(2014) 06 GUJ CK 0003

In the Gujarat High Court

Case No : Special Civil Application No. 4683 of 2004

Darshan Industries APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 11-06-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 307 ELT 36

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Paritosh Gupta and Paresh M. Dave, Advocate for the Appellant; R.J. Oza and Dharmishta Raval, Advocate for the Respondent

Judgement

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Mukesh R. Shah, J.—By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ or order for quashing and setting aside the order No. C-III/2002/WZB/2003, dated 30-9-2003 (Annexure-E) 2004 (178) E.L.T. 345 (Tri.-Mum.)] by holding and declaring that the petitioners were entitled to avail credit of Rs. 1,28,117/-. The facts leading to the filing of the Special Civil Application in nutshell are that the petitioner Firm is engaged in the business of manufacturing texturised yarns using Partially Oriented Yarn (POY) as input. In the month of April, 1994, the petitioner purchased yarns from three different dealers, who were dealers and agents of M/s. Baroda Rayon Corporation Ltd. of Surat, a manufacturer of POY. It is the case of the petitioner that the petitioner-Company was given original invoices issued by the manufacturers with endorsement of the above dealers that yarn was sold to the petitioner by them and also bills/invoices of the dealers for the said yarn sold by them to the petitioner for which the petitioner took credit of Rs. 1,28,117/- which were duties actually paid by the manufacturer - M/s. Baroda Rayon on POY purchased by the petitioner from the above dealers. The petitioner filed return for April, 1994 and reported all the above transactions to the Central

Excise authorities. Thereafter, a show cause notice was issued to the petitioner, denying the above credit of Rs. 1,28,117/-, solely on the ground that the invoices of manufacturer Baroda Rayon were not in the name of the petitioner, but, were in the names of the dealers, who had endorsed the invoices in favour of the petitioner, and, as such, such documents were not admissible for Modvat credit. Then, the Assistant Commissioner of Central Excise passed an order denying the credit on 28-2-1996.

2. Feeling aggrieved and dissatisfied by the order passed by the Assistant Commissioner denying the credit, the petitioner preferred an appeal before the Commissioner (Appeals), who rejected the appeal of the petitioner by order dated 20-11-1997 on the ground that the endorsed invoices were not valid documents with effect from 1-4-1994.

3. Being aggrieved and dissatisfied by the aforesaid two orders, the petitioner preferred an appeal before the learned Appellate Tribunal, who dismissed the appeal of the petitioner on the ground that the manufacturer''s invoices were not in the name of the petitioner and it also doubted the genuineness of the invoices issued by the dealers, upon which the reliance was placed by the petitioner.

4. Feeling aggrieved and dissatisfied with the aforesaid three orders, more particularly, the order passed by the learned Tribunal (Annexure-E), the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

5. Shri Paritosh Gupta, learned Advocate appearing on behalf of the petitioner, has vehemently submitted that, as such, the petitioner did produce the invoices issued by the dealers, which were with respect to the very goods, which were manufactured and sold by the manufacturers-Baroda Rayon and it is submitted that, as such, neither the Asst. Commissioner nor the Commissioner (Appeals) considered the same. It is submitted that when same was pointed out to the Tribunal, the learned Tribunal dismissed the appeal and confirmed the order passed by the Asst. Commissioner. It is, further, submitted that the Asst. Commissioner as well as the Commissioner (Appeals) erred in holding that, since, the manufacturer''s invoices were not in the name of the petitioner, the petitioner is not entitled to get the credit and wrongly doubted the genuineness of the invoices issued by the dealers. It is also submitted that without giving any opportunity of hearing to the petitioner, the learned Tribunal has given findings with respect to the genuineness of the dealers'' invoices, which is not permissible, as it is against the principles of natural justice.

