

(2014) 11 MAD CK 0492

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 180 of 2007

Gangadharam Appliances Ltd.

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal

RESPONDENT

Date of Decision : 06-11-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11AC, 3

Citation : (2015) 320 ELT 209

Hon'ble Judges : R. Sudhakar, J; R. Karuppiyah, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—This appeal is filed by the Department against the order dated 11.8.2006 in Appeal No. E/922/99 (Final Order No. 853/2006) passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai, raising the following substantial questions of law:

(a) Whether the chargeability to duty under Section 3 of the Central Excise Act can be enforced without there being a removal of excisable goods under Rule 9 or for captive consumption under Rule 49 of erstwhile Central Excise Rules?

(b) Whether manufacture will complete only when the excisable goods are marketable?

(c) Whether Notification No. 67/95, dated 16.3.1995 is clarificatory in nature and has retrospective operation?

(d) Whether the Tribunal is right in not considering the scope of notification applicable to the present case?

(e) Whether the demand under the extended period of limitation is permissible when there is no clandestine removal?

(f) Whether the Tribunal is right in confirming the demand under extended period of limitation when the facts were available on record and the department had taken the figures from the balance sheet which is a statutory document?

(g) Whether the Tribunal is right in not giving any finding on the aspect of availability of input credit in the manufacture of goods meant for export?

(h) Whether the Tribunal is right in upholding the imposition of penalty (however reduced) in absence of mentioning of particular clause of Rule 173Q of the Central Excise Rules?

(i) Whether the Tribunal can reject the appeal without considering each submission raised in the grounds of appeal?

2.1. The facts in a nutshell are as under: The appellant is engaged in the manufacture of pressure cookers and vacuum flasks. They also manufacture stainless steel vessels and restaurant items. According to the appellants, the goods are exempted from central excise duty.

2.2. There was a surprise inspection of the appellant's unit by the officers of the Central Excise Department on 22.3.1996 and 10.4.1996. On verification of records maintained by the assessee, it was found that certain MODVAT inputs as well as capital goods were exclusively used in manufacture of stainless steel vessels and other restaurant items. The department was, prima facie, of the view that the appellant had misused MODVAT credit scheme and evaded central excise duty. Accordingly, a show cause notice was issued by the Commissioner of Central Excise, Chennai in S.C.N. No. 21/98, dated 25.5.1998, requiring the appellant to show cause on the following issues:

(1) Why the MODVAT credit of Rs. 1,39,333/- availed on paint based on silicon resin and water based Poly Tetra Fluoride Ethylene (P.T.F.E.) material under Rule 57A, as detailed in Annexure-I, which are used exclusively in manufacture of exempted product, should not be denied under sub-Rule (2) of Rule 57I of Central Excise Rules, 1944;

(2) Why the MODVAT credit of Rs. 47,719/- availed on Elgi Screw Compressor, Air Compressor, HVLP equipment, etc. under Rule 57Q as detailed in Annexure-I, which are used exclusively in manufacture of exempted products should not be denied in terms of sub-Rule (2) of Rule 57U of Central Excise Rules, 1944;

(3) Why the MODVAT credit of Rs. 10,91,446/- availed on 0.80 mm coils under Rule 57A as detailed in Annexure-II should not be denied in terms of sub-Rule (2) of Rule 57I of Central Excise Rules, 1944, inasmuch as the above input is not used in manufacture of excisable/dutiable products?

(4) Why the MODVAT credit of Rs. 11,61,312/- representing the proportionate MODVAT credit for the quantity of 0.40 mm, 0.50 mm and 0.63 mm S.S. Coils used in manufacture of exempted products as shown in Annexure-III should not be denied under sub-rule (2) of Rule 57I of Central Excise Rules, 1944;

(5) Why an amount of Rs. 51,09,014/- representing the Central Excise Duty involved in Dies manufactured and captively consumed within their factory should not be demanded under proviso to sub-section (1) of Section 11A of the

Central Excise Act, 1944;

