
(2004) 11 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5630 of 2003

Shree Rajasthan Texchem Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

CENVAT (Credit) Rules, 2002 — Rule 2, 3, 4, 4(1)

Citation : (2005) 182 ELT 311

Hon'ble Judges : Rajesh Balia, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : Sanjeev Johari and Rajendra Mehta, for the Appellant; V.K. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. This writ petition is directed against a show cause notice issued by the Assistant Commissioner, Central Excise Division, Udaipur dated 18-6-2003 proposing to withdraw the Cenvat Credit Facility availed by the petitioner on the Light Diesel Oil received on or before 28-2-2003 and forming part of stock on 28-2-2003 on the basis of law standing as on the date, in terms of Rule 4(1) of Cenvat Rules, 2002, on the ground that since Rule 2(g) has been amended w.e.f. 1-3-2003 by which Cenvat Credit Facility has been withdrawn from Light Diesel Oil w.e.f. 1-3-2003.

3. Learned counsel contends that in view of the Circular of Central Board of Excise and Customs dated 31-3-2003 [hereinafter to be referred to be "the Assessing Officer"], which is binding on Assessing Officer, the hearing before Assessing Officer is only formal. Therefore, he has been forced to come before this Court at this stage. In support of his contention that he is entitled to avail Cenvat Credit Facility on Light Diesel Oil, as on that date the raw material was received by him. He relies on Rule 4(1) of the Cenvat Rules. Upto 28-2-2003 the

Light Diesel Oil was an input in respect of which Cenvat Credit facility was available. Therefore, he has rightly availed Cenvat Credit Facility by taking Credit of Duty paid on Light Diesel Oil received by him up to 28-2-2003. Once he has availed Cenvat Credit Facility on that raw material, the same cannot be withdrawn later on by subsequently amending the Rules. For the proposition, he relies on Eicher Motors Limited and Another Vs. Union of India and Others Etc., and Collector of Central Excise, Pune Etc. Etc. Vs. Dai Ichi Karkaria Ltd. Etc. Etc.,

4. While Rule 3 of Cenvat Credit Rules, 2002 (in short Cenvat Rules) enabled a manufacturer or purchaser of final product to take Cenvat credit of the Duty of Excise paid on any input or capital goods and that Cenvat credit can be utilised for payment of Duty of Excise on any final product, Rule 4(1) of the Rules of 2002 envisaged time or stage at which the manufacturer or purchaser becomes entitled to take the credit of cenvat to be utilised in future for payment of Duty of Excise on final product. Rule 4(1) of the Cenvat Rules reads :

"The Cenvat credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacturer."

5. It is not in dispute that because of the amendment made in Rule 2(g) of the Cenvat Rules defining input w.e.f. 1-3-2003.

6. Rule 2(g) of the Cenvat Rules as it stood before its amendment vide Notification No. 13/2003-C.E. (N.T.), dated 1-3-2003 did not exclude from its purview Light Diesel Oil from the definition of inputs and was held by Courts to be input eligible for Cenvat credit. Therefore, with the combined reading of the definition of "input" under Rule 2(g), Rule 3 enabling the manufacturer, producer to take Cenvat credit on the inputs read with Rule 4, the time at which a manufacturer or producer could avail the Cenvat until 28-2-2003 Cenvat credit in respect of any eligible input could be availed at the time when the same was received in the factory of the manufacturer.

7. The definition excluding Light Diesel Oil from the purview of input had not been brought into effect retrospectively and did not apply to the definition of input as it was prevailing until 28th February, 2002. Rule 4(1) had not at all been amended. The combined effect of the three Rules was that the assessee became entitled to avail Cenvat credit on LDO received in his factory until 28th February, 2003 as soon as it was received in the factory and he acquired a vested right to utilise that credit availed by him for payment of Duty of Excise on any final product. The alteration in definition with effect from 1-3-2003, in our opinion, cannot alter or take away the vested right of the petitioner to avail the benefit of Cenvat as per the existing Rules when he received the input in his factory. It may be noticed that even after the amended definition of input came into force the time at which the Cenvat credit could be availed remained the same namely on receipt of the input in the factory of the manufacturer and that being the position, the contention raised by the petitioner deserves to be sustained.