6. Shri Gupta, further, submitted that even otherwise, ignoring the invoices issued by the dealers, on the basis of the invoices of the manufacturer, endorsed by the dealers, the petitioners shall be entitled to the Cenvat credit. He has heavily relied on a decision of the Rajasthan High Court in the case of Union of India (UOI) Vs. Rajasthan Spinning and Weaving Mills Ltd., . It is submitted by Shri Gupta that in the aforesaid decision, the Rajasthan High Court has taken a

view that on the endorsed invoices issued by the intermediatory purchaser, having sold the goods in transit, the assessee/subsequent purchaser can avail Cenvat/Modvat credit. Making the above submissions and placing the reliance on the above referred decision, it is prayed that the present petition be allowed.

7. Shri R.J. Oza, learned Counsel, has appeared on behalf of the respondent. He has tried to support the impugned judgment and order passed by the learned Tribunal by submitting that as such the learned Tribunal has categorically given findings with respect to the genuineness of the invoices issued by the dealer/ dealers. However, when it was pointed out to Shri Oza that the learned Tribunal has, as such, not doubted the genuineness of the invoices issued by the manufacturer, he fairly conceded to the same. He, therefore, requested that the appropriate order be passed.

8. Heard the learned Advocates for the respective parties, at length. At the outset, it is required to be noted that the petitioners have been denied Cenvat credit solely on the ground that the Cenvat credit is claimed on the invoices, though, issued by the manufacturers, but, in name of the dealer/dealers and not in the name of the petitioners and on the basis of the invoices endorsed by the dealers, which were in the name of the dealers. However, the Tribunal disputed the genuineness of the same. Be that as it may, it is an admitted position that in the present case invoices are issued by the original manufacturer-Baroda Rayon, which are on the record, and the manufacturers paid the duty for the same, for which the Cenvat credit has been claimed. It is also required to be noted that, as such, invoices issued by the manufacturer, may be in the name of the dealers, the genuineness of the same is not doubted by the Department and, as such no finding; has been recorded by the learned Tribunal with respect to the genuineness of invoices issued by the original manufacturer. Therefore, the short question which arises for the consideration of this Court is, as to whether, on the basis of the invoices issued by the manufacturer, though, may be in the name of the dealers from whom the assessee had purchased the goods and the duty is paid by the manufacturer on the same goods, the purchaser can claim Cenvat credit?

9. Identical question came to be considered by the Rajasthan High Court in "Union of India v. Rajasthan Spinning & Weaving Mills Ltd." (supra), Dealing with the similar situation and considering the aforesaid issue/question, whether the Cenvat or Modvat credit is available to the assessee on the endorsed invoices issued by the intermediatory purchaser, the Rajasthan High Court observed and held as under;

"8. It is not in dispute and doubt that availing of Modvat credit is not confined to an immediate purchaser from the manufacturer. The Modvat credit is availed by the person who has actually used any duty paid goods as inputs in the manufacture of goods, of the excise duty paid on such inputs by the manufacturer of such goods and the credit has not been availed in respect thereof by any other person. In the present case, on facts it is not in dispute that the invoices were issued by the manufacturer, M/s. Terene Fibers India Ltd. In favour of M/s. Reliance Industries Ltd. And M/s. RIL has transferred the goods in favour of the respondent-assessee in transit, without receiving them in its godown by endorsing the invoices issued by the manufacturer as under:

"The entire consignment covered under this invoice is endorsed to M/s. Rajasthan Spinning & Weaving Mills Ltd. Banswara".

9. Thus, the goods were transferred to the respondent-assessee by the first purchaser in transit by making an endorsement on the invoices received by him, which was the document of title in the goods and is a normal mode of transacting the goods in transit. It is also not in dispute that the subsequent purchasers of the inputs using the same in the manufacturer of goods can avail the Modvat credit and it need not be availed by purchaser at the fist instance, as the first purchaser need not be a manufacturer by himself. That is even clear from reading of Rule 57G, which was in force at the relevant time. There is no dispute about the fact that the assessee has furnished the declaration required by him under sub-rule (1) of Rule 57G of Central Excise Rules. The proviso to Rule 57G at the relevant point reads as under:

"Provided that no credit shall be taken unless the inputs are received in the factory under the cover of a Gate Pass, an AR-1, a Bill of Entry or any other document as may be prescribed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) in this behalf evidencing the payment of duty on such input.

