
(2015) 08 SC CK 0132

In the Supreme Court Of India

Case No : Civil Appeal No. 2043 of 2006

Commissioner of Central Excise, Patna

APPELLANT

Vs

New Swadeshi Sugar Mills

RESPONDENT

Date of Decision : 19-08-2015

Acts Referred:

Central Excise Rules, 2002 — Rule 12, Rule 12(1), Rule 12(2), Rule 12(3), Rule 12(4)
CENVAT (Credit) Rules, 2002 — Rule 3, Rule 3(3), Rule 6, Rule 9

Citation : (2015) 323 ELT 222 : (2015) 9 SCALE 397 : (2016) 1 SCC 614

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : A.K. Sanghi, Senior Advocate, Ritesh Kumar and B. Krishna Prasad, for the Appellant; S.K. Bagaria, Sr. Adv., Praveen Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J—The Respondent (hereinafter referred to as the " Assessee ") had two units, one is for the manufacture of sugar and molasses and the other for distilling of denatured spirit, which is dutiable product and rectified spirit, which is non-dutiable product. The Assessee had applied for grant of single licence for both the units as the distilling unit was using molasses manufactured by sugar unit, as inputs, for the manufacture of dutiable and non-dutiable products i.e. denatured spirit and rectified spirit respectively and also because of the reason both these units were located in the same premises. This request of the Assessee was allowed and the Assessee was granted the single licence.

2. In the present case, we are concerned with the CENVAT Credit which was earned by the Assessee in terms of CENVAT Credit Rules, 2001 which were in existence. These Rules were superseded by new Rules, namely, CENVAT Credit Rules, 2002 (hereinafter referred to as the "Rules, 2002").

3. It would be relevant to point out here that under the CENVAT Credit Rules, 2001, the Assessee was also paying duty @ 8% of the value of the exempted

goods cleared by it in lieu of the CENVAT Credit availed by it on the inputs utilized in the manufacture of its goods. The duty was obviously paid on the dutiable products, namely, denatured spirit. The issue pertains to the utilization of the CENVAT Credit which was already accumulated in favour of the Assessee at the time when the Rules, 2002 were brought into force. The utilization of the major portion of the credit was denied to the Assessee by the Adjudicating Authority invoking the provisions of Rule 6 of the Rules, 2002. The Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"), however, reversed the aforesaid decision of the Commissioner holding that Rule 6 has to be given effect to prospectively and it would not come in the way of the CENVAT Credit already earned and accumulated by the Assessee. Since interpretation of Rule 9 read with Rule 6 as well as Rule 3(3) of the Rules, 2002, is involved, we re-produce the relevant Rules 3(3), 6 and 9 as under:

Rule 3. CENVAT credit.-

(1) xxx

(2) xxx

(3) The CENVAT credit may be utilized for payment of-

(a) any duty of excise on any final product; or

(b) an amount equal to CENVAT credit taken on inputs if such inputs are removed as such or after being partially processed; or

(c) an amount equal to the CENVAT credit taken on capital goods if such capital goods are removed as such; or

(d) an amount Under Sub-rule (2) of Rule 16 of Centrall Excise Rules, 2002.

Provided that while paying duty, the CENVAT credit shall be utilized only to the extent such credit is available on the last day of the month for payment of duty relating to the month.

Provided further that the CENVAT credit of the duty paid on the inputs used in the manufacture of final products cleared after availing of the exemption under the notification numbers 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508 (E) dated the 8th July, 1999] and 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509 (E) dated the 8th July, 1999], shall be utilized only for payment of duty on final products, cleared after availing of the exemption under the said notification numbers 32/99-Central Excise, dated the 8th July, 1999 and 32/99-Central Excise, dated the 8th July, 1999.]

