(2009) 04 MAD CK 0488

In the Madras High Court

Case No : C.M.A. No. 1649 of 2005

Commissioner of Central Excise — APPELLANT

Vs

Vishnu Shankar Mills Ltd. and Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench — RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:
Central Excise Rules, 1944 — Rule 57C, 57C(2), 57CC, 57CC(1)
Central Excises and Salt Act, 1944 — Section 35G
CENVAT (Credit) Rules, 2004 — Rule 6, 6(2)

Citation : (2009) 167 ECR 256

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

Bench : Division Bench

Advocate : P. Mahadevan, for the Appellant; V. Gunasekaran, for R-1, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—In this civil miscellaneous appeal, the following substantial question of law is raised for consideration.

Whether the CESTAT is right in allowing modvat credit of duty paid on inputs furnace Oil/LSHS used in the manufacture of exempted final products.

2.The assessee is the manufacturer of both Cotton yarn on plain reel hanks and Cotton yarn on cones/cheese. The Cotton Yarn on cones/cheese are cleared on payment of duty and the Cotton Yarn in plain reel hanks are exempted form the payment of Central Excise Duty. The assessee avails Cenvat Credit on Furnace Oil/LSHS oil which are used as fuel for both the dutiable and exempted finished product. The assessee was called upon to reverse the Cenvat credit to the extent of actual quantity of inputs used in the manufacture of exempted finished products and an order was passed against the assessee demanding Cenvat credit to that extent and penalty was also imposed. On appeal it was set aside and the same was confirmed by the Tribunal relying on Sub-rule (2) of Rule 6 of Cenvat

Credit Rules, which reads thus:

Where a manufacturer avails of Cenvat credit in respect of any inputs, except inputs intended to be used as fuel, and manufacture such final products which are chargeable to duty as well as exempted goods, then, the manufacturer shall maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of exempted goods and take Cenvat credit only on that quantity of inputs which is intended for use in the manufacture of dutiable goods.

3. We find that in 2006 TIOL30HC AHM-CX (Commissioner of Central Excise & Customs v. Gujarat Narmada Fertilizers Co., Ltd.), the Gujarat High Court has held in favour of the assessee on the question whether LSHS which was used for manufacture of fertilisers and chemicals, MODVAT Credit could be denied as follows:

However, what is material is that in Sub-rule (2) an exception is carved out in case of inputs intended to be used as fuel in other words, the necessity of maintenance of separate account or denial of credit cannot be insisted upon in a case where inputs are used as fuel by the manufacturer.

Similarly in 2008 (221) E.L.T. 41 (Commissioner of C. Ex. Delhi-IV v. Super Auto (I) Ltd.), the High Court of Panjab and Haryana in the case of MODVAT credit, held as follows:

Cenvat/Modvat - Furnace oil used as fuel ? Whether credit on inputs under Rules 57C and 57CC of erstwhile Central Excise Rules, 1944 used in both dutiable as well as exempted goods is admissible when neither separate accounts maintained nor 8% of price reversed ? Modvat credit availed on furnace oil used in production of own final products as well as for jub work articles cleared without payment of duty and without reversing proportionate credit ? Rules 57C(2) and 57C(2) ibid showing that Rule 57CC(1) ibid not applicable when inputs are intended to be used as fuel ? Furnace oil used as fuel in the present case ? Tribunal''s order is sustainable ? Section 35G of Central Excise Act, 1944 ? Rule 6 of Cenvat Credit Rules, 2004 ? appeal dismissed.

4. Therefore where the inputs are intended to be used as fuel, the manufacturer is not obliged to maintain separate accounts. It is for this reason that both the Appellate Authority and the Tribunal held that in case of inputs which are used as fuel for the manufacture of both duty paid and non-duty paid products, no recovery could be made.

5. Therefore the substantial question of law is answered against the revenue and the civil miscellaneous appeal is dismissed. No costs.

