
(2013) 02 MAD CK 0108

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1715 of 2005

M/s. Ganesh Steels

APPELLANT

Vs

The Customs Excise and Service Tax and The Commissioner
of Central Excise

RESPONDENT

Date of Decision : 26-02-2013

Acts Referred:

Central Excises and Salt Act, 1944 — Section 5A

Citation : (2013) 197 ECR 368 : (2013) 294 ELT 529 : (2013) 21 GSTR 261

Hon'ble Judges : R. Banumathi, J;K. Ravichandrabaabu, J

Bench : Division Bench

Advocate : K. Jayachandran, for the Appellant; V. Sundareswaran, for the Respondent

Judgement

R. Banumathi, J.—Whether Appellant is entitled to Deemed Credit under Notification No. 01/93-Central Excise dated 28.02.1993 and

Ministry's Order in TS/36/94-TRU dated 01.03.1994, even after the Appellant Unit crossed the value of clearances of Rs. 75 lakhs is the issue

falling for consideration in this appeal. The following substantial questions of law are raised in this appeal:-

1. Whether the deemed credit facility be extended under Government of India's Order No. TS/36/94/TRU dated 1.3.94 to the appellant who

availed the benefit of Notification No. 1/93 CE dated 28.2.93 even after the appellant-unit crosses the value of clearance of Rs. 75 lakhs and

when the appellant-unit pays full rate of duty?

2. Whether the Tribunal is right in rejecting the appeal of the appellant following a larger bench decision of the Tribunal reported in 2000 (118)

ELT 85 especially when the same 1st Respondent-Tribunal in its decisions

reported in 2002 (104) ECR 773 and the other Tribunal decisions

reported in 2004 (171) ELT 462 (Mumbai-Tribunal), which are subsequent to the decision of the larger bench decision? Whether the decision of

the same Tribunal rendered on the same issue, subsequent to the larger bench decision of the Tribunal is binding on the 1st Respondent-Tribunal?

3. Whether the Tribunal can go ahead with the appeal, when a Reference Case is pending on the same issue before this Hon"ble Court and

whether the Tribunal has to wait for the decision of this Hon"ble Court in the same issue?

4. Whether the benefit of exemption/concession remains at Rs. 75 lakhs or extended up to Rs. 2 crores under the Notification No. 1/93-CE dt.

28.2.93?

Brief facts:- Appellant M/s. Ganesh Steels, Sankari are the manufacturer of re-rolling products falling under Chapter 72 and they availed

MODVAT Credit for the inputs used in the manufacture of final products under Rule 57-A of erstwhile Central Excise Rules, 1944. Appellant also

availed deemed credit at the rate of Rs. 920/- per M.T. on the ingots and re-rollable materials of iron and steel purchased from outside. As per

Board's letter F.No. TS/36/94 dated 01.03.1994, the re-rollers availing the exemption under Notification No. 1/93-CE dated 28.2.1993 were

eligible for availing the Deemed Credit on the inputs.

2. As the Appellant crossed the clearance value of Rs. 75 lakhs on 21.09.94, they were not eligible for availing the Deemed Credit, a show cause

notice dated 13.6.1995 was issued to the Appellant calling them to show cause as to why the Deemed Credit of Rs. 5,00,403/- availed by them

during the period from 1st January, 1995 to 31st March, 1995 should not be denied and recovered under Rule 57 (1) of Central Excise Rules, if

they have utilised already and why a penalty should not be imposed on them under Rule 173Q of Central Excise Rules. Appellant had sent its reply

on 03.07.1995 stating that they were the manufacturers of re-rolled products of iron and steel which are falling under Chapter 72 and that they are

Small Scale Unit availing exemption under Notification No. 1/93-CE dated 28.02.1993 and that they have fulfilled all the conditions stipulated in

the Board's order and as per the Board's Order No. TS/36/94/TRU dated 01.03.1994, Deemed Credit would be available to all those Units

availing the exemption under Notification dated 28.2.1993 irrespective of whether the value of their clearance has exceeded the limit of Rs. 75

lakhs or not and requested the authority for dropping the case.

3. Upon consideration of the show cause notice and the reply, the Assistant Commissioner of Central Excise, Erode Division held that the party

were eligible for the Deemed Credit availed during 1994-95 and ordered dropping of further proceedings of show cause notice dated 13.6.1995.

