(2021) 10 CESTAT CK 0029

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 12705 Of 2018

Essel Propack Limited APPELLANT

Vs

C.C.E. And S.T.-Daman RESPONDENT

Date of Decision : 11-10-2021

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57B, 57C, 57D, 57E, 57F, 57G, 57H, 57I, 57J, 57K, 57L, 57M, 57N, 57O, 57P
Central Excise Act, 1944 — Section 11A, 11B

Citation : (2021) 10 CESTAT CK 0029

Hon'ble Judges : Ramesh Nair, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The brief facts of the case are that the appellant has availed Cenvat credit pertaining to period of 2009-2010 and 2010-11 in July 2013. The case of the department is that the appellant has not availed the Cenvat credit immediately on receipt of inputs therefore, it becomes time bar accordingly, the Cenvat credit was denied.

2. Shri Prasad Paranjape and Shri Mohit Raval, advocates appeared on behalf of the appellant. Shri Prasad submits that there is no time limit prescribed for taking credit. Therefore, the department cannot prescribe the time limit. He submits that time limit was prescribed by notification no 21/2014-CE dated 11.07.2014. The present case is pertaining to the period prior to the said notification therefore, in absence of any time limit the appellant have taken the credit even though belatedly the same cannot be denied on the ground of time bar. He placed reliance on the following judgments:

? Raghuvar (India) Ltd - 2000 (118) ELT 311(SC)

? Balkrishna Textiles Mills Pvt. Ltd- 2016 (340) ELT 55 (Guj.)

? SGS India Private Limited - 2011 (270) ELT 115 (Tri. Guj)

? Steel Authority of India Limited - 2013 (287) ELT 321 (Tri. Del)

? Borosil Glass Work s Limited- 2015 (319) ELT 119 (Tri. Mum)

? Transformers and Rectifiers- 2010 (262) ELT 983 (Tri. Ahd)

? Industrial Cables - 2009 (236) ELT 658 - (P&H)

? Ram Sawrup Electricals Ltd- 2007 (217) ELT 12 (All.)

? Pratibha Syntex Ltd - 2013 (287) ELT 290

? Citadel Fine Pharmaceuticals - 1989 (42) ELT 515 (SC)

? Brakes India Ltd - 1997 (96) ELT 434

? Mold-tek Technologies Ltd- 2006 (205) ELT 415

3. On the other hand Shri Vinod Lukose, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the findings of the impugned order. He submits that even though the time limit is not prescribed during the relevant period, the appellant is supposed to take the credit within the reasonable time period. Since the appellant have taken the credit after 2-3 years the same is liable to be disallowed. Accordingly, the impugned order is correct and legal. He also placed reliance on the following judgments:

? Mold-tek Technologies Ltd- 2006 (205) ELT 415

? Citadel Fine Pharmaceuticals - 1989 (42) ELT 515 (SC)

? Brakes India Ltd - 1997 (96) ELT 434

? Mysore Lac & Paint Works Ltd - 1991 (52) ELT 5920(Tri.)

4. I have carefully considered the submission made by both the sides and perused the records. The appellant have taken the credit in the month of July 2013 in respect to the goods received during the period 2009-10 and 2010-11. During that period no time limit was prescribed for taking the credit. Therefore, in my considered view the department cannot import the time limit which is not statutorily stipulated in the law. The time limit has been prescribed by the Notification No 21/2014-CE (NT) dated 11.07.14 whereby the assessee is suppose to take the credit within 6 month/1 Year from the date of invoice. Considering this amendment for the past period this tribunal has considered the similar issue wherein it was held that the invoice issued prior to date of Notification No 21/2014-CE (NT) dated 11.07.2014 the Cenvat credit cannot be denied on the ground of limitation. The relevant judgment is as under:

? Alok Master batches Pvt Ltd vs CCE &ST- Daman- 2021 VIL 170 CESTAT-AHD

"4. I have heard both the sides and perused the records. I find that the major issue to be decided is that the cenvat credit was availed after 01.09.2014, in respect of invoices issue prior to 01.09.2014. In the light of the amendment notification no 21/2014-CE(N.T.) whether the claim of cenvat credit is time barred. I find that though there are various decision on the issue however, the Division Bench in the case of BHARAT ALUMINIUM COMPANY LTD. V/S. JOINT COMMISSIONER OF CENTRAL EXCISE, CENTRAL TAX GOODS AND SERVICE TAX. held that the limitation of 6 months provided as per notification no 21/2014-CE(N.T.) is not applicable in cases where the invoices were issued before the notification came into effect i.e. 01.09.2014. the Delhi bench in said case has relied upon the judgment of Delhi High Court in the case of GLOBAL CERAMICS PRIVATE LIMITED AND ORS.-2019-TIOL-1129-HC-DEL-CUS. The relevant para of said judgment of BHARAT ALUMINIUM COMPANY LTD. (Supra) is reproduced below.

