
(2012) 04 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Central Excise Appeal No. 8 of 2010

Ranbaxy Laboratories Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Chandigarh

RESPONDENT

Date of Decision : 05-04-2012

Acts Referred:

Citation : (2012) 279 ELT 194 : (2012) 35 STT 484

Hon'ble Judges : Sanjay Karol, J; R.B. Misra, J

Bench : Division Bench

Advocate : M.P. Devnath and Rahul Mahajan, for the Appellant; Sandeep Sharma, for the Respondent

Judgement

Sanjay Karol, J.—Appellants have filed the present appeal against the order dated 30.4.2010, passed by Customs Excise & Service Tax Appellate Tribunal, which stands admitted on the following substantial question of law:-

The question for consideration that arises in the present case is whether the inputs lying in stock on the date on which the notification exempts the final product is eligible for the credit or not.

The appellants are engaged in manufacture of medicament classifiable under Chapters 29 and 30 of the first Schedule of the Central Excise Tariff Act, 1985. The finished goods manufactured by the appellants are sold in domestic and international market. For substantial expansion, appellants set up a unit within the State of Himachal Pradesh to avail the benefit of exemption on finished goods under Notification No. 50/2003-CE dated 10.6.2003. Declaration in that regard was filed by the appellants with the Central Excise Division, on 10.1.2005. Appellants took cenvat credit on inputs procured prior to 10.1.2005 and utilized the same for discharging excise duty on the finished goods. Out of the inputs procured prior to 10.1.2005, some stock of inputs were lying with them as on 10.1.2005. With respect to these inputs appellants did not reverse the proportionate cenvat credit since at the time when these inputs were procured,

cenvat credit was validly taken and utilized.

2. On 21.11.2005 a show cause notice was issued by the Revenue with respect to the inputs lying in stock as on 10.1.2005. As per the Revenue, appellants wrongly took cenvat credit. Appellants responded to the same. The Commissioner of Central Excise, Chandigarh adjudicated the matter and vide its order dated 17.11.2006 confirmed the demand and additionally imposed penalty in the following terms:-

In view of the discussion and findings in the forgoing paras, I pass following order: -

(i) I confirm the demand amounting to Rs. 7,69,52,504.00 (Rs. Seven Crore sixty nine lakh fifty two thousand five hundred and four only) against the Noticee M/s Ranbaxy Laboratories Limited alongwith interest payable as per law, under Rule 14 of the Rules read with Section 11A & 11AB of the Act. The amount of Rs. 3,00,00,000.00 already debited by the Noticee is ordered to be adjusted against the amount of demand confirmed under this order.

(ii) I impose a penalty of Rs. 50,00,000.00 (Rs. Fifty lakhs only) on the Noticee M/s Ranbaxy Laboratories Limited, under Rule 15(1) of the Rules.

(iii) Further proceedings with regard to the confiscation of the goods cleared in violation of the Rules as proposed in the show cause notice are dropped.

3. Aggrieved thereof, appellants preferred an appeal before the Customs, Excise & Service Tax Appellate Tribunal, which stands dismissed in terms of impugned order dated 30.4.2010.

4. The matter was heard on 19.3.2012 when Mr. M.P. Dev Nath, Advocate, made his submissions on behalf of the appellants. On the request of respondents, matter was adjourned for further hearing and Mr. Sandeep Sharma, learned Assistant Solicitor General of India, made his submissions on 2.4.2012 and today.

5. It was urged by the appellants that issue in question, in fact the substantial question of law stands squarely settled and covered by the decisions of this Court in CCE v. United Vanaspati Ltd [2010] 25 STT 125 (HP), CCE v. Saboo Alloys (P.) Ltd. [2010] 25 STT 192 (HP), and as such, the impugned orders dated 17.11.2006 and 30.4.2010 need to be set aside.

6. On the other hand, learned Assistant Solicitor General of India, has tried to distinguish the aforesaid decisions and justify the order passed by the Tribunal below.

7. It is seen that the Division bench of this Court in United Vanaspati Ltd. (supra), was dealing with the following substantial question of law, which we find is similar to the one with which we are dealing:-

Whether the Modvat/Cenvat credit involved on the inputs, inputs in process and contained in finished products is liable to be reversed/paid back when the final

product becomes exempt from payment of duty.

8. In the said decision after taking into consideration the relevant provisions i.e. Rule 57 of Modvat credit under Central Excise Rules, 1944 and Rule 9(2) of the Cenvat Rules, as interpreted by the Apex Court in Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., the Division Bench of this Court specifically held that even though final product may be exempt from payment of excise, the assessee cannot be asked to reverse the Modvat credit already taken by it. The substantial question of law was answered in favour of assessee as against the Revenue.

