(2009) 04 MAD CK 0152

In the Madras High Court

Case No : C.M.A. No. 612 of 2005

Commissioner of Central Excise APPELLANT

Vs

Singaravelar Spinning Mills (P) Ltd. RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:
Central Excise Tariff Rules — Rule 57Q

Citation : (2009) 167 ECR 161 : (2009) 241 ELT 497

Hon'ble Judges : T.S. Sivagnanam, J;Prabha Sridevan, J

Bench : Division Bench

Advocate : T. Chandrasekaran, SCGSC, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—In this civil miscellaneous appeal, the following substantial questions of law were framed for consideration:

1. Whether the Appellate Tribunal is correct in allowing Modvat credit of duty paid on capital goods/spares for the period from 4/1994 to 9/1994

when the Notification No. 60/94 CE (NT) dated 21.10.1994 comes to effect from 21.10.1994 ?

2. Whether the Appellate Tribunal is correct in allowing Modvat credit of duty paid on capital goods/spares namely carding and combing machines

producing products namely Silver/combed/carded cotton falling under Chapter heading 52.02 of the schedule to the Central Excise Tariff Act,

1985, when this heading remained specifically excluded from the purview of capital goods under erstwhile Rule 57Q as it stood during the material

time, by overriding the legal provisions.

2. Mr. T. Chandrasekaran, SCGSC, learned Counsel for the appellant submitted

that the authorities had failed to see that Cotton Carded or

Combed falling under Chapter 52.02 is manufactured by carding and combing machinery and as per Rule 57Q as it existed at that time, carding

and combing machinery could not be considered as capital goods for the period from 1.3.1994 to 20.10.1994 because the goods falling under the

heading 52.02 remained excluded from the list of eligible final products. Learned Counsel therefore submitted that this question has to be answered

in favour of the revenue.

3. All the authorities found on facts that ""Sliver"" has no independent existence and has a transient character and therefore the processed cotton

falling under heading 52.02 during manufacture of cotton yarn are incomplete excisable goods and cannot be qualified as final products to deny

MODVAT credit invoking Rule 57Q. The final product viz., cotton yarn was cleared on payment of duty. Thus carded/combed cotton/sliver came

into existence at an intermediate stage. The Tribunal and the other authorities rightly held that the goods in question were not marketable and

relying on the circular No. 665/56/2002-CX dated 25.9.2002 held that ""CENVAT Credit should not be denied on the capital goods used in

manufacture of intermediate product exempt from payment of duty which are used captively in the manufacture of finished goods chargeable to

duty"" held that MODVAT credit of duty paid on the capital goods cannot be denied.

4. We find that in a writ petition filed before the Delhi High Court in Modi Carpets Limited Vs. Union of India, , the Division Bench had

considered the nature of ''Sliver'' on the basis of expert reports and held as follows:

Sliver obtained in the Petitioner''s factory as described above cannot be brought and sold in the market and is not a commodity which is known in

the trade.

5. The Supreme Court declined to grant leave against the judgment of the Delhi High Court in Modi Carpets Limited Vs. Union of India, . They

also relied on Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay, , where it was held as follows:

Therefore, it is necessary, in a case like this, to find out whether there are goods, that is to say, articles as known in the market as separate distinct identifiable commodities and whether the tariff duty levied would be as specified in the Schedule. Simply because a certain article falls within the

Schedule it would not be dutiable under excise law if the said article is not ""goods"" known to the market. Marketability, therefore, is an essential

ingredient in order to be dutiable under the Schedule to Central Excise Tariff Act, 1985.

(emphasis supplied)

and the decision of the Supreme Court in Collector of Central Excise, Baroda Vs. M/s. Ambalal Sarabhi Enterprises (P) Ltd., , where the

Supreme Court emphasised the requirement for any product to be called ''goods'' ""it must be something which can ordinarily come to the market to

be brought and sold and is known to the market"".

6. In both the judgments viz., judgment of the Division Bench of the Delhi High Court Modi Carpets Limited Vs. Union of India, , and the

judgment of the learned Single Judge of the Bombay High Court Gokalchand Rattanchand Woollen Mills Pvt. Ltd. Vs. U.O.I., , we find a graphic

description of the nature of ""Sliver"" and we think it might be useful to extract this:

...This sliver is very brittle in nature and is liable to fall apart by handling. It also get entangled if it is not handled gently, thus becoming unsuitable for

spinning. If the Sliver falls apart or gets entangled, it becomes unfit for spinning and cannot be fed into ring frames for spinning. Moreover, it is

important to maintain humidity condition in the spinning Section and the Sliver is not allowed to dry. If the moisture content is lost, Sliver dries and

the fibre strands fall apart and collapse and become unfit for spinning. Sliver cannot be packed and transported in view of its non-cohesive and

brittle nature. Any form of packing entailing even the slightest pressure would entangle the fibre and render it unfit for spinning. Upon such

entanglement, it would cease to be Sliver. Because of the very nature of the Sliver, it''s non-cohesive and brittle property as described above,

Sliver obtained in the Petitioner''s factory as described above cannot be brought and sold in the market and is not a commodity which is known in

the trade.

7. In view of the aforesaid reasons, the substantial questions of law are answered against the revenue and the civil miscellaneous appeal is

dismissed.