

(2003) 03 SC CK 0020

In the Supreme Court Of India

Case No : Civil Appeals No. 6493 Of 2000 With No. 8692 Of 2001

Samtel India Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Jaipur

RESPONDENT

Date of Decision : 12-03-2003

Acts Referred:

Citation : (2003) 155 ELT 14 : (2003) 11 SCC 324

Hon'ble Judges : S. N. Variava, J;B. P. Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. These appeals are against the judgments of the Customs, Excise & Gold (Control) Appellate Tribunal (for short "the CEGAT") dated 9th August, 2000 and 3rd August, 2001. The question involved is with regard to interpretation of Rule 57F(17) of the Central Excise Rules, 1944, (for short, "the Rules") which was introduced, by an amendment, with effect from 1st March, 1997.

2. Briefly stated the facts are as follows :-

The appellants are manufacturers of black and white picture tubes which they export under a bond. For the manufacturing of black and white picture tube, they use inputs on which duty is paid by them. Under the Modvat scheme, which was then in existence, they were entitled to credit for the duty paid against duty payable on the final product which is used for home consumption or on final product which is exported after payment of duty or where such adjustment is not possible to a refund of the duty.

3. It is an admitted position that the appellants had paid duty on the imports. It is admitted that the appellants had credit available to them. In Civil Appeal No. 6493 of 2000, they exported under bond in January and February, 1997. In Civil Appeal No. 8692 of 2001 they exported under bond between October to December, 1996. As the export was under a bond, under the Rules prevailing upto February, 1997, the appellants would have been entitled to a refund of duty

because no adjustment was possible. However, as stated above, with effect from 1st March, 1997, the Rule was amended.

4. The amended Rule 57F(17) reads as follows :-

"(17) Notwithstanding anything contained in Sub-rule 12 or Rule 57A, any credit of specified duty lying unutilised, -

(a) on the sixteenth day of March, 1995, with the manufacturer of tractors falling under heading No. 87.01 or motor vehicles falling under heading Nos. 87.02 and 87.04 or chassis of such tractors or such motor vehicles falling under heading No. 87.06 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export :

Provided that nothing contained in this clause shall apply to credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on the sixteenth day of March, 1995;

(b) on the first day of March, 1997, with the manufacturer of bulk drugs falling under Chapter, 28 or 29 and with the manufacturers of black and white picture tubes falling under sub-heading No. 8540.12 shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export;

Provided that nothing contained in this clause shall apply to credit of duty, if any, in respect of inputs lying in stock or contained in finished products lying in stock on the first day of March, 1997."

5. The appellants filed claims for refund on 7th April, 1997 and 11th July, 1997. Those claims for refund were rejected on the ground that under the amended Sub-rule 17 credit had lapsed and that the same could not be allowed. This view prevailed with the CEGAT which has, by the impugned orders, dismissed their appeals.

6. Before us, reliance is placed upon a three Judge Bench decision of this Court in the case of Eicher Motors Limited and Another Vs. Union of India and Others Etc., . In that case the validity of then Sub-rule 4A was challenged. Sub-rule 4A read as follows :-

"(4A) : Notwithstanding anything contained in Sub-rule (4), or Sub-rule (1) of Rule 57A and the notifications issued thereunder any credit of specified duty lying unutilised on the 16th day of March, 1995, with a manufacturer of tractors, falling under heading No. 87.01 or motor vehicles falling under heading No. 87.02 and 87.04 or chassis of such tractors or such motor vehicles under heading No. 87.06 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) shall lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared for home consumption or for export;

Provided that nothing contained in this sub-rule shall apply to credit of duty, if

any, in respect of inputs lying in stock or contained in finished products lying in stock on the 16th day of March, 1995."

7. Thus, the then Sub-rule 4A is identical to Sub-rule 17 which is under consideration. In Eicher Motors case (supra), it has been held that the assessee became entitled to take the credit on the input having been received in the factory on the basis of the existing Scheme. It is held that the right to credit became absolute when the input was used in the manufacture of the final product. It is held that the incident following thereto must take place in accordance with the Scheme under which the duty had been paid on the manufactured product. It is held that if such a situation is sought to be altered necessarily it follows that right which accrued to a party gets affected. It is held that the Scheme sought to be introduced cannot be made applicable to the goods which had already come into existence in respect of which the earlier Scheme was applicable and under which the assessee had availed of the credit facility for payment of taxes. It is held that the right which accrued to the assessee on the date when they paid the taxes would continue until the facility available thereto gets worked out or until those goods existed. It is held that the amended sub-rule could not be applied to the goods manufactured prior to 16th March, 1995 (date on which Sub-rule 4A came into existence).

8. The principles laid down in Eicher Motors case (supra) are fully applicable, here. It is however submitted that is no challenge to the validity of Sub-rule 17. It is submitted that this Court cannot, therefore, strike down nor read down Sub-rule 17. It is submitted that in the absence of such a challenge full effect has to be given to the wording of Sub-rule 17. It is submitted that Sub-rule 17 specifically provides that the credit would lapse and that credit shall not be allowed. We are unable to accept this submission. What was then Sub-rule 4A is now Sub-rule 17(a). Sub-rule 17(b) is identical to Sub-rule 17(a) except that it is in respect of a different final product. Once a validity of a provision is challenged and the validity is upheld by reading down that provision, then it is not necessary that in all subsequent proceedings the validity must again be challenged. It is sufficient if a party claims that the provision has to be read in the manner laid down by a judgment of this Court. In the light of the judgment of this Court in Eicher Motors case (supra), Sub-rule 17 cannot apply to vested rights. Therefore to the extent that the goods have already been exported, prior to March, 1997, the assessee would be entitled to a refund.

9. Reliance was placed in the case of Osram Surya (P) Ltd. Vs. Commissioner of Central Excise, Indore, . In this case the Court considered the effect of proviso to Rule 57-G of the Central Excise Rules, 1944. The proviso read as follows :-

"Provided further that the manufacturer shall not take credit after six months of the date of issue of any of the documents specified in first proviso to this sub-rule."

10. This Court held that this proviso did not take away vested right and merely

laid down a period of limitation. This Court upheld the contention of the Revenue that after the period of six months, credit could not be claimed. It was submitted that Sub-rule 17 is merely laying down a period of limitation. It is submitted that no vested right is taken away. We are unable to accept this submission. It must be noted that in Osram Surya's case (supra) reliance had been placed upon the judgment in Eicher Motors case (supra). The Court distinguished the judgment in Eicher Motors case (supra) on the basis that under Sub-rule 4A vested rights were taken away whereas under the proviso to Rule 57G no vested right was being taken away.

11. For all the above reasons, we are unable to uphold the impugned judgments. The same are accordingly set aside. It is directed that the appellants case for refund shall be processed in accordance with law and within a period of three months.

12. The appeals stand disposed of accordingly. There shall be no order as to costs.