5. Having expressed our anguish, we note that the issue is no more res Integra. Reliance can be placed to the following decisions; (i) Indian Potash Ltd. vs Commissioner of Central GST, Meerut [2018 (10) TMI 1367-CESTAT Allahabad] (ii) Hindustan Coca Cola Beverages Pvt. Ltd. vs. Commissioner of Central Tax [2018 (10) TMI 1366- CESTAT Bangalore] (iii) Industrial Filters & Fabrics Pvt. Ltd. vs. CGST & CE, Indore[2019 (1) TMI 1426-CESTAT New Delhi] (iv) Suryadev Alloys and Power Pvt Ltd. vs. Commissioner of GST & Central Excise, Chennai [2018 (11) TMI 1019-CESTAT Chennai] 4 E/53851-53852/2018-[DB] (v) Umesh Engineering Works vs. Commissioner of Central Tax, Bengaluru West [2019 (1) TMI 1158- CESTAT Bangalore] (vi) Sarda Energy and Minerals Ltd. vs. CCE & ST, Raipur [2019 (4) TMI 473-CESTAT New Delhi] Wherein it was clearly held that the six month limitation provided with effect from 01/09/2014 would not apply to the cenvatable invoices issued prior to said date. The other decisions relied upon by the Ld. Advocate are also to the same effect but multiplying the precedent decisions would not make a difference as it is a settled law. Further, not only various Tribunals' decisions but Hon'ble Delhi High Court also in case of Global Ceramics Private Limited and Ors. vs. The Principal Commissioner of Central Excise and Ors. W.P. (C) 6706/2016 and W.P. (C) 9152/2016 has also observed to the same effect in paragraph 11.4 of their decisions.

6. As such, we find that the issue is no more res Integra and stands settled in favour of the assessee. However, the fact that the invoices in question were prior to 01/09/2014 is required to be verified. The Original Adjudicating Authority is directed to do so, with the association of appellant to whom an opportunity would be given.

4.1 In view of the above decision which is based in Delhi High Court judgment of GLOBAL CERAMICS PRIVATE LIMITED AND ORS (supra), I am of the view that the appellant is entitled for the Cenvat Credit since all the invoices on which cenvat credit was claimed were issued prior to 01.09.2014.

5. The revenue is at liberty to verify this fact, therefore the impugned order is not sustainable and the same is set aside. Since the entire demand is set aside. The personal penalty imposed on Shri Vijay Kumar Srivastaw will also not sustain the same is also set aside. Both the appeals are allowed with consequential relief,

if any, in accordance with law."

4.1 This issue has been considered by the Honb'le Punjab and Haryana High Court in the case of Industrial Cables (Supra) wherein the same issue of limitation for availing the Cenvat credit was considered. The Hon'ble High court has passed the following order:

"5. We have heard Mr. Kamal Sehgal, learned counsel for the revenue. The principle question raised before us is whether a period of limitation of 6 months for availing Modvat credit during the relevant period could be introduced when no provision existed. It is relevant to mention that in the present case we are concerned with the period from 4-1-1989 to 1-2-1991. It is significant to notice that Rule 57G of the erstwhile Central Excise Rules, 1945 prescribing limit of six months was introduced on 29-6-1995 which had prospective effect. Therefore, it has to be concluded that no period of limitation was prescribed by any statutory provision. The question is no longer res integra. The Supreme Court in the case of Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd. - 2000 (118) E.L.T. 311 (S.C.) = (2000) 5 SCC 299 has held that the period of limitation cannot be imported by the Courts by implication in the absence of a specific provision made in that regard. The view of the Supreme Court is discernible from reading of few lines from para 13 of the judgment, which are as under :-

"13. Any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the Courts to import any specific period of limitation or implication, where there is really none, though Courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period......."

