
(2015) 08 AP CK 0063
In the Andhra Pradesh High Court
Case No : C.E.A. No. 27 of 2005

ITC Limited

APPELLANT

Vs

The Customs Excise & Service Tax Appellate Tribunal
and Others

RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11B, 35G

Citation : (2016) 331 ELT 342

Hon'ble Judges : G. Chandraiah and Challa Kodanda Ram, JJ.

Bench : Division Bench

Advocate : M. Bhaskara Lakshmi, for the Appellant; V. Gopala Krishna Gokhale, for the Respondent

Judgement

Challa Kodanda Ram, J.—This appeal is filed under Section 35G of the Central Excise Act, 1944 (in short "the Act"), questioning the Final Order No. 1471 dated 06.09.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (in short, "the Tribunal"), made in Appeal No. E/ Appeal No. 452/2001, raising following substantial questions of law for consideration of this Court:

"i. Whether in the facts and circumstances of the cases, the first respondent is correct in ignoring Order No. 1945/1996 dated 18.10.96 of the Appellate Tribunal which allowed MODVAT credit on felts, wires and dandy cloth used in the manufacture of proper and paper machinery particularly when a claim has been made from 1987 onwards and no appeal has been preferred by the second respondent against the above said order?

ii. Whether the first respondent is correct in not appreciating the fact that in the Form EA.3 filed before the Appellate Tribunal, the period of dispute was indicated as 1987 onwards and the Appellate Tribunal had allowed the appeal vide Order No. 1945/1996 dated 18.10.96?

iii. Whether the third respondent is correct in not holding that later larger Bench decision of the Tribunal in the case of Union Carbide India Ltd. - Vs- CCE 1996 (86) ELT (T) and Order No. 1945/1996 dated 18.10.96 would impliedly overrule the earlier Order No. 643/1991 dated 22-11-91 of the Tribunal and therefore the appellate would be entitled for the benefit of MODVAT credit from 1987 onwards?

iv. Whether the first respondent is correct in denying the credit on procedural grounds when the Hon"ble Supreme Court in the case of Formica India Division Vs. Collector of Central Excise and Others, has held that the benefit of Notification No. 71/71-C.E. cannot be denied on technical ground of non-compliance with Rule 56A procedure?"

2. At the outset, learned Senior Counsel Smt. M. Bhaskara Lakshmi, at the time of hearing, would submit that Question No. iv does not arise from the orders of the Tribunal, and as such, the same need not be considered and answered.

3. The brief facts of the case are that the petitioner is a manufacturer of paperboards and paper products. During the years 1987 to 1992, in terms of Rule 57G of the Central Excise Rules (in short "the Rules"), the appellant filed a declaration on 29.07.1987 seeking to avail MODVAT credit on certain inputs viz., felts, wires, dandy rolls, chipper knives and doctor blades. The Assistant Commissioner refused the same by his order dated 23.02.1988. The said order was challenged by the appellant before the Commissioner (Appeals), Madras, and the same came to be rejected vide Order dated 31.08.1988 in Appeal No. 254 of 1988. The appellant further carried the matter before the CEGAT, Madras, and the same also came to be dismissed on 22.11.1991 in Final Order No. 643 of 1991. The orders of the CEGAT dated 22.11.1991, rejecting the claim of the appellant for availing MODVAT credit on inputs, became final. It may be mentioned here that in the process of appeal the input credit came to be restricted only on felts and wires. In the present appeal, we are concerned only with respect to input credit on felts and wires. The Tribunal rejected the appeal based on its earlier order in the case of Andhra Pradesh Paper Mills Ltd. vs. Collector of Central Excise 1993 (44) ECR 345 , deciding identical case. Thereafter, the Eastern Bench of the CEGAT in contrast took a view that felts and wires also would qualify for grant of MODVAT credit. In view of the conflicting of decisions between the Southern Bench of the CEGAT and the Eastern Bench of the CEGAT, the matter came to be referred to a Larger Bench of the CEGAT and finally, the Larger Bench of the CEGAT in the case of Union Carbide India Ltd. vs. Collector of Central Excise 1996 (66) ECR 1 72 , decided that the MODVAT credit is allowable on the felts and wires. The appellant taking into consideration of the judgments rendered by the CEGAT in the case of Straw Products Ltd. vs. Collector of Central Excise and 1993 (45) ECR 74 , holding that the felts and wires would also qualify for grant of inputs for claiming MODVAT credit, filed a fresh declaration under Rule 57G of the Act on 07.07.1992 before the Assistant Commissioner of Central Excise, Warangal Division. The Assistant Commissioner did not give any acknowledgment. Thereafter, the appellant followed up with