9. Subsequently, the very same view stands reiterated by another Division Bench of this Court in Saboo Alloys (P.) Ltd (supra), wherein also the following substantial question of law was involved and assessee's similar plea accepted:-

Whether a manufacturer is required to reverse the Cenvat Credit taken by him in respect of inputs which are proved to have been used in the manufacture of goods which are exempted from excise duty in view of the provisions of Rule 6(1) of Cenvat Credit Rules, 2004 which provide that no credit can be taken in respect of inputs which are used in the manufacture of exempted goods.

10. In the impugned order, the Appellate Authority has dealt with the aforesaid decisions by simply making the following observations :-

The Himachal High Court in CCE, Chandigarh vs. M/s United Vanaspati Limited reported in 2009-T 102-723 HP-CX and in Commissioner, Central Excise Vs. Saboo Alloys Pvt. Ltd., , merely followed the decision of the Rajasthan High Court in Hindustan Zinc Limited. In Purval and Associates (supra) the Tribunal merely followed the decision of Hindustan Zinc Limited and in P.A. precision Components, the decision in Purval and Associates was followed without considering all the points which are considered herein.

11. We are of the considered view that the Appellate Authority has failed to appreciate the ratio of law laid down by this Court in its right perspective. The decisions have been brushed aside and dealt with in a cryptic and perfunctory manner. On this aspect we refrain from saying anything further. It is not that the earlier view taken by this Court merely based upon the decisions rendered by the High Court of Rajasthan. In fact this Court, while deciding the aforesaid appeals, took into account not only the relevant provisions of law but also the decisions rendered by various High Courts as also the Apex Court in Dai Ichi Karkaria Ltd. (supra).

12. It would be worthwhile noticing that while relying upon the decision of Apex Court in Dai Ichi Karkaria Ltd (supra), this Court in United Vanaspati Ltd. (supra), has held:-

The short question which arises for decision is whether a manufacturer who has obtained credit of the Central Value Added Tax paid by him in respect of the raw material and inputs lying in stock or in process or contained in the final product

lying in stock is required to refund /repay the credit when the final product is exempted from excise. The main argument of Sh. Sandeep Sharma, learned Assistant Solicitor General of India is that the authorities below have not taken into consideration Rule 9(2) of the Cenvat Rules.

A show cause notice was issued to the assessee on 31.1.1997 asking it to reverse the Modvat credit of Rs. 93,584/- on the inputs in hand and in process as well as on the inputs contained in the final product as on 23.7.1996.

The undisputed facts of the case are that the assessee is engaged in the manufacture of vegetable products and was taking credit of the duties paid on the inputs used in the manufacture of final products. The final product was exempted from payment of duty vide notification No. 16/96-CE dated 23.7.96. Therefore, the notice was issued requiring the assessee to reverse the credit of Rs. 93,584/-. The assessee contested this notice on the ground that once the credit has been taken, the same cannot be dis-allowed since in the books it had already been used and there was no legal provision which provided for recovery of such credit. It was further contended that Rule 57C places a bar on taking credit of inputs used for the manufacture of final product exempted from duty. However, as per the assessee, this Rule comes into operation only after the date when the final product is exempted and there was no legal provision requiring it to reverse the credit which it had taken prior to the date of the issuance of the exemption notification. The Assistant Commissioner did not accept the plea of the assessee and disallowed credit of Rs. 93,584.

The assessee filed an appeal and the Commissioner (Appeals) upheld the order of the Assistant Commissioner. Thereafter, the assessee approached the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) which allowed the appeal in view of the law laid down by a Five Member Bench in CCE, Rajkot v. Ashok Iron & Steel Fabricators reported in 2002 (48) RLT 789.

The main argument of Sh. Sandeep Sharma, learned Assistant Solicitor General of India is that in the case of Ashok Iron & Steel Fabricators, the Tribunal held that there was no rule which permitted the department to seek reversal of the Modvat credit. He relies upon Rule 9(2) of the Cenvat Rules in this behalf.

It is pertinent to mention here that the Apex Court in Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc., considered a similar question relating to the reversal of Modvat credit under Central Excise Rules, 1944. Rule 57H(5) of the said Rules reads as follows:-

Where a manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been availing of the credit of the duty paid on inputs before such option is exercised, he shall be required to pay an amount equivalent to the credit, if any, allowed to him in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date when such option is exercised and after deducting the said

amount from the said amount from the balance, if any, lying in his credit, the balance, if any, still remains shall lapse and shall not be allowed to be utilized for payment of duty on excisable goods, whether cleared for home consumption or for export.

After considering the Rule 57, the Apex Court held as follows:-

It is clear from these rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilized, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

Rule 9(2) of the Cenvat Rules reads as follows:-

A manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking of cenvat credit on inputs before such option is exercised, he shall be required to pay an amount equivalent to the cenvat credit, if any, allowed to him in respect of inputs lying in stock or in process or contained final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance if any, still remaining shall not be allowed to be utilized for payment of duty on excisable goods, whether cleared for home consumption or for export.