6. The aforementioned principle has been followed by a Division Bench of Allahabad High Court in the case of Collector of Central Excise, Allahabad v. Ram Swarup Electricals Ltd., 2007 (217) E.L.T. 12. It has been held that amendment to Rule 57G prescribing the limit of six months was introduced on 29-6-1995 which is prospective in its operation and in respect of the period earlier to that no limitation was prescribed. Therefore, it was concluded that any transaction earlier to 29-6-1995 was not to attract the period of limitation of six months and the dealer was within its right to avail the shortfall in the Modvat credit at any time.

7. In the light of the aforementioned principles and precedents, the facts in the present case are required to be examined. The period involved herein range from 4-1-1989 to 1-2-1991 and would, therefore, not be hit by the amendment made in Rule 57G which was introduced on 29-6-1995. Accordingly, the aforementioned 3 questions of law are answered as under :-

(i) The interpretation of Rule 57G adopted by the Tribunal is incorrect and unjust and , therefore, the period of limitation of six months imported by the tribunal in Rule 57G is unsustainable as the tribunal or the court are not competent to import any specific period of limitation by implication;

(ii) &(iii) In view of answer to the first question, the question Nos. (ii) and (iii) also have to be decided against the revenue and in favour of the dealer.

8. As a sequel to the above discussion, the reference is answered in favour of the dealer and against the revenue."

4.2 The same issue was considered by Hon'ble Allahabad High Court in the case of Ram Sawrup Electricals Ltd (supra) wherein the Hon'ble High Court passed the following order:-

4. At the outset it may be mentioned here that except the statement of case sent by the Tribunal there is no document on record. We are proceeding to decide the present Reference on the basis of the record available before us and on the basis of the arguments advanced by the learned Counsel for the parties. Shri K.C. Sinha submitted that even though during the relevant period there was no limitation provided under Rule 57A of the Central Excise Rules the time limit provided under Section 11B of the Act would be applicable and, therefore, any amount of Modvat credit which has been availed of falls short of the actual amount which could have been availed ought to have been taken credit of within six months and not beyond it. In support of his submission he has relied upon a Division Bench of the Gujarat High Court in the case of Wipro Ltd. v. Union of India [1992 (60) E.L.T. 370]. He submitted that as the period of six months had expired the respondents would not be entitled to avail of the difference in the amount of Modvat credit. Shri Pankat Bhatia submitted that provisions of Section 11B of the Act is not applicable in a case of Modvat credit as the same is governed by Rules 57A to 57P of the Central Excise Rules, 1944 as held in the case of Collector of Central Excise, Jaipur v. Raghuvar (India) Ltd. reported in 2000 (118) E.L.T. 311 (S.C.). He submitted that like provisions of Section 11A of the Act which has been held to be not applicable to the provisions of Rule 57-I of the Act relating to Modvat credit, Section 11B is also not applicable. He further submitted that the Apex Court in the case of Collector ofCentral Excise, Pune v. Dai IchiKarkaria Ltd. [1999 (112) E.L.T. 353] has held that the credit under the Modvat Scheme which is available is indefeasible and it has no co-relation with the raw material and the final product it can be availed at any time. According to him no period of limitation having been prescribed under Section 57A of the Rules, the respondents were entitled to avail the difference of Modvat credit relating to short fall at any time.

5. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties. It is not in dispute that the respondents have availed of the differential amount of duty paid in input as Modvat after a period of six months but on the basis of some documents which they had submitted lesser amount of Modvat credit was availed by them while taking the benefit of Rule 57A of the Central Excise Rules, 1944. In the case of Raghuvar (India) Ltd. (supra) the Apex Court has held as follows :