Provided also that the CENVAT credit of the duty paid on the inputs used in the manufacture of final products cleared after availing of the exemption under the notifications No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565 (E), dated the 31st July, 2001], No. 56/2002-Central Excise dated the 14th November, 2002, [G.S.R. 764 (E) dated the 14th November, 2002], No. 57/2002-

Central Excise, dated the 14th November, 2002 [G.S.R. 765 (E), dated the 14th November, 2002] and No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] shall respectively be utilized only for payment of duty on final products, in respect of which exemption under the said notifications No. 39/2001-Central Excise dated the 31st July, 2001, 56/2002-Central Excise dated 14th November, 2002 and No. 57/2002-Central Excise dated 14th November, 2002, and No. 56/2003-Central Excise dated the 25th June, 2003 is availed."

Rule 6. Obligation of manufacturer of dutiable and exempted goods.-

(1) The CENVAT credit shall not be allowed on such quantity of inputs which is used in the manufacture of exempted goods, except in the circumstances mentioned in Sub-rule (2).

Provided the CENVAT credit on inputs shall not be denied to job worker referred to in Rule 12B of the Central Excise Rules, 2002 on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.

(2) Where a manufacturer avails of CENVAT credit in respect of any inputs, except inputs intended to be used as fuel, and manufactures 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 dutiable final products and the quantity 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) The manufacturer, opting not to maintain separate accounts shall follow either of the following conditions, as applicable to him, namely:

(a) if the exempted goods are-

(i) goods falling within heading No. 22.04 of the First Schedule to the Tariff Act;

(ii) Low Sulphur Heavy Stock (LSHS) falling within Chapter 27 of the said First Schedule used in the generation of electricity;

(iii) Naphtha (RN) falling within Chapter 27 of the said First Schedule used in the manufacture of fertilizer;

(iv) Omitted.

(v) newsprint, in rolls or sheets, falling within heading No. 48.01 of the said First Schedule;

(vi) final products falling within Chapters 50 to 63 of the said First Schedule,

(vii) Naptha (RN) and furnace oil falling within Chapter 27 of the said First Schedule used for generation of electricity;

(viii) goods supplied to defence personnel or for defence projects or to the Ministry of Defence for official purposes, under any of the following notifications of the Government of India in the erstwhile Ministry of Finance (Department of Revenue), namely:

(1) No. 70/92-Central Excise, dated the 17th June, 1992, G.S.R. 595 (E), dated the 17th June, 1992;

(2) No. 62/95-Central Excise, dated the 16th March, 1995, G.S.R. 254 (E), dated the 16th March, 1995;

(3) No. 63/95-Central Excise, dated the 16th March, 1995, G.S.R. 255 (E), dated the 16th March, 1995;

(4) No. 64/95-Central Excise, dated the 16th March, 1995, G.S.R. 256 (E), dated the 16th March, 1995,

the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to inputs used in, or in relation to, the manufacture of such final products at the time of their clearance from the factory; or

(b) if the exempted goods are other than those described in condition (a), the manufacturer shall pay an amount equal to eight per cent, of the total price, excluding sales tax and other taxes, if any, paid on such goods, of the exempted final product charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

Explanation I.-The amount mentioned in conditions (a) and (b) shall be paid by the manufacturer by debiting the CENVAT credit or otherwise.

Explanation II.-If the manufacturer fails to pay the said amount, it shall be recovered along with interest in the same manner, as provided in Rule 12, for recovery of CENVAT credit wrongly taken.

(4) No CENVAT credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods, other than the final products which are exempt from the whole of the duty of excise leviable thereon under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year.

(5) The provisions of Sub-rule (1), Sub-rule (2), Sub-rule (3) and Sub-rule (4) shall not be applicable in case the exempted goods are either-

i. cleared to a unit in a free trade zone; or

ii. cleared to a unit in a special economic zone; or

iii. cleared to a hundred per cent, export-oriented undertaking; or

iv. cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

v. supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 108/95-Central Excise, dated the 28th August, 1995, number G.S.R. 602 (E), dated the 28th August, 1995; or

vi. cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002.

vii. gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting.

