(2008) 05 MP CK 0005

In the Madhya Pradesh High Court

Case No : Contempt Petition No. 3213 of 2005

Primo Pick N Pack Ltd. APPELLANT

Vs

Avinash Mehta, Asstt. Commissioner RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Citation : (2011) 268 ELT 60

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : Anand Mohan Mathur and Ashutosh Upadhyaya, for the Appellant; S.A. Dharmadhikari, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Lahoti, J.—This application is directed to initiate contempt proceedings against the Respondent alleging non-compliance of order dated 15-12-2000 in W.P. 4486/99; Primo Pick N. Pack Ltd. Vs. Union of India (UOI), by which this Court directed thus:

Resultantly, the writ petition is allowed and the orders passed vide Annexures P-15, P-18 and P-20 are quashed and it is directed that the competent authority shall verily the records and pass appropriate orders in consonance with the law laid down in the case of Gilt Pack Ltd. (supra) within a period of three months. In the peculiar facts and circumstances of the case there shall be no order as to costs.

2. The aforesaid order was challenged in LPA No. 16/01 and the Division Bench vide order Annexure C-2 dated 15-3-2001; Union of India (UOI) Vs. Primo Pick N. Pack Limited, affirmed the order. The order of Division Bench was also assailed before the Apex Court in SLP (Civil) C.C. 2142/02 and by order dated 8-3-2002 (Annexure C-3) the Apex Court dismissed the SLP [2002 (143) E.L.T. A181 (S.C.)J. Thereafter the Respondent adjudicated the claim of the Petitioner vide order dated 19-8-2002. On adjudication the Respondent allowed a claim of

Petitioner for Rs. 70,79,167/- but disallowed the remaining claim of the Petitioner for the period from 5-5-1989 to 21-12-1989. Aggrieved by the aforesaid order, the Petitioner filed a contempt petition before this Court which was registered as C.P. No. 101/04. The aforesaid contempt Petitioner was disposed of by a learned Single Judge of this Court vide order Annexure C-4 dated 11-4-2005. The operative part of that order reads thus:

I am only inclined to direct the Respondent No. 2, the Deputy Commissioner, Customs & Central Excise, Division, Jabalpur to pass an appropriate order after hearing the Petitioner in the capacity of quasi judicial authority and the same should be honored by all concerned unless there is any other permissible statutory provision for interfering with the same. It is hereby made clear that there should be no administrative interference. Exercise in this regard shall be completed within a period of three months from the date of receipt of the order passed today.

3. After the order passed on 11-4-2005 in Contempt Petition, the Respondent re-considered the claim of the Petitioner and rejected it vide order dated 22-7-2005 Annexure C-5. Aggrieved by the aforesaid, this petition has been filed alleging non-compliance of order dated 15-12-2000 (supra).

4. Learned Counsel for the Petitioner submitted that W.P. No. 4488/99 was allowed and the earlier order of the Respondent rejecting the claim of the Petitioner was quashed and the High Court in writ petition specifically directed that the competent authority shall verify the record and pass an appropriate order in consonance with the law laid down in the case of Gilt Pack Ltd. v. Assistant Collector, Central Excise, Indore 1994 (69) E.L.T. 222 (M.P.) so the Respondent was not entitled to reopen the issue which was finally settled by the order of this Court in Gilt Pack Ltd. (supra) which was duly followed by learned Judge of this Court in W.P. No. 4486/99; Primo Pick N. Pack Ltd. Vs. Union of India (UOI), . That in C.P. 101/04 also the learned Single Judge of this Court had not permitted the Respondent to reopen the issue with regard to the claims of the Petitioner which were decided by order dated 15-12-2000; Primo Pick N. Pack Ltd. Vs. Union of India (UOI), but the Respondent disobeying the earlier orders of this Court turned down the claim of the Petitioner by order Annexure C-5. That there was deliberate non-compliance and disobedience of the order dated 15-12-2000 so the Respondent deserves to be punished for the contempt committed by him.

5. The Respondent has filed reply and stated that there was no disobedience of the order passed by this Court and the Dy. Commissioner earlier had duly sanctioned refund of Rs. 70,79,167/- for the period 1-3-1987 to 5-5-1989 and rightly rejected the claim of the Petitioner for the period after 5.5.1989. The Petitioner preferred a review application MCC No. 887/02 before this Court seeking modification of earlier order dated 15-12-2000 to the effect that it was entitled for the benefit of not only for the period between 1-3-1987 and 5-5-1989 but for the entire period. The High Court in MCC No. 887/02 on

10-10-2003 clarified the order thus:

This Court held that the Petitioner had deposited the amount and thereafter, the rule which was in vogue at the time of deposit, would come into play and Petitioner would be entitled to the benefits as per the law laid down in the case of M/s Gilt Pack Ltd. (supra) and the same shall be extended to the Petitioner as per paragraph 11 of the earlier order.

6. That the Petitioner was claiming MODVAT credit for the period between 6-5-1989 and 20-12-1989 but it was not entitled. Rule 57(H) of the Central Excise Rules, 1944 which was prevalent at the relevant time was amended vide notification dated 5-5-1989 by which Sub-clause 2 was deleted from the Rules, hence the MODVAT credit for the period between 6-5-1989 to 20-12-1989 was not available to the Petitioner. In the case of Gilt Pack Ltd. the dispute was in respect of declaration dated 20-12-89 and the rule which was in existence on the aforesaid date was considered by the High Court, while in the case of Petitioner Rule 57(H) of the Central Excise Rules, 1944 was amended by notification No. 201/89 dated 5-5-1989 so the aforesaid MODVAT credit was not available to the Petitioner for the subsequent period. It was further submitted that no case is made out for initiating contempt proceedings against the Respondent. The order passed by this Court dated 15-12-2000 was not disobeyed by the Respondent and this application may be dismissed.

