(1995) 06 GAU CK 0010

In the Gauhati High Court

Case No : Civil Rule No. 1303 of 1988

Fairlie Industries Pvt.Ltd APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-06-1995

Acts Referred:
Central Excise Rules, 1944 — Rule 57B, 57B, 8(1), 8(1)

Citation : (1995) 2 GLJ 287

Hon'ble Judges : D.N.Baruah, J

Bench : Single Bench

Advocate : S.S.Goswami, P.K.Goswami, N.Dutta, K.N.Choudhary, Advocates appearing for Parties

Judgement

1. In this petition under Article 226 of the Constitution the petitioner has challenged the Annexure F order dated 17.5.88 issued by the respondent No.3 directing the 4th respondent to get the refunded amount of duty adjusted in the RG23A (II) account maintained by the final product manufacturer and also Annexure G order dated 27.6.88 issued by the respondent No.4 directing the respondent No.7 to debit 7% advalorem duty taken on credit earlier. This order to debit was given in view of exemption of 7% duty granted to the petitioner company as SSI Unit.

2. The case of the petitioner for the purpose of disposal of this writ petition may be stated as follows : Petitioner is a Private Limited Company having a factory at 7th Mile, Dimapur, Nagaland. Petitioner company is a small scale industrial unit and its factory manufactures veneer and peeling roller which are basic raw materials for manufacture of plywood.

3. The normal rate of excise duty of veneer under Central Excise Tariff Act is 12%. However, in view of notification No. 175CE/86 dated 1.3.86 issued under Rule 8 (1) of Central Excise Rules, 1944, the excise duty payable by a manufacturer of veneer in small scale industrial unit is 5%. The petitioner accordingly was liable to pay only 5% excise duty. But the concession was not

given immediately as the petitioner company could not produce the necessary documents and accordingly the petitioner company was compelled to pay the full amount of 12% initially. However on production of the necessary documents, the amount thus paid was refunded. The 7th respondent took the credit of 12% under the provisions of Rule 57B of the Central Excise Rules.

4. In the Central Budget of 1986 the Finance Minister had announced a modified system of value added tax, for short, MOD VAT. The scheme provided for instant credit of excise duty and additional duty of customs paid on inputs when used in or in relation to the manufacture of the final products. This scheme enable a manufacturer to avail of instant and complete reimbursement of the specified duties paid on the inputs. This was aimed at decrease cost of the final product considerably both on account of availability of credit of the duties paid on the inputs and on account of reduction of interest costs. The scheme wouldfurther avoid payment of duties on earlier duties paid. The procedure of duty draw back would be simpler, as the element of excise duty would be transparent in the first stage.

5. Rule 57G prescribes the procedure that a manufacturer need only send an intimation to the concerned Assistant Collector about the articles on which he proposes to have the MOD VAT credit. The notification dated 1.3.86 specifies the inputs and the extent of duty paid thereon which would be allowed as credit when used in or in relation to the manufacture of the final product. A credit under MODVAT scheme is available to the manufacturer of a final product classifiable under any of the chapters specified in column 3 of the tables annexed to the said notification. The final product should be dutiable. When the final product manufacturer is exempted from excise duty, no credit of duty paid on the inputs would be available. The next point to be seen how much credit will be allowed. The amount of credit allowed under the scheme is equal to the excise duty or additional duty of custom or any other specified duty actually paid on the inputs, as evidenced by the related Gate Pass.

6. Again under Rule 57B, provisions have been made for allowing credit of the duty which may be in excess of the duty actually paid on the inputs made by the small scale units. This facility shall be available only in respect of cases where the notification allowing concessional rate of duty for small scale units provides for such higher credit. The duty exemption for small scale units is available under Notification No. 175/86CE dated 1.3.86. Under the said notification provision has been made for allowing credit of duties in respect of goods which are subject to concessional rate of duty and used as inputs under MODVAT, as the rate that would be leviable but for the exemption available under the said notification. The small scale units are required to indicate the amount of duty leivable but for the exemption in the Gate Pass. This notification was applicable at the material time Under the provisions of Rule 57B of the Rules, the credit of specified duty on inputs may, in a case where the duty on inputs has been paid under a notification issued under subrule (1) of Rule 8 exempting such inputs from a part of the duty

leviable thereon on the basis of value of clearances of such inputs during any specified period, be allowed at the rate otherwise applicable to such inputs but for the said notification: Provided that the said notification provides for grant of credit in respect of such inputs at such higher rates as may be specified therein.

7. In the instant case the petitioner is a small scale industrial unit and the notification was issued under Rule 8(1) of the Rules. By Annexure C notification the Central Government in exercise of power under Rule 8 (1) allowed concessional rate of duty under clause (5) which is relevant for the petitioner''s case. As per the said notification (Annexure C) the petitioner company being a small scale industrial unit was entitled to concessional benefit at that relevant time. Though the central excise duty was 12% the petitioner company was required to pay only 5%. In view of the provisions of Rule 57B, the final product manufacturer (respondent No.7) was entitled to take credit of the entire 12%. Accordingly the 7th respondent took the creditand it was entered in Account No.RG23 A (II). The 3rd respondent, thereafter, by order dated 17.5.88 (Annexure F) directed the 4th respondent to get the refunded amount of duty adjusted in the RG23A (II) Account maintained by the final product manufacturer. Pursuant to this order (Annexure F) the Annexure G order was issued by the 4th respondent directing the 7th respondent to debit 7% advalorem duty taken credit earlier. This order to debit was given in view of refund of 7% duty granted to the petitioner company. Hence the present petition.

8.1 have heard the learned counsel of both sides. Mr. Dutta, learned counsel for the petitioner submits that in view of Rule 57B the final product manufacturer was entitled to take credit of the entire duty. On perusal of the MODVAT and the provision contained in Rule 5 7B, 7% concession given to the petitioner company cannot be adjusted in RG23A (II) account maintained by the final product manufacturer as directed by respondent No.3 and respondent No.4 by annexure F and G respectively.

9. In view of the position discussed above, Annexure F and Annexure G orders are without jurisdiction and contrary to the provisions of law. Accordingly I set aside the Annexure F and Annexure G orders and the writ petition is allowed.