Aggrieved by the said order, the Deputy Commissioner of Central Excise, Erode Division preferred appeal before the Commissioner of Central

Excise (Appeals), Salem. By the order dated 27.02.2004, the Commissioner of Central Excise (Appeals) set aside the order of Lower Authority

and allowed the appeal. In the appeal preferred by the Appellant, following the decision of the Tribunal in 2000 (118) ELT 85 the Customs,

Excise and Service Tax Appellate Tribunal (in short "CESTAT") held that the aggregate value of clearances in the financial year had exceeded Rs.

75 lakhs and Appellant was not eligible for the benefit of Deemed Credit Order TS/36/94 TRU dated 01.03.1994 and rejected the appeal.

4. Mr. K. Jayachandran, learned counsel for Appellant submitted that Tribunal failed to appreciate that any SSI manufacturer who availed the

benefit up to the given value limit i.e. Rs. 75 lakhs will continue to be categorised as one still availing and entitled to the benefits of the Notification

even after the value limit is crossed. Contention of Appellant is that concession will be admissible for financial year 1994-95, if the aggregate value

of clearances during the preceding financial year i.e. 1993-94 had not exceeded to Rs. 200 lakhs and the limit of Rs. 75 lakhs is prescribed for

calculating the duty structure and not to roll out the Unit from the benefit of SSI Notification. Learned counsel for Appellant submitted that the

Larger Bench decision in Digambar Foundry 2000 (118) ELT 85 was considered by the Himachal Pradesh High Court in Sood Steel Industrial

(P) Ltd. Vs. Commissioners of Central Excise and Another, and the Division Bench of Himachal Pradesh High Court held that the order of Larger

Bench of CEGAT is not correct and therefore, prayed for allowing of the appeal.

5. Taking us through the Notification No. 1/93-CE dated 28.2.1993, the learned counsel for Department Mr. V. Sundareswaran submitted that

re-rollers whose aggregate value of clearances in the financial year had exceeded

Rs. 75 lakhs and when were paying the applicable rate of excise

duty on the clearances beyond the value limit of Rs. 75 lakhs were not eligible for the benefit of the Deemed Credit Order TS/36/94 TRU dated

01.03.1994.

6. We have carefully considered the matter and the submissions made by both sides.

7. As per Ministry's Deemed Credit Order TS/36/94 TRU dated 01.03.1994, the ingots and re-rollable materials of iron or steel purchased from

out side and lying in stock on or after 1st April, 1994 with the re-rollers availing of the exemption under Notification No. 1/93-CE dated

28.02.1993 will be deemed to have paid duty and the credit of duty under Rule 57A of Central Excise Rules in respect of such ingots and re-

rollable materials used without undergoing the process of melting in the manufacture of goods falling under Chapter 72 or 73 of the schedule to the

Central Excise Tariff Act, 1985. Case of Appellant is that they have not crossed the limit of Rs. 200 lakhs and they were SSI Unit availing

exemption under Notification No. 1/93-CE dated 28.02.1993 and that they have fulfilled all the conditions stipulated in the Board's Order dated

01.03.1994,

8. Under Notification No. 1/93-CE dated 28.02.1993, the specified goods up to the aggregate value of clearances not exceeding Rs. 75 lakhs

enjoyed full/concessional/slab exemption from the payment of Central Excise duty subject to the various conditions and limitations as provided in

that exemption Notification. The exemption under that Notification was not available if the aggregate value of clearances of all excisable goods for

home consumption (a) by a manufacturer from one or more factories; or (b) from any factory by one or more manufacturers, had exceeded Rs. 2

crores in the preceding financial year.

9. A perusal of Notification (28.2.1993) shows that the benefit of the Notification was available to such Units whose total clearances in the

preceding financial year did not exceed Rs. 2 crores. Notification No. 1/93-CE dated 28.02.1993 reads as under:-

Notification No. 1/93-CE dated 28.02.1993.

1.3 (a)-Exemption to first clearances of specified goods and concessional rate of duty for subsequent clearances.

In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred

to as the said Act), the Central Government being satisfied that it is necessary in the public interest so to do hereby exempts the excisable goods of

the description specified in the Annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), (hereinafter

referred to as the "specified goods") and cleared for home consumption on or after the 1st day of April in any financial year [by a manufacture,-

(a) in the case of first clearances of the specified goods up to an aggregate value not exceeding rupees thirty lakhs-

(i) in a case where a manufacturer avails of the credit of the duty paid on the inputs used in or for the manufacture of the specified goods cleared

for home consumption under rule 57A of the Central Excise Rules, 1994 (hereinafter referred to as the said Rules), from so much of the duty of

excise leviable thereon which is specified in the said Schedule (read with any relevant notification issued under sub-rule (1) of Rule 8 of the said

Rules of sub-section (1) of Section 5A of the said Act, and in force for the time being] as is equivalent to an amount calculated at the rate of 10 per

cent ad valorem

(ii) in any other case from the whole of the duty of excise leviable thereon.

