

(2019) 12 GAU CK 0020

In the Gauhati High Court

Case No : Central Excise Appeal No. 1, 2, 3, 4, 5 Of 2018

Dharampal Satyapal Ltd

APPELLANT

Vs

Commissioner Central Excise And Service Tax

RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:

Central Excise Act, 1944 — Section 3, 3(2), 3A, 4, 4A, 16, 35G
Pan Masala Packing Machines (Capacity Determination And Collection Of Duty) Rules,
2008 — Rule 2(b), 5, 15
Central Excise Rules, 2002 — Rule 16

Citation : (2019) 12 GAU CK 0020

Hon'ble Judges : Suman Shyam, J; Parthivjyoti Saikia, J

Bench : Division Bench

Advocate : Dr. Ashok Saraf, B Sharma

Final Decision : Allowed

Judgement

Suman Shyam, J

1. Heard Dr. Ashok Saraf, learned senior counsel assisted by Mr. P. Baruah, learned counsel appearing for the appellant. We have also heard Mr. Bipul Sharma, learned Standing Counsel, Central Excise Department, appearing for the respondents.

2. The common judgment and order dated 18.07.2017 passed by the learned Central Excise and Service Tax Appellate Tribunal (CESTAT), Kolkata in Appeal Nos.E/75556-75559/14 and Appeal No.E/75434/15 has been assailed by filing the present appeal under Section 35 G of the Central Excise Act, 1944.

3. The following substantial questions of law had been framed by this Court in all these appeals at the time of admission :-

"1. Whether the order dated 18.07.2017 passed by the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), East Zonal Bench, Kolkata is based on correct appreciation of the provisions of the Central Excise Act, 1944, the Central

Excise Rules, 2002, the Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 and the CENVAT Credit Rules, 2004?

2. Whether the provisions of CENVAT Credit Rules, 2004 are applicable in respect of the duty paid under Section 3A of the Central Excise Act, 1944 and whether CENVAT credit in the present case can be denied by taking recourse to the provisions of CENVAT Credit Rules, 2004?

3. Whether the adjudicating authority could have passed final order on the grounds not taken in the show cause notice by building up a new case against the notice?"

4. The case of the appellant, briefly stated, is that it has been engaged in the business of manufacturing Pan Masala falling under the first schedule of the Central Excise Tariff Act, 1985 and is also covered under Section 3A of the Central Excise Act, 1944 when sold in pouches from its factory. The appellant had received back duty paid finished products, whereafter, those were reconditioned and reprocessed and thereafter sent to the market in bulk packing. The appellant had availed CENVAT credit on such returned goods as per section 16 of the Central Excise Rules, 2002. However, the jurisdictional Additional Commissioner had issued show cause cum demand notice alleging that the appellant had wrongfully availed Cenvat Credit. The matter had ultimately gone up to the (CESTAT) and by the impugned order dated 18.07.2017 passed in a batch of Applications, the learned tribunal had ruled in favour of the revenue. Hence, these appeals.

5. Dr. Saraf, learned senior counsel for the appellants has argued that since the reprocessed products were not packed in pouches with the aid of packing machines, those goods cannot be said to be covered under section 3A of the Central Excise Act, 1944. As such, Rule 15 of the "Pan Masala Packing Machines (Capacity Determination And Collection of Duty) Rules, 2008 [for short "Rules of 2008"] would not have any application in this case. As such, submits Dr. Saraf, the appellant's case would fall under section 3 of the Excise Act, 1944 and therefore, would be covered by Rule 16 of the Central Excise Rules, 2002.

6. Responding to the said submission Mr. Sharma, learned departmental counsel, has argued that even if it is held that Rule 15 of the Rules of 2008 is not applicable in this case, even in than, the revenue would have the jurisdiction and authority to verify as to whether the products re-processed at the factory would qualify as "inputs" within the meaning of Central Excise Rules, 2002. On such ground Mr. Sarma submits that even if the impugned order is set aside by this Court, the matter be remanded back for a fresh decision on the above issue.

7. There is no dispute in this case that the scented Pan Masala sold by the appellant in pouches would come under the definition of notified products within the meaning of section 3A of the Central Excise Act, 1944 and accordingly excise duty on those pouches have also been paid by the appellant. Therefore, the only

controversy in this case is as to whether even the re-processed products sold in bulk would also come within the purview of Rule 2008 thereby disentitling the appellant from claiming Cenvat Credit in respect thereof.