Rule 9. Transitional provision.-

(1) Any amount of credit earned by a manufacturer under the CENVAT Credit Rules, 2001, as they existed prior to the 1st day of March, 2002 and remaining unutilized on that day shall be allowable as CENVAT credit to such manufacturer under these rules, and be allowed to be utilized in accordance with these rules.

(2) A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

4. Argument of Shri A.K. Sanghi, learned senior Counsel appearing for the Revenue, is that Rule 9, which is a transitional provision, makes it very clear that the unutilized credit is allowable as CENVAT Credit to the manufacturer under "these Rules", as stipulated in Rule 9 and, therefore, for this purpose, for utilization of the said credit, Rules, 2002 are to be followed. On that basis, it is argued that Rule 6 would become applicable and it does not allow CENVAT Credit on such quantity of inputs which is used in the manufacture of exempted goods, coupled with the circumstances mentioned in Sub-rule 2 and, insofar as Sub-rule 2 is concerned, the case of the Assessee is not covered there.

5. This very contention was raised before the Tribunal also and the Tribunal has repelled the same in the following manner:

Rule 9 of the CENVAT Credit Rules, 2002 clearly enacts that any amount of credit earned by the manufacturer under the CENVAT Credit Rules, 2001, as they existed prior to 1st day of March, 2002, and remaining unutilized credit on the day, shall be allowable as CENVAT Credit to such manufacturer under these rules and be allowed to be utilized in accordance with these Rules. The perusal of this rule leaves no doubt that it allows the utilization of the already earned credit by a

manufacturer under the earlier CENVAT Credit Rules, 2001. Then, Rule 3(3) of the Rules, 2002 permits the utilization of the already earned MODVAT credit for payment of any duty of excise on any final product or for payment of duty on inputs or capital goods.

Rule 6, which has been relied upon by the Revenue, only speaks of non-availability of the MODVAT credit to a manufacturer after the enforcement of these rules, when he is engaged in the manufacture of exempted goods also falling under heading 22.04 of the Tariff Act. From the perusal of this Rule, it is evident that under the new CENVAT Credit Rule, 2002, no credit shall be allowed to the manufacturer on such quantity of inputs which is used in the manufacture of exempted goods and those exempted goods have been detailed in Clause 3(a) of this rule. This rule nowhere takes away the right of a manufacturer to utilize the already accumulated credit under the earlier CENVAT Credit Rules of 2001. This rule only prohibits the availability of credit under the new CENVAT Credit Rules, 2002, to a manufacturer engaged in the manufacture of exempted goods specified therein.

6. We are in agreement with the aforesaid interpretation given by the Tribunal to Rule 6 inasmuch as the CENVAT Credit which was already earned by the Assessee, could not have been taken away if the rigors of Rule 6 would be having only prospective effect. At this juncture, we would like to refer to the following observations of this Court in *Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc.*, AIR 1999 SC 3234 : (1999) 65 ECC 354 : (1999) ECR 4 : (1999) 112 ELT 353 : (1999) 5 JT 595 : (1999) 4 SCALE 669 : (1999) 7 SCC 448 : (1999) 1 SCR 360 Supp : (1999) AIRSCW 3205 : (1999) 7 Supreme 456 , wherein the significance of such CENVAT Credit in favour of the manufacturer is described:

17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands canceled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

18. It is, therefore, that in the case of Eicher Motors Limited and Another Vs. Union of India and Others Etc., AIR 1999 SC 892 : (1999) 81 ECR 7 : (1999) 106 ELT 3 : (1999) 1 JT 205 : (1999) 1 SCALE 230 : (1999) 2 SCC 361 : (1999) 1 SCR 295 : (1999) AIRSCW 563 this Court said that a credit under the MODVAT scheme was "as good as tax paid".

7. Going by the spirit of the aforesaid observations, we have no doubt in our mind that the view of the Tribunal is perfectly justified and does not call for any interference.

8. The appeal is accordingly dismissed.

9. The result of this would be that the Assessee shall be allowed to the entire accumulated CENVAT Credit. However, the figure which is submitted by the Assessee can be verified by the authorities