(b) in the case of clearances, being the clearances of the specified goods of an aggregate value not exceeding rupees twenty lakhs, immediately

following the said clearances of the value specified in sub-clause (a) under this clause, from so much of the duty of excise leviable thereon which is

specified in the said Schedule (read with any relevant notification issued under sub-rule (1) of rule 8 of the said Rules or sub-section (1) of Section

5A of the said Act, and in force for the time being), as is equivalent to an amount calculated at the rate of 10 per cent ad valorem, and

(c) in the case of clearances, being the clearances of the specified goods of an aggregate value not exceeding rupees twenty five lakhs, immediately

following the said clearances of the value specified in sub-clause (b) under this clause, from so much of the duty of excise leviable thereon which is

specified in the said Schedule (read with any relevant notification issued under sub-rule (1) of Rule 8 of the said Rules or sub-section (1) of Section

5A of the said Act, and in force for the time being), as is equivalent to an amount

calculated at the rate of 5 per cent ad valorem:

Provided that the amount of duty of excise payable on the specified goods under item (i) of sub-clause (a), or sub-clause (b), or sub-clause (c),

shall not be less than an amount calculated at the rate of 5 per cent ad valorem:

Provided further than the aggregate value of clearances of the specified goods in terms of sub-clauses (a), (b) and (c) taken together, shall not

exceed rupees seventy five lakhs.

2. The aggregate value of clearances of the specified goods for home consumption in a financial year-

(a) by a manufacturer from one or more factories; or

(b) from a factory by one or more manufacturers under sub-clauses (a), (b) and (c) of the opening paragraph shall not exceed rupees thirty lakhs,

twenty lakhs and twenty five lakhs respectively.

3. Nothing contained in this notification shall apply, if the aggregate value of clearances of all excisable goods for home consumption,-

(i) by a manufacturer, from one or more factories, or

(ii) from any factory, by one or more manufacturers had exceeded rupees (three hundred lakhs) in the preceding financial year.

10. By careful reading of the Notification, it is seen that no exemption was available to the aggregate value of clearances in excess of Rs. 75 lakhs

[Rs. 30 lakhs in Clause (i) plus Rs. 20 lakhs in Clause (ii) plus Rs. 25 lakhs in Clause (iii)]. While the extent of exemption was limited to the

aggregate value of clearances not exceeding Rs. 75 lakhs, no such exemption at all was available if the aggregate value of clearances of all

excisable goods for home consumption had exceeded Rs. 200 lakhs in the preceding financial year. Thus a manufacturer whose total clearance in

the previous year did not exceed Rs. 200 lakhs could get the benefit as provided in the Notification.

11. The Excise Ministry issued a Deemed Credit Order TS/36/94 TRU dated 01.03.1994 which reads as under:-

In exercise of the powers conferred under the second proviso to Rule 57G (2) of the Central Excise Rules, 1944 and in supersession of Order

F.No. 342/5/91-TRU, dated 7th July 1992 as amended the Central Government hereby directs that the ingots and re-rollable materials of iron or

steel purchased from outside and lying in stock on or after the 1st day of April, 1994 with the rerollers, availing of the exemption under

Notification No. 1/93-Central Excise, dated the 28th February, 1993 will be deemed to have paid duty, and the credit of duty under Rule 57A of

the said Rules in respect of such ingots and rerollable materials used without undergoing the process of melting, in the manufacture of goods falling

under Chapter 72 or 73 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) may be allowed at the rate of Rs. 920/- per tonne,

without production of documents evidencing the payment of duty.

2. This order shall come into force on the 1st day of April, 1994.

12. Considering the scope of Notification No. 1/93-CE dated 28.02.1993 and also the Ministry's deemed Credit Order TS/36/94 TRU dated

01.03.1994 in 2000 (118) ELT 85, the Larger Bench of CEGAT, New Delhi took the view that re-rollers whose aggregate value of clearances in

the financial year had exceeded Rs. 75 lakhs and when they were paying the applicable rate of excise duty on the clearances beyond the value limit

of Rs. 75 lakhs were not eligible for the benefit of Ministry's Deemed Credit Order TS/36/94 TRU dated 01.03.1994.