reminder and finally on 03.06.1994, the Assistant Commissioner rejected the benefit of MODVAT credit by referring to the Final Order of the CEGAT, dated 22.11.1991. The appellant challenged the same by way of an appeal, which appeal also came to be rejected and finally the matter came up before the CEGAT, Bangalore. The said Appeal was numbered as Appeal No. F/523/96 and E/472/99/MAS. The said appeal came to be allowed by orders dated 18.10.1996 in Order No. 1945 of 1996, following the Larger Bench decision in the case of Union Carbide India Ltd. vs. Collector of Central Excise 1996 (66) ECR 1 72 . On appeal being allowed, the appellant also filed a Rectification of Mistake Application bearing No. E/ROM/817/97 before the CEGAT to recall and rectify its order dated 22.11.1991 in Appeal No. 643 of 1991. The said application was dismissed on 17.03.1997. The reference application seeking to question the order dated 17.03.1997 also came to be dismissed by this Court. In February, 1997, the appellant availed input credit on felts and wires for the period from 29.07.1987 to 09.07.1992. In the process of scrutinizing RT-12 returns, the Assistant Commissioner noticing of this issued a show cause notice on 04.09.1997 under Rule 57-I of the Rules seeking explanation why MODVAT credit taken should not be reversed. After consideration of the explanation, by an order dated 19.05.1998, the MODVAT credit was directed to be reversed, confirming the show cause notice dated 04.09.1997. Further appeals filed by the appellant before the Commissioner (Appeals) and the CEGAT came to be dismissed, confirming the order dated 19.05.1998 of the Assistant Commissioner. In the above fact-situation, the present appeal is filed by the Appellant questioning the orders of the Tribunal dated 06.09.2004 raising the questions of law set out supra for consideration of this Court.

4. Smt. M. Bhaskara Lakshmi, learned Senior Counsel submits that by virtue of the orders dated 18.10.1996 of the CEGAT, the entitlement of the appellant for availing MODVAT credit on inputs viz., felts and wires came to be confirmed. Thus, the declaration filed by the appellant on 07.07.1992, which resulted in order dated 03.06.1994 rejecting the claim of the appellant for availing the MODVAT credit on account of the reversal of the said rejection order by the Tribunal holding that the appellant is entitled to avail MODVAT credit, became final, as there is no challenge to the same. The appellant in its declaration dated 07.07.1992, filed in the form of EA-3, specifically claimed input credit for the period from 29.07.1987 to 09.07.1992. The same was rejected by the Assistant Commissioner on 03.06.1994, which order came to be reversed by the Tribunal by its order dated 18.10.1996. The natural consequence of the order dated 18.10.1996 is the acceptance of the claim of the appellant made vide their declaration dated 07.07.1992. The learned Senior Counsel by placing reliance on the orders in Union Carbide India Ltd. vs. Collector of Central Excise 1996 (66) ECR 1 72 , would submit that once a law is declared by the Court/Tribunal, the same would endure to the benefit of the party from its beginning. In that view of the matter, the decision of the Larger Bench of the Tribunal in Union Carbide India Ltd. vs. Collector of Central Excise 1996 (66) ECR 1 72 would operate from

the year 1987, and as such, the appellant is entitled to avail the MODVAT credit for the period from 29.07.1987 to 09.07.1992. Whatever may be the position prior to 1992 on account of the order of the Tribunal dated 18.06.1996, which order has not been challenged, the input credit, which has been availed by the appellant, cannot be termed as improper, and as such, the Tribunal has erred in dismissing the appeal of the appellant.

5. On the other hand, Sri Swaroop, learned counsel representing on behalf Sri Gopala Krishna Gokhale, learned Standing Counsel for the Department, supports the order of the Tribunal and places reliance on the judgment of the Supreme Court in *Union Carbide India Ltd. vs. Collector of Central Excise* 1996 (66) ECR 172 .

6. We have considered the rival submissions of both the learned counsel and perused the record.

7. A close perusal of the orders of the Tribunal indicate that the Tribunal had taken into consideration the declaration dated 07.07.1992 made by the appellant, wherein the appellant itself had stated that it may be allowed to avail MODVAT credit on felts and wires in view of the decision of *Straw Products Ltd. vs. Collector of Central Excise* and 1993 (45) ECR 74 . It is also stated therein that it would file a refund claim against the duty paid from 01.03.1987 till the date of acknowledgments and also duty on stocks held as on 28.02.1987 against the above two inputs separately. The said declaration is filed under Rule 57G of the Rules. Rule 57G of the Rules deals only with regard to taking of credit by the method of giving acknowledgments. The same does not relate to claiming of MODVAT credit for the past period. Further the notice dated 04.09.1997 which has been issued by the Assistant Commissioner is in exercise of the power under Rule 57-I of the Rules, proposing to reverse the wrongful MODVAT credit availed. The same was adjudicated upon and the Tribunal found the same to be in order. There was never a claim made by the appellant seeking refund of the MODVAT claim, and the denial of which had become final by virtue of the orders of the Tribunal dated 22.11.1991. In other words, disentitlement of the MODVAT credit for the period from 29.07.1987 to 09.07.1992 became final, thereby the taking of credit by the appellant in February, 1997 became wrongful availment. The same came to be adjudicated upon under Rule 57-I of the Rules, which is the provision dealing with the cases of wrongful availment MODVAT credit. Rule 57-I of the Rules may be noticed.