8. We have bestowed our thoughtful consideration upon the rival submissions advanced at the bar and have also gone through the materials available on record.

9. From a careful perusal of the impugned order dated 18.07.2017 we find that the learned Tribunal had rejected the claim of the appellant by relying upon Rule 15 of the Rules of 2008 by opining that the said rule creates a bar preventing the appellant from availing the benefits under Rule 16 of the Central Excise Rules, 2002. The operative part of the impugned order dated 18.07.2017 is quoted herein below for ready reference :-

"On plain reading of Rule 16 of Central Excise Rules, 2002, it is clear that for duty paid goods brought back to the factory, the assessee is entitled to take Cenvat Credit on inputs as per Cenvat Credit Rules, 2004. On the other hand, Rule 15 of Pan Masala Packing machines (Capacity Determination and Collection of Duty) Rules, 2008 imposed restriction that no Cenvat Credit of duty paid on inputs used in the manufacture of notified goods under section 3A of the Act shall be taken under the Cenvat Credit Rules, 2004. To sum up, the manufacturer of notified goods under section 3A of the Act is not entitled to take credit under the Cenvat Credit Rules. There is an express provision under Rule 16 of the Central Excise Rules that clearly mentions that duty paid returned goods would be treated as inputs under Cenvat Credit Rules, 2004. Rule 15 of the Pan Masala Packing machines (Capacity Determination and Collection of Duty) Rules, 2008 had debarred availment of credit under the Cenvat Credit Rules. Hence, the assessee is not entitled to take input credit in view of Rule 16 of the Central Excise Rules, 2002 on the duty paid returned goods."

9. From the above, it is apparent that the core controversy arising in this proceeding would centre around interpretation of Rule 16 of the Central Excise Rules, 2002 as well as Rule 15 of the Rules of 2008.

10 Rule 16 of the Central Excise Rules, 2002 reads as follows :-"16. Credit of duty on goods brought to the factory. -

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer

shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be."

11. Rule 2(b) of the Rules of 2008 defines "notified goods" as follows :-

"2(b)."notified goods" means goods specified by the Central Government by Notification No.29/2008- C.E.(N.T.) dated the 1ST July 2008 under sub-section (1) of section 3A of the Act."

12. As per Rule 5 of the Rules of 2008, quantity of notified goods shall be deemed to be produced by use of operating packing machine as per the entry specified in the table appended thereto.

13. Rule 15 of the Rules of 2008 deals with admissibility of Cenvat credit. Rule 15 is reproduced herein below :-

"15. Cenvat credit not admissible.-

Notwithstanding anything contained in these rules, no CENVAT credit of duty paid on any input capital goods or input services used in or in relation to manufacture of the notified goods shall be taken under the CENVAT Credit Rules, 2004 and the full amount of duty payable would be paid in cash only."

14. From a careful examination of the scheme of Rule 15 of the Rules of 2008 read with Rule 5, we are of the considered opinion that the said Rule would apply only in case of notified goods coming under the purview of section 3A of the Central Excise Act, 1944 but not in case of manufactured products which would be covered by section 3 of the Act of 1944.

15. In this case, there is no dispute about the fact that the re-processed products were not sent to the market in pouches by using packing machines. If that be so, it is evident that Rule 15 of the Rules of 2008 would not have any application in this case. Consequently, we hold that the Cenvat credit availed by the appellant on the re-conditioned products sold in bulk quantity would fall under Rule 16 of the Central Excise Rules 2002. Therefore, we are unable to concur with the views of the learned CESTAT, as noticed above, on this issue.

16. Mr. Sarma has argued that even dehors Rule 15 of the Rules of 2008, the question of applicability of Rule 16 of the Central Excise Rule, 2002 on the reprocessed products cannot be readily presumed so as to hold that such goods were received as "inputs" so as to claim Cenvat credits under the Rules of 2002. We find from the record that the aforesaid issue was not raised in the show cause cum-demand notice and therefore, the learned CESTAT also did not have any occasion to go into the aforesaid aspect of the matter. Under the circumstances, we are not inclined to entertain the aforesaid issue in the present batch of appeals. The respondents are, however, granted liberty to initiate appropriate action in the matter in accordance with law, if so advised.

17. For the reasons stated above, these appeals succeed and are hereby allowed.

The impugned judgment and order dated 18.07.2017 stands set aside.
Parties to bear their own cost.