8. In Samtel India Ltd. Vs. Commissioner of Central Excise, Jaipur, like question

was raised before the Supreme Court in appeal filed against the Order of CEGAT in a matter arising under Customs Act. The appellants had paid the duties on the imports of goods to them under the Rules prevailing up to February, 1997. The appellants would have been entitled to a refund of duty because no adjustment was possible. However, w.e.f. 1st March, 1997 the Rule 57F was amended and the claim of the petitioner for refund of the amount of duty paid by him on the imports was rejected on the ground of relying on the amended provision. Before the Supreme Court, it relied its earlier decision in Eicher Motors Ltd. [supra] and the Court found that the principle enunciated in Eicher Motors Limited's case [supra], is fully applicable to the case.

9. The contention of the Revenue that without striking down Sub-rule (17), no relief could be given to the petitioner and that in the absence of such a challenge to the Sub-rule (17), the judgment of the Tribunal deserves to be sustained was rejected on the ground that

"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 Etcher Motors Ltd.'s case (supra), Sub-rule (17) cannot be applied to vested rights that the goods have already been exported, prior to March, 1997, the assessee would be entitled to a refund".

10. In coming to this conclusion, the Court distinguished its earlier decision in Osram Surya (P) Ltd. Vs. Commissioner of Central Excise, Indore, relied on by the Revenue in its application to present controversy and held it to be inapplicable.

11. The controversy, which has been raised in the present case, squarely, came up before the Karnataka High Court in Grasim Industries Ltd. Vs. C.B.E. and C., It was a case relating to exclusion of Light Diesel Oil used as inputs in the manufacture of cement from the purview of input in terms of Notification dated 1-3-2003 amending Rule 2(g) of the Cenvat Credit Rules/ 2002. The question about availing of Cenvat credit as in the present case was in respect of L.D.O. which had been received by the assessee prior to 1-3-2003 before Rule 2(g) was amended but has not been actually used as input until then and was forming part of closing stock as on 28-2-2003 or for that matter opening stock on 1-3-2003. Since w.e.f. 1-3-2003, L.D.O. has been specifically excluded from definition of inputs under Rule 2(g) by so providing in Explanation to Rule 2(g), the Revenue has sought to withdraw Cenvat Credit availed by the assessee on such stock of L.D.O. up to 28-2-2003 in terms of amended Rule 2(g) and direction issued by CBEC dated 31-3-2003. The Revenue required the assessee to reverse credit availed by him in respect of L.D.O. stock as on 28-2-2003. The assessee claimed that it had acquired a vested right to claim the Cenvat credit in terms of Rule

4(1) of the Cenvat Credit Rules, 2002, and subsequent amendment which was not retrospective in effect could take away the vested right. The Rule 4(1) having not been amended, it must have its full operation.

12. The Karnataka High Court upheld the contention of the assessee relying, on the decision of the Supreme Court in Eicher Motors Limited's case (supra). The Karnataka High Court also referred to the decision of Supreme Court in Samtel India Ltd.'s case referred to above and relying on the following observations of the Supreme Court, the impugned circular was held to be invalid and contrary to the provisions of the statute and was not given effect to :

"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 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]".

13. It has been brought to our notice that SLP filed against the aforesaid judgment has since been dismissed by the Supreme Court by a speaking Order 2004 (170) E.L.T. 306 (S.C). While dismissing the SLP against the judgment of the Karnataka High Court in Grasim Industries Company's case (supra), the Court observed as under :

"In our view, this case is fully covered by the decision of this Court in Samtel India Ltd. Vs. Commissioner of Central Excise, Jaipur, and the High Court has rightly so held".

14. In view of the aforesaid decision, the controversy raised in the present case is fully governed by the ratio laid by the Karnataka High Court as affirmed by the Supreme Court and this petition deserves to be allowed.

15. Accordingly, the petition is allowed. The circular dated 31-3-2003 giving effect to the amended Rules retrospectively and to recall the Cenvat credit availed in respect of stocks of L.D.O. as on 28th February, 2003 with reference to subsequent amendment, is set aside and so also the impugned notices found on that circular calling upon the assessee to reverse the Cenvat credit in respect of stocks on L.D.O. lying in stocks as on 28th February, 2003, on which Cenvat was permissible under Rule 4, are also quashed.

16. There shall be no Orders as to costs.