The language of Rule 57H(5) of the Excise Rules and Rule 9(2) of the Cenvat Rules is identical, therefore, the decision also has to be similar.

It would also be pertinent to mention here that the High Court of Kerala in Collector of C. Ex. and Cus. Vs. Premier Tyres Ltd., following the judgment of the Apex Court answered a similar question in favour of the assessee and against the Department.

It would also be pertinent to mention that the judgment of the Tribunal in Ashok Iron and Steel Fabricators "case has been upheld by the High Court of Rajasthan

in Hindustan Zinc Ltd v. Union of India, 2008 (223) ELT 149. The High Court held as follows:-

It can be seen from yet another angle. In case inputs are received in factory and used in manufacture of end product. But the end product is destroyed by fire before stage of its removal from factory premise. In such circumstances, no excise duty becomes payable on end product. Yet Modvat credit availed on inputs used in destroyed goods is not to be recalled. This is also suggestive of the fact the relevant date for considering exemption from duty of the end product in or in relation to which inputs are used is the date of its receipt in factory and condition is its actual use in or in relation to manufacture of end product by the manufacturer. The chargeability to duty or non-chargeability due to exemption or notified nil rate is to be considered at the stage before goods are actually produced, but on receipt of inputs intended to be used in manufacture of such goods. That being so ultimate clearance of goods at nil rate due to contingency existing at the time of removal does not affect the entitlement that legally arises long before that date.

13. We are in respectful agreement with the judgment of the Kerala and Rajasthan High Courts. Since the language of Rule 9(2) of the Cenvat Rules is identical to that of Rule 57H (5) of the Excise Rules, we feel that the interpretation given by the Apex Court has to apply in the present case also and, therefore, even though the final product may be exempt from payment of excise, the assessee cannot be asked to reverse the Modvat credit already taken by it.

14. Thus the findings rendered by the authorities are perverse and against the settled principles of law.

15. Further our attention has been invited to the decision rendered by the Division Bench of High Court of Karnataka in titled as CCE v. Tafe Ltd. 2011 31 STT 332/ 10 taxmann.com 283 , wherein it has been held that once the input credit is legally taken and utilized on the dutiable final product, it need not be reversed on the final product being exempted subsequently. However, if products are purchased subsequent to the said exemption and if any tax is paid on such inputs, as the final product is exempted from payment of tax, the assessee would not be entitled to avail the Cenvat credit on such inputs. But the Cenvat credit availed on such inputs till the date of exemption, vest in the assessee and the assessee cannot be divested of that credit as the law does not provide for the same. The Court further held that Revenue cannot take advantage of the notification exempting the final product and claim reversal of Cenvat credit either in respect of final product which have come into existence on the date of the notification or on the inputs stored in the godown or the work in progress and finished products. Significantly, SLP (Civil) CC 14763/2011, titled as CCE v. Tafe Ltd., assailing the aforesaid judgment stands dismissed by the Apex Court vide its order dated 16.9.2011.

16. In the instant case, there is no dispute that credit claimed is with regard to

the goods manufactured prior to the year 2005.

17. In Eicher Motors Limited and Another Vs. Union of India and Others Etc., while interpreting Rule 57F(4A) of Central Excise Rules, 1944, which are almost similar to the instant Rules, the Apex Court has held that if on the inputs the assessee had already paid the taxes on the basis that when the goods are utilized in the manufacture of further products as inputs thereto then the tax on these goods gets adjusted which are finished subsequently. Thus a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs, that right would continue until the facility available thereto gets worked out or until those goods existed. The Court further held that Section 37 of the Act does not enable the authorities concerned to make a rule, subjecting the goods to taxation and applying it to goods manufactured prior to 16.3.1995, on which duty already stood paid and credit facility availed of for the purpose of manufacture of further goods.

18. We also find that not only this Court but other High Courts have also taken a similar view while deciding the similar and/or identical substantial question of law. Following decisions are referred to in this regard:-

i Collector of C. Ex. and Cus. Vs. Premier Tyres Ltd.,

ii 2006 (135) ECR 420

iii Hindustan Zinc Ltd v. Union of India 2008 (223) ELT 149 (Raj) ;

iv. CCE v. C.N.C. Commercial Ltd 2008 (224) ELT 239 (Punj. & Har.) ; and

v. CC&CE v. Apco Pharma Ltd. 2011 33 STT 491/15 taxmann 362 (Uttarakhand).

19. We see no reason to either distinguish or differ with the view already taken by this Court. The decisions are squarely applicable to the instant facts as the substantial question of law already stands settled. Hence, in our considered view the impugned orders dated 17.11.2006 and 30.4.2010 being erroneous and perverse are liable to be set aside. Ordered accordingly. Substantial question of law is answered in favour of the assessee and against the Revenue.