"Rule 57-I(1): Recovery of Credit wrongly availed of or utilized in an irregular manner:

(i) Where credit of duty paid on inputs has been taken on account of an error, omission or mis-construction, on the part of an officer or a manufacturer, or an assessee, the proper officer may, within six months from the date of filing the return as required to be submitted in terms of sub-rule (8) of rule 57G, and where no such return as aforesaid is filed, within six months from the last date

on which such return is to be filed under the said rule, serve notice on the manufacturer or the assessee who has taken such credit requiring him to show cause why he should not be disallowed such credit and where the credit has already been utilized, why the amount equivalent to such credit should not be recovered from him."

8. In the present set of facts, the order of the Tribunal in *Union Carbide India Ltd. vs. Collector of Central Excise* 1996 (66) ECR 1 72 relied on by the learned counsel for the appellant has no relevance. What all the *Union Carbide India Ltd. vs. Collector of Central Excise* 1996 (66) ECR 1 72 decided is the eligibility of the manufacturers with regard to the entitlement to claim MODVAT credit on felts and wires treating them to be inputs in terms of Rule 57A of the Rules. In the present case, for the period 29.07.1987 to 09.07.1992 the appellant did claim MODVAT credit treating the felts and wires as inputs. But the same was denied on the interpretation of the Rule at that point of time. The decision of denying the input credit came to be challenged by the appellants by resorting to the provisions under the Act and Rules and the denial order came to be affirmed by the Tribunal, which denial became final. The order of the Tribunal, intra parties is binding and there cannot be any two opinions about the same decision. Further the effort made by the appellant seeking rectification of the order of the Tribunal on 22.11.1991 also came to be rejected and in fact the reference which is sought from the said Rectification of Mistake (ROM) order also came to be rejected. In other words, whatever may be the legal position for other manufacturers, so far as the appellant is concerned the decision intra parties is binding and there is no escape from the same. In this context nine judge judgment of the Supreme Court in *Union Carbide India Ltd. vs. Collector of Central Excise* 1996 (66) ECR 1 72 is apt and may be noticed.

Para 79: "One of the important principles of law, based upon public policy, is the sanctity attaching to the finality of any proceeding, be it a suit or any other proceeding. Where a duty has been collected under a particular order which has become final, the refund of that duty cannot be claimed unless the order (whether it is an order of assessment, adjudication or any other order under which the duty is paid) is set aside according to law. So long as that order stands, the duty cannot be recovered back nor can any claim for its refund be entertained."

9. We are also not impressed with the argument of the learned Senior Counsel with reference to the paragraph No. 108 (viii) in the case of *Union Carbide India Ltd. vs. Collector of Central Excise* 1996 (66) ECR 1 72 to the effect that the declaration or the law laid down in the Propositions (i) to (vii) above shall not however entitle the State to recover the taxes/duties already refunded and in respect whereof no proceedings are pending before any authority/Tribunal or Court as on this date.

10. The said observations made in the said paragraph are firstly in the context of interpretation of Sections 11A and 11B of the Act and further in the context of

partly overruling the earlier judgment of the Supreme Court in Union Carbide India Ltd. vs. Collector of Central Excise 1996 (66) ECR 1 72 case.

11. As a matter of fact, the Larger Bench of Supreme Court had categorically held that any duty paid under mistake of law can be recovered only by resort to the provisions of Section 11B of the Act. In the present case though the petitioner in the letter dated 07.07.1992 had categorically stated that an independent application would be made seeking refund claim against the duty paid from 01.03.1997 till the date of acknowledgment, no such refund claim was ever made. The fact that the appellants themselves treated the period from 01.03.1987 onwards as distinct would go to show that the declaration filed on 07.07.1992 is only restricted to their claim for availing MODVAT credit on felts and wires treating them as inputs, especially in the light of the order of the Tribunal in Straw Products Ltd. vs. Collector of Central Excise and 1993 (45) ECR 74 . In other words, the claim of the appellant in the letter dated 07.07.1992 is limited to claim a MODVAT credit from and with effect from 07.07.1992 which came to be denied initially by the authorities and subsequently allowed by the Tribunal setting aside such denial. Thus, making the appellant entitle for the input credit with effect from 07.07.1992. The entire proceedings never dealt with the claim of the appellants for MODVAT credit for the period 29.07.1987 to 09.07.1992. Merely because the dates have been mentioned in the claim petition in the letter dated 07.07.1992 it cannot be presumed that the same was in issue before the authorities and adjudicated upon. Factually there is no basis for such assumption. In that view of the matter, we have no hesitation to reject the arguments of the appellant's counsel that by virtue of the order of the Tribunal dated 18.10.1996 in Order No. 1945 of 1996 made in Appeal No. F/523/96 & E/472/99/MAS, the entitlement of the appellant for the claim of MODVAT credit for the period 29.07.1987 to 09.07.1992 is crystallized. Accordingly, the order of the Tribunal does not call for any interference and the same is in order and the appeal is liable to be dismissed.

12. In the result, the appeal is dismissed and the questions of law are answered in favour of the Revenue and against the appellant. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall also stand dismissed.