

(2010) 06 DEL CK 0056

In the Delhi High Court

Case No : Writ Petition (C) 3899 of 2010

Grasim Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 02-06-2010

Acts Referred:

Central Excise Rules, 2002 — Rule 18

Central Excises and Salt Act, 1944 — Section 35EE

Citation : (2010) 177 ECR 195 : (2010) 256 ELT 553

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : M.P. Devnath and Abhishek Anand, for the Appellant; B.V. Niren and Akriti Gandotra for R-1 and Mukesh Anand and Shailesh Tiwari for R-2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.

CM 7824/2010

Allowed subject to all just exceptions.

WP(C) 3899/2010 and CM 7823/2010

1. This writ petition is directed against the order dated 01.12.2009 issued by the Joint Secretary, Government of India u/s 35EE of the Central Excise Act, 1944 (hereinafter referred to as "the said Act"). The petitioner had claimed rebate in respect of central excise duty paid on raw materials as well as in respect of central excise duty paid on the final products. The petitioner's claim in respect of the rebate qua final products has been allowed by the authorities below. However, the rebate in respect of duty paid on raw materials has been disallowed. It is because of this that the petitioner is before us by way of this writ petition.

2. The petitioner manufactures man-made fabrics as well as polyester! viscose blended yarn falling under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985. For the purposes of manufacturing the said final products, the petitioner employs duty paid inputs as well as other inputs. The duty paid inputs include polyester staple and viscose staple fibre as well as other packing materials and consumables. The products manufactured by the petitioner are cleared for home consumption as well as for exports. In this petition, we are only concerned with the products which are exported on payment of duty under claim of rebate. The petitioner had filed as many as 15 rebate claims covering the period from 2005 to 2006. As aforesaid, the rebate claims were allowed in part inasmuch as the rebate claims qua the duty paid on final products were allowed. The rebate claims which were denied amounted to Rs. 26,11,788/- being the aggregated disallowance in respect of all the 15 claims.

3. Rule 18 of the Central Excise Rules, 2002 (hereinafter referred to as "the said Rules") reads as under:

Rule 18. Rebate of duty. - Where any goods are exported the Central Government may, by notification, grant rebate of duty paid on such excisable goods or duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfillment of such procedure, as may be specified in the notification.

Explanation. - "Export" includes goods shipped as provision or stores for use on board a ship proceeding to a foreign port or supplied to a foreign going aircraft.

A plain reading of the aforesaid Rule indicates that the Central Government has power to grant rebate and that too by notification in respect of duty paid on excisable goods which are exported "or" on duty paid on materials used in the manufacture or processing of such goods. In pursuance of the said Rule 18, the Central Government issued notification No. 21/2004-CE(NT) dated 06.09.2004 for rebate on inputs and notification No. 19/2004-CE(NT) dated 06.09.2004 for rebate on finished excisable goods. The plea of the petitioner throughout has been that the Central Government having issued both the notifications and the petitioner having complied with the conditions stipulated in the notifications, it was entitled to the grant of rebate under both the notifications.

4. The stand taken by the revenue, however, has been that the grant of rebate of duty paid could be availed either on the duty paid on excisable goods or on the duty paid on the materials used in the manufacture or processing of such goods and not both. The stand of the revenue has also been that the notifications are only machinery provisions implementing the principles laid down in Rule 18 of the said Rules. Thus, even where a case falls for grant of rebate under both the notifications, the same cannot be granted because the rule itself prescribes that the grant of rebate shall be made on duty paid on excisable goods "or" on duty paid on materials used in the manufacturing or processing of such goods.

5. The Assistant Commissioner passed orders in respect of the rebate claims

rejecting the rebate claims in respect of both raw materials as well as finished products. When the petitioner went in appeal before the Commissioner of Central Excise (Appeals), he gave part relief to the petitioners in the sense that he allowed the rebate claim in respect of the duty paid on final products but rejected the claim in respect of the duty paid on raw materials. It is thereafter that the petitioner approached the Government of India u/s 35EE by way of revision. The impugned order has been passed in those revisions applications.

6. We have heard the counsel for the petitioner as also the counsel appearing on behalf of the respondents who were present on advance notice. We find that the Government of India in its revisional order had placed reliance on a decision of the Bombay High Court, Nagpur Bench in the case of Commissioner of Central Excise Vs. Indorama Textiles Ltd., The Bombay High Court observed in paragraph 18 of the said decision that in principle the Government had accepted that goods, which are exported from India, should be relieved of domestic levies in order to promote export of domestic products from India and to make them internally competitive and, therefore, the intention of the Legislature was to grant some concession on duty paid on excisable goods or inputs and in order to achieve this objective, Rule 18 was framed whereby rebate of duty paid either on excisable goods, which are exported, or on inputs is provided. The Bombay High Court clearly read the provisions of Rule 18 as prescribing an "either - or" situation meaning thereby that the word "or" appearing in Rule 18 should be read as it is and should not be read as "and" as suggested by the learned Counsel for the petitioner. In paragraph 20 of the said decision, the Bombay High Court observed that if the word "or" is read as "and", it would be wholly inconsistent with the intention of the Legislature as well as object of Rule 18 of the said rules. The Bombay High Court clearly held that the intention of the Legislature was not to grant rebate of duty paid on exported goods as well as on inputs used in such goods simultaneously, which is evident from the language used in Rule 18 of the said Rules itself.

7. The Government of India, in exercising its revisional power u/s 35EE, has correctly followed the decision of the Bombay High Court in coming to the view that the petitioner was not entitled to rebate of duty paid on raw materials after it had already been granted rebate in respect of duty paid on finished products. We agree with the view taken by the Bombay High Court and consequently, we see no fault in the impugned order.

The writ petition is dismissed.