(6) Why a penalty should not be imposed under Rule 173Q of Central Excise Rules, 1944 for the above mentioned contraventions;

(7) Why a penalty equal to the proposed total duty/MODVAT credit demand should not be imposed in terms of Section 11AC/Rule 57I(4) of Central Excise Act and Rules respectively;

(8) Why an amount of Rs. 4,00,397/- paid by M/s. Gal as part payment towards (1) wrong availment of MODVAT credit on inputs/capital goods (Rs. 1,50,397/-) used exclusively in manufacture of exempted products (non-stick cookware/restaurant items) and (2) in-eligible MODVAT credit on 0.80 mm SS coils (Rs. 2,50,000/-) should not be confirmed and adjusted towards the above proposed demand;

(9) Why the duty amount paid by the assessee from time to time towards the clear of 0.80 mm SS coils from the stock of 35.015 tons (as recorded by officers during their visit on 6.6.96 under a mahazar) subsequently should not be confirmed and adjusted towards the above proposed demand.

The details of the wrongful availment of MODVAT credit are set out in the statement of grounds annexed to the show cause notice as Annexures I to IV.

2.3. The appellant submitted a reply to the show cause notice. Thereafter, the matter was considered on merits and the Commissioner of Central Excise, Chennai, adjudicated the matter and passed the following order:

28. Summing up the above discussions, the following findings are arrived at:-

Annexure I Modvat credit to the extent of Rs. 1,39,333 taken on paints and Rs. 11064 taken on HVLP system is held as not admissible.

Annexure II The demand has to be confirmed to Rs. 3,00,695/- in as much as only to this extent Modvated inputs have been used in the manufacture of exempted products.

Annexure III A sum of Rs. 3,59,668/- being duty credit taken on 20428.378 Kgs. of coils of the sizes 0.5 mm, 0.4 mm and 0.63 mm used in dutiable products need not be reversed, but a sum of Rs. 8,01,644/- is to be reversed.

Annexure IV A sum of Rs. 11,17,500 is demandable on account of usage of dies during the period 1/3/1994 to 16/3/1995 when there was no exemption on such capital goods.

Insofar as the point of extended period of limitation is concerned, the Commissioner held that only after a detailed enquiry by the department, the facts leading to reversal of credit were unearthed and the liability to pay duty on dyes became evident and, therefore, there was suppression of facts. On the above premise, the Commissioner passed the following order:

I demand a sum of Rs. 12,52,736/- in terms of Rule 57I. I demand a sum of Rs. 11,17,500/- in terms of proviso to Section 11A of the Act. Amounts already paid towards the above demands are to be adjusted. I impose a penalty of Rs. 3,00,000/- in terms of Rule 173Q of the C.E. Rules, 1944 on M/s. Gangadharam Appliances Ltd. No separate penalty under Section 11AC of Central Excise Act 1944, is imposable since the evasion had taken place prior to 29.8.96.

2.4. Aggrieved by the said order, the assessee as well as the department preferred appeals before the Tribunal. The Tribunal allowed the appeal of the assessee only to the extent of reducing the quantum of penalty to Rs. 1,00,000/-. The appeal filed by the department was dismissed by the Tribunal.

2.5. Assailing the said order, the assessee has preferred this appeal on the substantial questions of law, referred supra.

3. We have heard Mr. K. Jayachandran, learned counsel for the appellant and Mrs. Mallika Srinivasan, learned Standing Counsel appearing for the department and perused the orders passed by the Tribunal and original authority.

4. The appellant did not pursue before the Tribunal their challenge against the denial of credit made under Annexure I (with regard to inputs/capital goods to the tune of Rs. 1,39,333/- on paints and Rs. 11,064/- on HVLP system) and Annexure II (with regard to 0.80 mm Stainless Steel coils to the extent of Rs. 3,00,695/-) by the Original Authority. This is also admitted by the assessee.

