(2016) 01 AHC CK 0133

In the Allahabad High Court

Case No : Central Excise Appeal No. 86 of 2004

Saraya Distillery	APPELLANT
Vs	
Commissioner, Central Excise Alld.	RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Citation : (2016) 01 AHC CK 0133

Hon'ble Judges : Tarun Agarwala and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : A.P. Mathur, for the Appellant; C.S.C., A.K. Nigam, K.C. Sinha and R.C. Shukla, for the Respondent

Final Decision : Allowed

Judgement

1. We have heard Sri A.P. Mathur, learned counsel for the appellant and Sri R.C. Shukla, learned counsel for the Department.

2. The appeal was admitted on the following substantial question of law:-

"(i) Whether the Hon''ble Tribunal was justified in denying the Modvat credit to the appellants which was due to them in all respect; merely on account of a procedural lapse which had been cured subsequently.

(ii) Whether the Hon''ble Tribunal was justified in not entertaining a legal plea merely on the pretext that the same was not taken before the lower authorities."

3. The facts given to the filing of the present appeal are that the appellant during the material period in question was engaged in the manufacture of country liquor, Indian made Foreign Liquor, rectified spirit and denatured ethyl alcohol. The appellant was not aware of Modvat Rules and could not claim credit being a new assessee. When the appellant came to know, an Application dated 27th August, 1994 was filed claiming benefit of Modvat credit of duty paid on molasses for the period of 1.3.1994 to 20.7.1994 under Rule 57G of the Central Excise Rules. The declaration form was filed previously on 27.7.1994 along with

an application for condonation of delay. Instead of allowing Modvat credit as per Rule 57G(9) & (10), a show cause notice dated 21.12.1994 was issued to show cause why the Modvat credit availed by the appellant should not be rejected and penalty should not be imposed. The appellant submitted a reply and thereafter the appellant''s application for condonation of delay was rejected. The appellant filed an appeal which was also rejected by the Tribunal against which the present appeal has been filed.

4. Having heard learned counsel for the parties we find that under Section 57G(5), credit cannot be taken by a manufacturer after six months of the date of issuance of any document specified in sub-rule (3), namely, on the inputs received by the manufacturer in its factory. Rule 57G(9) & (10) provides as under:-

"(9) Where a manufacturer was, for sufficient reasons, not in a position to make a declaration under sub-rule (1) and makes the declaration subsequently, the Assistant Commissioner may, subject to the provision of sub-rule (10) and for reason to be recorded in writing, condone the delay in filing of such declarations and allow the manufacturer to take credit of the duty already paid on the inputs.

(10) The Assistant Commissioner shall not condone the delay unless he is satisfied that:

(i) the inputs were received in the factory not before a period of six months from the date of filing of such declaration;

(ii) the amount of duty for which credit is sought has actually been paid on such inputs; and

(iii) the inputs have actually been used or are to be used in the manufacture of final products."

5. The aforesaid provision makes it apparently clear that if a manufacturer was not in a position to make a declaration under sub-rule (1) with regard to the availing Modvat credit but provides sufficient reasons, the competent authority under sub-rule (10) would condone the delay if he is satisfied that the inputs were received in the factory prior to six months from the date of filing of such declaration or for other reasons mentioned in that sub-rule.

6. In the instant case, it is not disputed by the department that the appellant was a new assessee. The appellant further contends that he was not aware of the Modvat Rules and, therefore, could not take credit. This fact has not been disputed by the respondents and, therefore, in our opinion sufficient reasons had been given by the appellant for the purpose of condoning the delay in filing the declaration form. Once sufficient reasons have been given, the competent authority was required to give Modvat credit in terms of sub-rule (9) of Rule 57G. The show cause notice itself indicates that the Modvat credit was applied for inputs received in the appellant''s factory for the period March, 1994 to 28th July, 1994 which was within the prescribed period of six months. Consequently in our

opinion the authorities as well as the Tribunal committed an error in not allowing the application for availing the Modvat credit for the said period. The application for condonation of delay could not have been rejected by the authorities.

7. Accordingly, the appeal is allowed. The order of the Tribunal and other authorities are set aside. The procedural lapse, if any, stood cured by providing sufficient reasons by the appellant. The plea which was raised by the appellant was squarely covered under Rule 57G(9) of the Rules. Consequently, the appeal is allowed. The question of law is answered in favour of the appellant.