"13. ......It is not for the Courts to import any specific period of limitation by implication, where there is really none, though Courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period. Section 11A is not an omnibus provision which provides any period of limitation for all or any and every kind of action to be taken under the Act or the Rules but will be attracted only to cases where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded. The section also provides for an extended period on certain contingencies and situations. The situation on hand and the one which has to be dealt with under Rule 57-I, as it stood unamended, does not fall under any one of those contingencies provided for in Section 11A of the Act. Part AA of the Rules in which Rule 57-I is found included provides a special scheme for earning credit and adjustment of duty paid on excisable goods used in inputs in the manufacture of what is referred to as "final product, and thereby enable the manufacturer to utilize the credit so allowed towards payment of duty of excise leviable on the final products, in the manner and subject to the terms and conditions stipulated therein. The manufacturer, in this case while removing the final product manufactured has adjusted against payment of excise duty on such final product a part or portion of the credit earned by him under the special scheme and what is sought to be really and in substance done is to inform the manufacturer that the adjustment he purported to have made was with an amount not legitimately or factually earned by or due to him. For this purpose, the irregularity and impropriety committed by the manufacturer in maintaining the accounts and the error in the calculation of the credit said to have been earned by him is pointed out and the manufacturer is only directed to reverse the credit so wrongly and undeservedly made by readjustment and if need be, to recover the amount equivalent to such credit wrongly availed of and disallowed by the proper officer. The recovery of credit availed of and utilized in utter breach of the faith and mutual trust and confidence which is the raison d'etre for the proper and successful working of the Modvat scheme and that too in gross violation of the mandatory requirements necessarily to be fulfilled before ever claiming or availing of such benefits cannot be said to be the same as the demand for payment to be made under Section 11A of the Act of any excise duty not levied or paid or has been short levied or short paid. They fall into two distinct and different altogether with basic as well as substantial differences to distinguish them from each other. As a matter of fact, Rule 57-I envisages disallowance of the credit and consequential adjustment in the credit account or the amount current maintained by the manufacturer and if only any such adjustment are not possible proceed to recover the amount equivalent to the credit illegally availed of. Consequently, the situation postulated to be dealt with under Rule 57-I cannot be said to involve a case of manufacture and removal of excisable goods without subjecting such goods to levy or payment of the various nature and category enumerated in Section 11A of the Act on its own terms will have no application or operation to cases covered under Rule 57-I of the Rules.

14.......The provisions contained in Section 11A are general in nature and application and the Modvat Scheme being a specific and special beneficial scheme, with self-contained procedure, manner and method for its implementation, providing for its own remedies to undo any mischief committed by the manufacturer in abuses thereof, the provisions of the said special scheme alone will govern such a situation and there is no scope of reading the stipulations contained in the general provisions like Section 11A into the provisions of the Rules in question which alone will govern in its entirety the enforcement of the Modvat Scheme. The question as to the relative nature of the provisions general or special has to be determined, with reference to the area and extent of their application either generally in all circumstances or specially in particular situations and not on the ground that one is a mere provision in the Act and the other is a provisions in the Rule. We are not also concerned in this case with any challenge to the inconsistency of a rule with any statutory provisions in the Act.

15.......The restricted operation of the provisions contained in Section 11A is found inherently in built due to the specification of the various categories of cases enumerated in the provision itself to be dealt with. The scheme of Modvat introduced for the first time in 1986 did not consider it necessary either to have its own period of limitation in built in the Rules nor has the enforcement of the scheme been made subject to Section 11A of the Act. The fact that even when an amendment was made on 6-10-1988, it was prospective in nature and the amendment was not given any retrospective effect indicates the intention unmistakably that the subsequent amendment should have no impart on the construction to be placed on the provisions as it existed before such amendment. The further fact that the amendments to Rule 57-I had its own pattern of limitation and method of computation of such limitation also would militate against the manner of construction adopted by the decisions of the High Courts other than that of the Gujarat High Court."

6. In the case of Dai IchiKarkaria Ltd. (supra) the Apex Court has held as follows :

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit of 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 obtained an acknowledgement 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 cancelled or, if utilized, 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 correlation 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 Ltd. v. Union of India [1999 (106) E.L.T. 3] this Court said that a credit under the Modvat scheme was "as good as tax paid"."

7. In view of the principle laid down by the Apex Court in Raghuvar (India) Ltd. (supra) provisions of Section 11A of the Act is not attracted and cannot be imparted in respect of the Rules framed for availing of the Modvat, the same principle would apply for the purpose of Section 11B of the Act also. In view of the decision of the Apex Court in Raghuvar (India) Ltd. (supra) the law laid down by the Gujarat High Court in the case of Wipro Ltd. (supra) cannot be said to be a good law any more. We are, therefore, of the considered opinion that provisions of Section 11B of the Act is not attracted in the case of Modvat which is governed by Rules 57A to 57P. Further, during the relevant period no limitation had been provided for availing of the Modvat credit and the amendment in Rule 57G prescribing the limit of six months was introduced on 29th June, 1995 which has prospective effect. Thus, the respondents were within their right to avail the short fall in the Modvat credit at any time.

8. In view of the foregoing discussions, we answer the questions referred to us in favour of the assessee and against the Revenue. There will be no order as to costs."

5. In view of the above settled legal position of law the cenvat credit cannot be denied on the ground of limitation in absence of any statutory time limit prescribed.

6. Therefore, the impugned order is not sustainable hence the same is set aside. Appeal is allowed.

(Pronounced in the open court 11.10.2021)