5. The issues that now remain for consideration are:

(i) whether the reversal of credit to the extent of Rs. 8,01,644/- in respect of 0.40 mm, 0.50 mm and 0.63 mm coils relatable to Annexure-III is correct?; and

(ii) whether the demand of duty of Rs. 11,17,500/- relatable to Annexure-IV with regard to the claim that there was no exemption in respect of tools and dyes which were manufactured and consumed in the factory during the period from 1.3.1994 to 15.3.1995 is correct?

6.1. On the issue relating to Annexure-III, a specific plea has been taken by the assessee in paragraph (3) of the grounds of appeal before the Tribunal, which reads as under:

3. The appellants submit that the purpose of the scheme is to remove the cascading effect of duty on the finished goods. Appellants have in fact suffered on two counts. Credit which was available for use of inputs in the dutiable product were not taken and credit availed on inputs used in the manufacture of goods meant for export were disallowed. The confirmation of demand has result in penalising the appellants twice. Taking into consideration the purpose and intention of the Act and the bonafides of the appellants the learned authority ought to have extended the benefit of MODVAT credit.

6.2. The learned counsel for the appellant placed reliance on a decision of the Bombay High Court in *Repro India Ltd. Vs. Union of India* (UOI) to plead that

even in terms of Rule 57C of the Central Excise Rules, 1944 (as it stood then), the benefit of Modvat credit was available, since the goods were exported.

6.3. We find that the decision in *Repro India Ltd.* case, referred supra, was rendered subsequent to the decision of the Tribunal. Nevertheless, the learned counsel for the appellant would like to canvass the plea raised in paragraph (3) of the grounds of appeal before the Tribunal. We have our own reservation as to the applicability of the decision in *Repro India Ltd.* case, referred supra, to the facts of the present case, as in the case on hand the relevant period is from 1.3.1994 to 16.3.1995 and moreover, the provision Rule 57C of the Central Excise Rules, 1944 (as it stood then) does not contain anything relating to export.

6.4. We find that even though a specific plea has been raised by the appellant in this regard, in paragraph (3) of the grounds of appeal (extracted above), the Tribunal has simply brushed aside the said plea saying that the assessee's appeal does not contain any challenge on this ground. Therefore, there is a clear non application of mind by the Tribunal in this regard.

7.1. As far as the duty demand in respect of exemption claimed for tools and dyes is concerned, the assessee raised a plea in paragraph (5) of the grounds of appeal before the Tribunal as follows:

5. The appellants submit that exemption notification No. 67/95, dated 16.3.1997 is clarificatory in nature and therefore retrospective in operation. In the circumstances no duty is leviable on tools and dies. Order confirming the demand is therefore bad in law.

7.2. Though the notification is referred to by the Tribunal as Notification No. 67/97, dated 16.3.1997, the actual notification is bearing No. 67/95, dated 16.3.1995. The Tribunal discarded the above said legal plea stating that none of these contentions has been substantiated by them. We find no reason is given by the Tribunal on the legal plea raised by the appellant. The Tribunal has merely stated that there is no merit in the assessee's case. We find that the order of the Tribunal is bereft of reasons and there is no analysis of the question of law raised before them. In our considered opinion, on this score also the order of the Tribunal cannot be countenanced.

8. Even in respect of limitation, despite a specific plea taken in paragraph (6) of the appeal grounds, the Tribunal has simply rejected the same saying that the plea has not been substantiated. We find that the order is cryptic and bereft of reasons.

9. In such view of the matter, we find no reason to test the order of the Tribunal in the light of questions of law raised. *Prima facie*, we find that there is no proper reasoning given by the Tribunal taking into consideration the legal plea raised by the appellant. Therefore, the order requires to be reconsidered by the Tribunal on merits on all the legal plea raised by the appellant.

For the foregoing reasons, this appeal is disposed of by remanding the matter to

the Tribunal for fresh consideration of all the legal plea raised by the appellant. The order passed by the Tribunal is set aside. As we are remanding the matter to the Tribunal for fresh consideration of all the legal plea raised by the appellant, we do not propose to answer the questions of law raised in this appeal. No costs. Consequently, M.P. No. 1 of 2007 is closed.