10. These requisite documents to be produced along with the declaration were to provide proof to the satisfaction of the authorities about payment of duty on such inputs in respect of which the Modvat credit is availed by a manufacturer using those inputs. There is no dispute in the present case also about the fact that the endorsed invoices issued by the manufacturer evidence payment of duty on such inputs. Therefore, the only controversy, which emanates from combined reading of the order of the Assessing Officer namely; Assistant Commissioner, Central Excise, goes to show that the impediment felt by the revenue in allowing the respondent-assessee to avail the Modvat credit was about the first dealer having sold the goods in transit by endorsing invoices before or without receiving the goods at its premises, before issuing invoices in favour of the respondent-assessee and the invoices issued by the manufacturer were endorsed evidencing the transfer of goods in transit, which carried with it proof of payment of duty on such inputs.

11. The trade notices referred to by the Commissioner (Appeals) clearly indicated that it was not imperative for the intermediary purchaser to have issued a separate invoice, when even the material has not actually reached the godowns to the first purchaser and who has sold to the subsequent purchaser. The sellers, in such circumstances can only issue an invoice of the goods in transit and endorse the invoice issued by manufacturer to enable the buyer in transit to take

delivery of goods covered under invoice. The presentation of his invoice would also satisfy the requirement of Rule 57G. In fact, the requirement was to produce the gate pass and the invoice issued by the manufacturer evidencing payment of duty on such input as proof of payment of duty on such inputs can be covered by the gate pass issued by the manufacturer or the invoice issued by the manufacturer himself. The endorsement put on it does not take away its value as evidence of payment of duty on such goods.

12. Construing the said proviso to Rule 57G(2) in connection with availing the Modvat credit in respect of customs duty paid on raw material imported from outside the country and not used by the importer, but was used by the manufacturer or by the subsequent purchaser, by obtaining endorsed bill of entry.

13. The Division Bench of this Court in Union of India v. M/s. Alcobex Metals Ltd., decided on 2nd December, 2003, has said:

"Apparently, so far as the Rule itself is concerned, it speaks that what is required is a bill of entry evidencing payment of duty on such inputs whether such imported goods are used by importer for manufacture or the importer himself does not use the goods to manufacture as inputs but transfers to other who use such imported goods as inputs in manufacturing. In latter case, it is further required to prove that importer has not availed refund or dues paid by him while claiming adjustment against countervailing duty.

14. Having thus concluded, the Court further found on that count no question of law arises for considering payment whether the endorsed bill of entry can be considered as a document, fulfilling the requirement of Rule 57G(2) of the producing the prescribed documents.

15. Moreover, the trade notification relied on by the Assessing Authority does not require that the goods in transit cannot be transacted by endorsement of the documents of title and on that basis the Modvat credit cannot be availed. Merely by providing an alternative method or the additional method for availing the Modvat credit in respect of transaction, which has taken place in transit, does not take away the entitlement to avail the Modvat credit on the basis of original endorsed document evidencing the payment of duty on such inputs."

10. It is fairly conceded by Shri Oza, learned Counsel appearing for the respondents, that against the aforesaid decision of the Rajasthan High Court, the matter is not carried further before the Hon''ble Supreme Court. We have considered the judgment rendered by the Rajasthan High Court in the case of "Union of India v. Rajasthan Spinning & Weaving Mills Ltd." (supra). We are in complete agreement with the view taken by the Rajasthan High Court in holding that on the basis of the endorsed invoices issued by the intermediatory purchaser and the invoices issued by the manufacturer, the assessee shall be entitled to claim the credit on the goods, on which the manufacturer has paid the duty. In view of the above and for the reasons stated herein above, present petition succeeds and the impugned order bearing No. C-III/2022/WZB/2003,

dated 30-9-2003 (Annexure-E), is hereby quashed and set aside and it is held that, in the present case, the petitioner was entitled to avail credit of Rs. 1,28,117/-. Necessary consequence shall follow. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, there shall be no order as to costs.

