(2012) 03 GUJ CK 0136

In the Gujarat High Court

Case No : Tax Appeal No''s. 1086 with 1540 of 2010

Commr. of C. Ex., Ahmedabad-I APPELLANT

Vs

Rohan Dyes and Intermediated Ltd. RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 5A(1A)

Citation : (2013) 195 ECR 374 : (2012) 284 ELT 484

Hon'ble Judges : Bhaskar Bhattacharya, Acting C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Y.N. Ravani, for the Appellant; Devan Parikh, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, A.C.J.

1. Both these appeals are taken up together as common question arises for determination in these appeals. These appeals are at the instance of the Revenue and are directed against a common order dated March 22, 2010 passed by the Customs, Excise & Service Tax Appellate Tribunal West Zonal Bench, Ahmedabad ("the Tribunal") by which the appeals preferred by the respondents before us were allowed.

2. The respondents are engaged in the manufacture of dyes and dye intermediates. The respondents purchased certain raw materials like Aniline & Beta Napthol and sent those to a job worker for conversion and thereafter, the job worker converted those materials into necessary intermediate goods and sent those goods back to the selfsame respondents, namely, manufacturer of final product.

3. The respondents manufactured their final product in the form of dyes. The job workers, instead of sending back those materials using the Challans without payment of duty, decided to pay duty and cleared the goods under invoice.

4. In such circumstances, the Revenue took a stance that the respondents-manufacturer should have reversed Cenvat credit taken before sending the goods to the job worker as the job worker had not followed the procedure for job work.

5. In these appeals, the Revenue has raised the following questions of law :

(i) Whether the job workers can prefer to pay excise duty in spite of having exemption notification bearing No. 214 of 1986, exempting the job worker from paying duty, in view of amended provision of Section 5A(1A) of Central Excise Act, 1944 inserted w.e.f. 13-5-2005?

(ii) Whether the Tribunal below committed error in not appreciating the aspect that it was case of sale and not a case of job worker, as finished material was sent back with invoice?

(iii) Whether the assessee is availing dual benefit of credit by accepting the goods sent to job worker on sale invoices?

(iv) Whether the Tribunal below committed error in interpreting Rule 3(5) and Rule 4(5)(a) of Cenvat Credit Rules, 2004 by not appreciating the aspect that the activities of three manufacturers could not be termed as job work and there was double availment of Cenvat credit?

6. By relying upon the aforesaid questions, Mr. V.N. Ravani, learned counsel, appearing on behalf of the Revenue strenuously contended before us that the Tribunal below committed substantial error of law in allowing the appeals preferred by the appellants before it.

7. Mr. D.V. Parikh, learned Senior Counsel, appearing on behalf of the respondents, on the other hand, opposed the aforesaid contention of Mr. Ravani and by relying upon a three-judge-bench decision of the Supreme Court in the case of International Auto Ltd. v. Commissioner of Central Excise, Bihar, reported in 2005 (183) E.L.T. 239 (S.C.), submitted that the questions so raised by the Revenue are fully answered by the Supreme Court in the above decision and the selfsame principle has been followed by the Tribunal. Mr. Parikh, therefore, prays for dismissal of these appeals.

8. After hearing the learned counsel for the parties and after going through the materials on record, we find that in the case relied upon by Mr. Parikh, the appellant therein used TELCO''s inputs as well as its own inputs in manufacturing the assemblies. It cleared the assemblies from its factories upon payment of excise duty on the completed floor plate assemblies by including the value of only the inputs put in by the appellant and adding thereto its service charges. By show cause notice dated February 22, 1994, the appellant in that case was called upon to show cause as to why it should not be charged with short-levy of excise duty for the period from February 28, 1993 to August 31, 1993 on the ground that value of TELCO''s inputs in the assemblies should have been included in the assembly value of the assemblies.

9. The departmental authorities confirming the demand also levied penalty on the appellant after having negatived the contention that the demand was in any way barred by limitation. The Tribunal upheld the finding of the departmental authorities on the basis of the decision of the Supreme Court in the case of M/s. Burn Standard Company Ltd. and another Vs. Union of India and others, but reduced the penalty.

10. In such case, it was contended on behalf of the appellant that the entire transaction between the TELCO and the appellant was covered by Rule 57F(2)(b) of the Central Excise Rules, 1944. According to the said appellant under those Rules, the assessee is the manufacturer of final product and in that case, excavators. The manufacturer of the final product, according to the appellant, was permitted to remove the inputs to a place outside the factory for the purpose of manufacture of intermediate products so that they return to the factory for further use in the manufacture of final product. The appellant therein contended that in such a case, the credit can be taken by the manufacturer of the final product on the inputs purchased by it which are made available to the intermediate product produces. According to the appellant therein, Modvat credit is taken by the manufacturer of the final product on the inputs supplied by it to the manufacturer of the intermediate products which credit is reversed ultimately when the final product is removed from such manufacturers'' factory. The appellant therein further contended that as far as the appellant (the intermediate purchaser) was concerned, it was not liable to pay duty on the inputs supplied by TELCO since it had not taken credit for modvat in respect of those inputs nor could value of the inputs be added to the excisable value of the assemblies.

11. In such case, the Supreme Court made the following observations :

We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were supplied free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.

12. If we apply the aforesaid principle to the facts of the present case, there is no dispute that according to the modvat scheme, it is the modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product and thus, in the facts of the present case, the Tribunal rightly rejected the contention of the Revenue that the respondents should have reversed the Cenvat credit taken before sending the goods to the job worker since the job worker had not followed the procedure of job work. It may not be out of place to mention here that that what was earlier provision contained in Rule 57F(2)(b) is exactly the present provision of Rule 4(5A) of the Cenvat Credit Rules, 2004.

13. We do not find any substance in the contention of Mr. Ravani that the job workers cannot prefer to pay excise duty in spite of having exemption notification bearing No. 214/86 exempting the job workers from paying duty in view of the mandatory provision of Section 5A(1A) of the Act. Similarly, we are also not impressed by the submission of Mr. Ravani that it was a case of sale and not the case of job work so as to attract the aforesaid principle laid down by the Supreme Court in the above case. On consideration of the entire materials on record, we thus hold that the Tribunal below rightly applied the decision of the Supreme Court in the case of International Auto Ltd. (supra) to the facts of the present case and allowed the appeal of the respondents.

14. The Tax Appeal No. 1086 of 2010 is thus dismissed. In the facts and circumstances of the case, however, there will be no order as to costs. In view of the dismissal of the above appeal, other appeal being Tax Appeal No. 1540 of 2010 is also dismissed on the above ground as it relates to the penalty imposed upon the Director of the company.

