that the mere act of getting one registration certificate as against two registration certificates, per se, would not call for any rejection of the claim of the assessee.

3. Satisfied of the claim, originally, the proceedings were dropped by the Assistant Commissioner. This was taken on appeal by the Revenue before the Commissioner of Central Excise (Appeals). After elaborately quoting the Rule on the credit of duty paid on excisable goods used as inputs, the Commissioner held that consequent on the unification of two registration certificates, what was remaining unutilised available at the hands of the distillery unit could not be used for payment of duty on sugar by the distillery unit, because, sugar was not manufactured in the distillery unit. In the circumstances, holding that the credit could be taken only with reference to the inputs received, as recognised by the proviso to Rule 57-F(12), the Commissioner allowed the appeal preferred by the Revenue and confirmed the demand of Rs. 94,62,626/-.

4. Aggrieved by this, the assessee went on appeal before the CESTAT contending that even as per Circular bearing No. B42/1/97-TRU dated 1st September, 1997, credit in respect of any input could be used for payment of duty on any final products without checking whether the input had been utilized in the manufacture of that final product or not and that Trade Notice No. 98 CE 94 dated 28.9.1994 clarified that one registration certificate would be sufficient in case where the factory had two different portions located in the adjoining premises. Placing reliance on the decisions reported in 2001 (133) ELT 487 and 2001 (98) ECR 479 the assessee contended that there was no illegality in the order passed by the Assistant Commissioner.

5. The Tribunal pointed out that the issue raised in the case on hand was similar to the one decided by the Delhi Tribunal in the case of 2001 (98) ECR 479 and in the case of 2003 (160) ELT 331 . The issue raised in those cases was as to whether the Modvat Credit earned on molasses in the distillery unit could be utilised by the assessee for payment of duty on the clearances of sugar or not. Having regard to the decision given in favour of the assessee, the Tribunal accepted the claim of the assessee and consequently, it allowed the appeal filed by the assessee. Aggrieved by this, the present appeal has been preferred by the Revenue.

6. Learned Standing Counsel appearing for the Revenue placed heavy reliance on Sub-Rule (20) of Rule 57F as well as Sub-Rule (12) of the Central Excise Rules and reiterated the reasoning of the Commissioner of Central Excise (Appeals) that on the transfer of one unit to other unit, whatever remained unutilised not being in respect of the inputs used by the transferor unit, the question of granting any adjustment on the duty payable by the sugar unit did not arise. In the circumstances, he prayed for setting aside the order of the Tribunal.

7. Learned counsel appearing for the assessee, however, drew our attention to the factual position as recorded by the Tribunal that the distillery unit and the sugar unit belonged to the self-same management, located in self-same premises. As such there is no merger or transfer of one unit to another. Although, originally the assessee took two registration certificates, yet, realising the mistake, they had gone for one single registration for both the units.

Considering the fact that the Revenue itself had accepted the utilisation of credit on the transferred Molasses to the extent of Rs. 44,06,511/-, there is no reason why the balance, being the unutilised credit, should not be available or rejected at the hands of the assessee in the matter of demand of duty on the sugar manufactured.

8. Heard learned standing counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed before this Court.

9. We agree with the contentions made by the learned counsel appearing for the assessee. As already seen in the preceding paragraph, the sugar unit and the distillery unit belonged to the self-same management and they are in the same premises. Although there are two units functioning, it is not denied by the Revenue that the resultant Molasses from the manufacture of sugar was used by the assessee in the manufacture of denatured Ethyl Alcohol. Although in respect of two activities, it had maintained two accounts, yet, it related to the business of the same assessee in respect of two activities, which are interconnected too. In the circumstances, the assessee decided to go for one registration alone as against two registrations originally taken. This decision was in tune with the management, administration and control of two units under the same head. In the above circumstances, we do not find any logical reason to accept the plea of the Revenue that on the mere taking of a single registration as against the two registrations, there was merger or amalgamation or transfer to hold that the assessee would not be entitled to any credit adjustment on the duty payable on sugar manufactured.

10. It is a matter of record and admitted by the Revenue too, that both before and after the so called transfer, the same management continued to be in charge of both the units and that the alleged credit is available. The Revenue itself admitted that the assessee would be entitled to the credit to an extent of Rs. 44,06,511/- out of a total claim of Rs. 1,38,69,137/- and the unutilised credit available was to the tune of Rs. 94,62,626/-.

11. In the background of the facts stated above, rightly the assessee contended that what is true of Rs. 44,06,511/- is also true of the unutilised credit of Rs. 94,62,626/-. We agree with this line of reasoning. Proviso to Rule 57F of the Central Excise Rules provides that the credit of duty allowed in respect of any input be utilised towards the payment of duty on any other final product, irrespective of whether such inputs have been used actually in the manufacture of such final product. The only condition is that the inputs should have been received and used in the factory of production on or after 1st March, 1997. Hence, we have no hesitation in accepting the case of the assessee that there is no transfer of units as understood in the legal parlance and the "transfer" itself being after 1999, they are entitled to have the advantage of the proviso to the said Rule. In the circumstances, we agree with the assessee's contention and we have no hesitation in affirming the order of the Tribunal.

12. We may point out herein that even though the Tribunal has not reasoned its order in so many words, yet, it followed the decision of the Delhi Tribunal on a similarly positioned assessee. We agree with the decision of the Tribunal. Consequently, we reject the appeal preferred by the Revenue. We may also point out that the Commissioner of Central Excise (Appeals) having accepted the case of the assessee on the quantum of credit to the tune of Rs. 44,06,511/-, had not given any reason as to why the claim of the assessee on the unutilised portion of Rs. 94,62,626/- should not be available to the assessee in respect of the duty payment on sugar. Thus, going by the proviso to Sub-Rule (12) of Rule 57F of the Central Excise Rules and on facts, we have no hesitation in rejecting the revenue's appeal, thereby confirm the order of the Tribunal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, C.M.P. No. 13308 of 2005 is also dismissed.