(2003) 12 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 31802 of 2003

Grasim Industries Ltd. — APPELLANT

Vs

C.B.E. and C. — RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:
CENVAT Credit Rules, 2002 — Rule 2G

Citation : (2004) 91 ECC 583 : (2004) 163 ELT 10 : (2004) 1 KarLJ 259

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Rukmini Menon and A. Rama and D. Venkatesh, for the Appellant; N.R. Bhaskar, ACGSC and P.S. Dinesh Kumar, Sr. CGSC, for the Respondent

Final Decision : Allowed

Judgement

R. Gururajan, J.—Petitioner M/s. Grasim Industries Limited, Unit ; Rajashree Cement, is seeking to quash the Circular dated 31-3-2003 in No. 704/20/2003 issued by the first respondent in terms of Annexure-B and to direct the second respondent and his officers to permit the petitioner to avail back the Cenvat Credit of Rs. 3,41,965.00/- on the stock of light diesel oil (''LDO'' for short) as on 28-2-2003.

2. Petitioner is engaged in the manufacture of cement at its plant located at Adityanagar, Malkhed Road, Gulbarga District. Petitioner is having thermal power plant and diesel generating sets. In the diesel generating sets, petitioner is using LDO. Petitioner has been availing credit on the said LDO as an input under Cenvat Credit Rules, 2002. Petitioner was availing credit on the said LDO as an eligible input. Rule 2(g) of the Cenvat Credit Rules ("the Rules") amended to exclude LDO as an input and in Explanation (1), LDO has been included in terms of Notification No. 13/2003 dated 1-3-2003. Annexure-A is the Notification. The Board thereafter issued a circular in terms of Annexure-B. Thereafter, respondent No. 2 by his letter dated 23-4-2003 directed the petitioner to reverse Cenvat credit of Rs. 3,41,965.00/- in terms of the Board''s Circular. Petitioner reversed

the said credit under protest. Petitioner with these facts is before me seeking for various prayers.

3. Respondents have entered appearance. Second respondent has filed a statement of objections. They justify their stand in the matter, According to them, the oil lying in stock as on 28-2-2003 required to be reversed in terms of the Notification dated 1-3-2003.

4. Smt. Rukmini Menon, learned Counsel appearing for the Petitioner argues before me that a vested right is being withdrawn in terms of the impugned circular by the respondents. She says that the goods which were brought to the factory earlier to 1-3-2003 are entitled for the benefits in terms of the Cenvat Credit Scheme. She strongly relies on a judgment of the Supreme Court in Samtel India Ltd. Vs. Commissioner of Central Excise, Jaipur, . Sri Bhaskar, learned Central Government Standing Counsel appearing for respondents would state that the said submission made on behalf of the petitioner is not available in the light of the amended Rule read with the Circular in terms of Annexure-B.

5. After hearing the learned Counsel on either side, I have carefully perused the material on record. Rule 2(g) of the Rules initially defined "input" as follows :

"(g) "input" means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final ting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

"Explanation 1. - The high speed diesel oil or motor spirit commonly known as petrol, shall not be treated as an input for any purpose whatsoever."

The said rule has been amended in terms of Annexure-A. In terms of the amended rule, in Explanation-1, for the words "the high speed diesel oil", the words "the light diesel oil, high speed oil" were substituted. Amended Rule has come into force on 1-3-2003. Respondents thereafter have chosen to issue a Circular in terms of Annexure-B. In Annexure-B it is stated that, if any Cenvat credit had been availed, in terms of Rule 3 of the aforesaid Rules on LDO, lying in stock on 28-2-2003, same is required to be reversed by the assessee. This is challenged in the case on hand.

6. Petitioner admittedly has cleared his goods by availing the benefits in terms of the unamended rule which excluded LDO. Amended rule including LDO has come into force on 1-3-2003. LDO lying in stock as on 28-2-2003 has already been cleared in terms of unamended Rules. Vested right has already been created in terms of the Excise laws. Therefore, respondents, in the light of the amended rule, cannot seek for reversal of stock of LDO as on 28-2-2003 in terms of Annexure-A, Same is impermissible in law. In this connection, it is pertinent to

refer to a direct judgment of the Supreme Court available to the petitioner on identical facts. In the case of Samtel India Ltd. Vs. Commissioner of Central Excise, Jaipur, , the Supreme Court was considering the refund claim with regard to credit of duty in respect of inputs lying or contained in finished products lying in stock on the first day of March, 1977. The facts of the said case would show that the appellant in the said case was a manufacturer of black and white picture tubes. For manufacture of black and white picture tubes, they use inputs on which duty is paid by them. Modvat scheme was in existence at the relevant point of time. They claimed refund in terms of an unamended provision prior to 1-3-1997. Rule 57F(17) of the Central Excise Rules, 1944 was amended on 1-3-1997. Similar words are seen in the amended Rule 57F(17) of the said Rules. It provided that "nothing contained in this clause shall apply to the credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on the first day of March, 1997". Claim was rejected on the ground that the amended Sub-rule 17 comes in the way of refund claim. The Supreme Court, with these facts notices with regard to vested right in these matters. Supreme Court ruled that right to credit became absolute when input was used in the manufacture of final product. Supreme Court notices that :

"It is held that the incident following thereto must take place in accordance with the Scheme under which the duty had been paid on the manufactured product. It is held that if such a situation is sought to be altered necessarily it follows that right which accrued to a party gets affected. It is held that the Scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier Scheme was applicable and under which the assessee had availed of the credit facility for payment of taxes. It is held that the right which accrued to the assessee on the date when they paid the taxes would continue until the facility available thereto gets worked out or until those goods existed. It is held that the amended sub-rule could not applied to the goods manufactured prior to 16th March 1995 (date on which Sub-rule 4A came into existence)."

The Supreme Court also notices two other cases in Eicher Motors Limited and Another Vs. Union of India and Others Etc., and in Osram Surya (P) Ltd. Vs. Commissioner of Central Excise, Indore, . In the reported matter, the Supreme Court ultimately in para-7 of its judgment notices that the amended sub-rule could not be applied to the goods manufactured prior to 16th March 1995, on which Sub-rule 4A came into existence. The dictum of the Supreme Court is equally applicable to the facts of this case. The amended rule cannot be applied to the stock lying on 28-2-2003.

7. In the circumstances, accepting the submission of the learned Counsel for the petitioner, I deem it proper to set aside the circular dated 31-3-2003 in the light of the decision of the Supreme Court in Samtel India Ltd. Vs. Commissioner of Central Excise, Jaipur, . Since the Circular is set aside, a direction is issued to the respondents to permit the petitioner to avail back Cenvat credit of Rs.

3,41,965.00/- on the stock of LDO as on 28-2- 2003. Ordered accordingly. No costs.