13. In Excise Reference No. 10 of 2001 dated 10.04.2009 Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, ,

the Himachal Pradesh High Court has considered the scope of Notification No. 1/93-CE dated 28.02.1993 as well as Ministry's Deemed Credit

Order TS/36/94 TRU dated 01.03.1994 and also the decision in 2000 (118) ELT 85 and held that the order of Larger Bench of CEGAT is not

correct. In Paragraphs (13) and (14), the Division Bench of Himachal Pradesh High Court held as under:-

13. In our view, the order of the Larger Bench of the CEGAT is not correct. The benefit of the Notification No. 1/93-C.E., dated 28.02.1993 will

be deemed to have paid duty, under Rule 57-I of the Rules and the credit may be allowed to them at the rate fixed without production of any

documents evidencing the payment of duty. Any manufacturer whose total clearances did not exceed Rs. 2 crores was entitled to the benefit of

exemption under the Notification No. 1/93-C.E. No doubt the benefits under this notification were limited to clearances of Rs. 75 lacs but this

does not mean that manufacturers whose clearances exceeded Rs. 75 lacs were

not availing the exemption under the notification. In our considered view, the only interpretation which can be given is that the wording used in the notification identifies the category of manufacturers who are satisfying the criteria as set out in Notification No. 1/93-C/E. and are availing of the benefit of the said notification. The trade note limiting this benefit to those manufacturers whose clearances do not exceed Rs. 75 lacs is totally illegal and against the deemed credit order issued by the Ministry. We may also point out that though the department may be bound by its trade note, the industry is not bound by the same and has a right to challenge the same.

14. In view of the above, we hold that the Tribunal mis-interpreted the deemed credit order dated 1.3.1994 and the petitioner was entitled to avail benefit of the deemed credit order since he was availing benefit of the notification dated 28.2.1993. We also hold that the trade note No. 81/94 dated 25.7.1994 cannot override the deemed credit order and the said trade note is illegal. All the questions are answered accordingly.

14. We agree with the view taken by the Division Bench of Himachal Pradesh High Court. Notification No. 1/93-CE, dated 28.2.1993 deals with payment of full/concessional/slab exemption rate of duty for the specified goods up to the aggregate value of clearances not exceeding Rs. 75 lakhs, subject to various conditions and limitations as provided in that exemption Notification. The exemption under that Notification was not available if the aggregate value of clearances of all excisable goods for home consumption (a) by a manufacturer from one or more factories; or (b) from any factory by one or more manufacturers had exceeded Rs. 200 lakhs in the preceding financial year. Notification No. 1/93-CE dated 28.2.1993 did not deal with availing of credit. Whereas the Ministry's Deemed Credit Order TS/36/94 TRU dated 01.03.1994 is that goods should be lying in stock on or after 01.04.1994 with the re-rollers. As per the Ministry's Deemed Credit Order dated 01.03.1994, re-rollers availing exemption under Notification No. 1/93-CE dated 28.2.1993 will be deemed to have paid the duty.

15. In the present case, Appellant has not crossed the value of clearance of Rs. 200 lakhs during the preceding financial year and availed full exemption under Notification No. 1/93-CE dated 28.02.1993 up to 24.12.1994

and thereafter started paying duty. Therefore, Appellant cannot said to be not availing exemption under Notification No. 1/93-CE dated 28.2.1993 during the year 1994-95. The Deputy Commissioner of Central Excise recorded factual finding that Appellant satisfied the conditions viz., (i) the inputs were re-rollable materials of steels; (ii) the inputs were purchased from out side and were lying in stock; (iii) the Appellant were re-rollers availing exemption under Notification No. 1/93 CE dated 28.2.1993 and (iv) the process carried was heating and not melting and that the goods manufactured were classifiable under Chapter 72. When the Deputy Commissioner had recorded such factual finding that the Appellant satisfied the conditions Notification No. 1/93-CE dated 28.2.1993 and Ministry's Deemed Credit Order TS/36/94 TRU dated 01.03.1994 and applying the ratio laid down by the Division Bench of Himachal Pradesh High Court in Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, , we are of the view that the order of Tribunal cannot be sustained. In the result, the order of Tribunal (07.03.2005) is set aside and this appeal is allowed. The questions of law are answered accordingly. No costs.