

(2015) 04 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No. 6342 of 2004.

**Sonalac Paints and Coatings Ltd. - Appellant @HASH Commr. of C. Ex.,
Chandigarh**

Date of Decision : 15-04-2015

Acts Referred:

Citation : (2015) 319 ELT 229 : (2015) 16 SCC 298

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : Mrs. Amita Gupta and Joy Kumar, Advocates, for the Appellants; S/ Shri K. Radhakrishnan, Sr. Advocate, Arijit Prasad, Ms. Aruna Gupta and B. Krishna Prasad, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. This appeal is preferred by the appellant against order dated 10-8-2004 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) [2004 (175) E.L.T. 869 (Tri.-Del.)]. By the impugned order, the appeal of the appellant has been dismissed.

2. The facts leading to the present appeal, questioning the validity of the aforesaid order, read as under :

3. The appellant herein is holding Central Excise Registration and is engaged in the manufacture of paints, varnish, primer, enamels and distempers falling under Chapter 32 and bituminous mixtures falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985. As per the appellant, it was availing Modvat credit on all the movable inputs during the financial year 1999-2000. As on 31-3-2000, it had a closing stock of inputs and finished goods involving Modvat credit of Rs. 86,222/- whereas the closing balance in RG-23A Part II was nil. With effect from 1-4-2000, it had started availing total exemption from payment of duty under Notification No. 8/2000, dated 1-3-2000. The amount of Rs. 86,222/- related to the credit of inputs was debited by the appellant in the Profit and Loss Account on 3-10-2000, i.e., on a later date. Interest thereupon was also deposited in TR-6 challan dated 22-12-2000.

4. A show cause notice was issued to the appellant on 27-3-2001 calling upon them to show cause as to why Central Excise duty of Rs. 14,28,370/- be not recovered from the appellant under Section 11A of the Central Excise Act as duty payable on the finished goods manufactured and cleared by the appellant during the period 1-4-2000 to 16-9-2000. The main reason for issuance of show cause notice was that the appellant had not debited the balance of Rs. 86,222/- on 1-3-2000, when it had started availing the exemption from payment of duty under Notification No. 8/2000 but had done subsequently, i.e., 3-10-2000. The appellant submitted reply to the show cause notice in which it was pleaded that all the conditions contained in Notification No. 8/2000 had been fulfilled by the appellant for exercising the option to avail the exemption under the said Notification and merely because the Modvat credit in the sum of Rs. 86,222/- which was there with the appellant as on 31-3-2000 was debited later on, i.e., 3-10-2000, would not be of any relevance.

5. The Commissioner after hearing the appellant accepted the aforesaid contentions and dropped the proceedings.

6. A perusal of the order of the Commissioner would show that he took into consideration para 2 of Notification No. 8/2000 which lays down the conditions subject to which exemptions contained in the Notification were to be granted.

7. It was found that all the conditions mentioned in para 2 were fulfilled by the appellant herein which is clear from the following discussion contained in the order dated 8-4-2002 passed by the Additional Commissioner (Audit), Chandigarh :-

"There is no condition precedent that exemption under Notification No. 8/2000 shall be available only if the credit of duty attributable to inputs in stock or inputs contained in the finished products in stock on day immediately preceding to the financial year shall have to be debited or reversed. It is nowhere laid down in Notification No. 8/2000, by express words or by implication that failure to debit or reversal of the aforesaid credit shall amount to treating the inputs in stock as modvatable inputs and goods manufactured in the financial year shall have to pay full rate of duty. The only two conditions relating to Modvat/Cenvat credit are contained in sub-paras 2 (iii) and (iv). Accordingly to those paras no credit of duty paid on inputs used in the manufacture of the specified goods cleared for home consumption shall be availed and no credit of duty under Rule 57Q with respect of capital goods shall be utilised with respect to the aggregate value of first clearances not exceeding Rs. one hundred lakhs."

8. The Commissioner thus took the view that merely because the earlier credit of Rs. 86,222/- was debited on 3-10-2000 would not deny the benefit of the exemption Notification to the appellant which was otherwise available. We may record at this stage that the Commissioner was conscious of the provisions of Rule 57AG(2) of the Central Excise Rules, 1944.

9. After discussing this Rule and interpreting the same, the Commissioner took

the view that the said Rule would not come as a handicap in the way of the appellant in claiming the benefit of the said Notification inasmuch as it nowhere provides that the Modvat credit balance which was there with the appellant had to be debited before exercising the option to avail the exemption under the aforesaid Notification. After reproducing the Rule, the same is interpreted by the Commissioner in the following manner :-

"4.6 sub-rule (2) of Rule 57AG of the Rules inter alia further provide that a manufacture who opts for exemption from the whole of the duty of Excise leviable on the goods manufactured by him under a notification bases on the value or quantity of clearances in financial year, and who has been availing of the credit of the duty paid on the inputs before such option is exercised, shall be required to pay an amount equivalent to the credit, if any, allowed to him in excisable goods 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 lapse and shall not be allowed to be utilised for payment of duty on any excisable goods, whether cleared from home consumption or for export.

4.7 As per the text of the rule the noticees were required to pay an amount equivalent to the credit, if any, allowed to them in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date when option to avail exemption of duty was exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining was to lapse and was not to be utilised for payment of duty on any excisable goods.

4.8 The text of Rule 57AG(2) is clear and credit attributable to inputs as such or contained in finished goods was to be debited only if there was balance in the Modvat credit amount. If there was no balance no debit was required to be made. Neither Rule 57AF nor any other rule or notification lays down that in the event of non-debiting of aforesaid amount the benefit available under Notification No. 8/2000 shall be denied. There is no averment in the show cause notice to any rule or notification which had laid down for such denial.

10. We find that the aforesaid interpretation given by the Commissioner on the facts of the present case is completely valid and correct. Contrary view which is taken by the CESTAT is unsustainable.

11. We allow this appeal and set aside the judgment of the CESTAT.