7. To appreciate the aforesaid contention, it would be appropriate to refer certain paragraph of order dated 22-7-2005 by which the case of the Petitioner was decided by the Respondent. Relevant para 2.14 and 2.15 reads thus:

2.14. In the light of law laid down in the case of Gilt Pack Ltd. (supra) by M.P. High Court that the purpose behind the Rule was to give credit both to the inputs which were lying in stock for verification and also those inputs which were already used in the manufacture of the goods which were cleared from the factory on or after 1st March, 1987. The clear language of the Rule does not admit of any other interpretation than the one which gives benefit in both the cases. I found that my predecessor vide his cited O I-O for MODVAT credit of Rs. 70,79,167/- in respect of inputs used/consumed during the period 1-3-1987 to 5-5-1989 had already been allowed under erstwhile Rule 57(H) of the Central Excise Rules, 1944 following the earlier decision of Hon. High Court dated 15-12-2000 in the light of its order in the case of M/s Gilt Pack Ltd. and rejected the balance amount on valid grounds detailed therein. It is seen that no modification as prayed for by the party of earlier order was allowed by the Hon. High Court and decision of the M/s Gilt Pack Ltd. case, the verification was done in respect of the records available with the department and also records submitted by the party. The party''s claim pertain to the inputs contained in the process, semi-finished goods and finished goods therein. The erstwhile amended proviso of Rule 57(H) did not permit the credit in respect of such inputs, which are lying in stock.

2.15. The Hon. High Court''s orders dated 15-12-2000 and 10-10-2003, where under it has been held that the Rule which was invoked at the time of deposit would come into play. The rule for the relevant period which is being referred to in the High Court''s order is Rule 57-H of the Central Excise Rules, 1944 and deposit of amount implies deposit of duty on inputs of which credit is claimed. Since the Hon. High Court has held that the rule which was invoked at the time of deposit would apply here, it is necessary to go through the Rule 57-H as it existed at different times during the relevant period of this case. Rule 57-H as it existed w.e.f. 1-3-1987 and prior to 5-5-89 read as under:

57(H)(1) Notwithstanding anything contained in Rule 57-G, the Assistant Collector of Central Excise may allow credit of duty paid on inputs received by a manufacturer immediately before obtaining the dated acknowledgment of the declaration made under the said rule if he is satisfied that -(i) Such inputs are lying in stock or received in the factory after filing the declaration made under 57-G, or (ii) Such inputs are used in the manufacturer of final product which are clear from the factory on or after 1st day of March, 1987.

Provided that such inputs are not used in the manufacturer of final product which is exempted from whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

Further I find that Rule 57-H was amended vide notification. No. 20/89-CE(NT) dated 5-5-89 vide which Clause (ii) of Sub-rule (1) of Rule 57-H was omitted. With this amendment w.e.f. 5-5-89, the second limb of the proviso [Rule 57-H(l)(ii)] which provided for credit of the duty paid on inputs used in the manufacture of final products which are cleared from the factory on or after the 1" day of March, 1987 was omitted. In terms of the direction of the High Court order dated 15-12-2000, 10-10-2003 and 11-4-2005 to the effect that the Rule which was invoked at the time of deposit would come into play and the deposit of amount implies deposit of duty on inputs of which MODVAT Credit is being claimed by the party in this case. It is clear that the claim for the period 5-5-89 and thereafter would be governed by the amended proviso of Rule 57-H and claim for the period prior to 5-5-89 would be govern by the un-amended old Rule 57-H. In term of amended Rule 57-H, the credit of inputs used in the manufacture of final products, which are cleared from the factory on or after the 1st day of March, 1987 was not admissible. The contention of the party that they are entitled the benefit of MODVAT Credit for the period 5-5-89 to 20-12-89 is not correct. The claim of the party for the period 11-3-87 to 5-5-89 has already been sanctioned in the compliance of the High Court''s order and further following the Hon. Court''s order in true letter and spirit. Their claim for MODVAT credit for the period 6-5-89 to 20-12-89 is not admissible due to amended provision of law prevalent during the period in this case as discussed above. In view of above discussion and findings I pass the following order.

ORDER

(i) I reject the MODVAT credit claim available on inputs consumed during the period 6-5-89 to 20-5-1989 under the amended proviso of erstwhile Rule 57-H of Central Excise Rules, 1944 as discussed above.

8. The aforesaid order specifically states that Sub-rule (2) provides for credit of the duty paid on inputs used in the manufacturing of final product which were cleared from the factory on or after 1st day of March; 1987 was omitted. In these circumstances, Petitioner''s claim could have been considered for the period beyond 5-5-1989 as per the amended rules and not under the rule which was in existence prior to 5-5-1989. After deletion of Sub-rule (2) if the Petitioner was not entitled for MODVAT credit, the authority rightly turned down the representation of the Petitioner in this regard. If under the statutory provision such credit was not permissible then the Respondent was right to follow the aforesaid amended provision in deciding the issue of MODVAT credit. In the order dated 15-12-2000 or in the case of Gilt Pack Ltd. (supra), nowhere it was held that even after 5-5-1989 when the sub-rule was deleted from statute book, Petitioner was entitled for MODVAT credit. In absence of any specific direction in this regard, the Respondent while passing the order, considered the amended Rule 57(H) and disallowing the MODVAT Credit, in which no willful disobedience is found.

9. In the result, this petition is found without merit. No case is made out for initiating contempt proceeding against the Respondent and the application is accordingly dismissed with cost. Counsels fee Rs. 2000/-.

