
(2009) 04 SHI CK 0054
In the High Court Of Himachal Pradesh

Sood Steel Industrial (P) Ltd.

APPELLANT

Vs

Commissioners of Central Excise and Another

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 57G(2)

Citation : (2009) 166 ECR 167 : (2009) 241 ELT 186

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—This Excise Reference was admitted on the following questions of Law:

1) Whether, in the facts and circumstances of the case, the Tribunal was right in interpreting the Notification dated 28.2.1993 and the Deemed Credit Order dated 1.3.1994 and in denying the benefit, which was claimed by the applicant:

2) Whether, in the facts and circumstances of the case, the Tribunal was right in interpreting the provisions of Rule 57A and 57G as having bearing and relevance to the Deemed Credit Benefit to be allowed to the applicant?

3) Whether, in the facts and circumstances of the case, the Tribunal was right in interpreting Chandigarh Central Excise Collectorate Trade Note No. 81/94 dated 25.7.1994 as over-riding the notice dated 28.2.1993 and Deemed Credit Order dated 1.3.1994?

2. Though three questions as aforesaid have been framed, the basic question which arises in this petition is with regard to the interpretation of the Deemed Credit Order dated 1.3.1994 vis-?-vis., the exemption notification No. 1/93-C.E. dated 28.2.1993 and also the effect of the trade note issued by the Chandigarh Central Excise Collectorate on 25.7.1994.

3. Under Notification No. 1/93-C.E., dated 28.2.1993, the specified goods upto the aggregate value of clearances not exceeding Rs. 75,00,000/- enjoyed full/

concessional/slab exemption from the payment of Central Excise Duty subject to the various conditions and limitations as provided in that exemption Notification. The exemption under that Notification was not available if the aggregate value of clearances of all excisable goods for home consumption (a) by a manufacturer from one or more factories or (b) from any factory by one or more manufacturers, had exceeded Rs. 2,00,00,000/- in the preceding financial year.

4. A bare perusal of this notification shows that benefit of this notification was only available to such units whose total clearances in the preceding financial year did not exceed Rs. 2 crores. The effect of the notification may be summarized as follows:

(1) In the case of first clearances of the specified goods upto an aggregate value not exceeding Rs. 30,00,000/-.

(a) manufacturer avails of the benefit of Modvat credit, then the exemption was to the extent of 10% ad valorem subject to the condition that a minimum of 5% ad valorem duty was payable.

(b) If the manufacturer did not avail of the benefit of Modvat credit then the exemption was from the whole of the duty of excise leviable thereon.

(2) For the further clearances of Rs. 20,00,000/- following the above clearances of Rs. 30,00,000/-, the exemption was to the extent of 10% ad valorem subject to the condition that a minimum of 5% ad valorem duty was payable.

(3) For the further clearances of Rs. 25,00,000 following the clearances of Rs. 50,00,000/- as above [Rs. 30,00,000/- in Clause (i) and Rs. 20,00,000/- in Clause (ii)], the exemption was to the extent of 5% ad valorem subject to the condition that a minimum of 5% ad valorem duty was payable.

5. No exemption was available to the aggregate value of clearances in excess of Rs. 75,00,000/- [Rs. 30,00,000/- in Clause (i) + Rs. 20,00,000/- in Clause (ii) + Rs. 25,00,000/- in Clause (iii)]. While the extent of exemption was limited to the aggregate value of clearances not exceeding Rs. 75,00,000/-, no such exemption at all was available if the aggregate value of clearances of all excisable goods for home consumption had exceeded Rs. 2,00,00,000/- in the preceding financial year. For the current year after limiting the exemption to the aggregate value of clearances of Rs. 75,00,000/-, there was no stipulation with regard to the value of clearances of payment of full excise duty as applicable. No benefit was however, available to the clearances in excess of Rs. 75,00,000/-.

6. For the next financial year, however, the benefit of small scale exemption was not to be available, if the clearances in the current financial year exceeded Rs. 2,00,00,000/- (Rs. 75,00,000/- exempted and rest not exempted). Thus a manufacturer whose total clearance in the previous year did not exceed Rs. 2 crore could get the benefit as provided in the notification. However, this benefit was limited to the clearances amounting to Rs. 75 lacs only and for clearances over and above Rs. 75 lacs the manufacturer was liable to pay the full duties.

7. The Excise Ministry thereafter issued a Deemed Credit Order dated 1.3.1994 which reads as follows:

In exercise of the powers conferred under the second proviso to Rule 57G(2) of the Central Excise Rules, 1944 (1 of 1944), and in supersession of Order F. No. 342/5/91- TRU dated 7th July, 1992, as amended, the Central Government hereby directs that the ingots and rerollable materials of iron and steel purchased from outside and lying in stock on or after the 1st day of April, 1994 with the rerollers, availing of the exemption under Notification No. 1/93- Central Excise dated the 28th February, 1993 will be deemed to have paid duty and the credit of duty under Rule 57G of the said Rules in respect of such ingots and rerollable material used without undergoing the process of melting, in the manufacture of goods falling under Chapter 72 and 73 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), may be allowed at the rate of Rs. 920/- per tonne, without production of documents evidencing the payment of duty. This order shall come into force on 1st day of April, 1994.

8. Thereafter, the Chandigarh Collectorate issued a trade notice on 25.7.1994 whereby the trade and all persons concerned were informed that the benefit of deemed credit on re-rollable material and ingots as provided in the deemed credit order was not admissible to the re-rolling units whose value of clearances was in excess of Rs. 75 lacs. Admittedly, for the year in question, the petitioner was entitled to avail the benefit of the notification No. 1/93- CE, dated 28.2.1993. It is also not denied that the total clearances of the petitioner-company for the relevant year exceeded Rs. 75 lacs. A show cause notice was issued to the applicant whereby the petitioner was denied the benefit of deemed credit after crossing the exemption of limit of Rs. 75 lacs. The Deputy Commissioner, Excise confirmed the demand in view of the trade notice referred to above. The petitioner filed an appeal and the Commissioner allowed the appeal relying upon the decision of the Appellate Tribunal in the case of 1996 (65) ECR 1 03 This judgment of the Two Member Bench was reconsidered by a Three Member Bench of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) in the 2000 (118) ELT 85

9. The Larger Bench held that any manufacturer whose clearances are over Rs. 75 lacs cannot be said to avail of the benefit of the notification No. 1/93-C.E. and, therefore, could not get benefit of the deemed credit order. Following this order of the CEGAT, the appeal filed by the department was allowed. Hence the present petition.

10. In our view, the order of the Larger Bench of the CEGAT is not correct. The benefit of the notification No. 1/93-C.E. is available to any manufacturer whose total clearances in the preceding financial year did not exceed Rs. 2 crores. The deemed credit order clearly states that all concerns availing of exemption under Notification No. 1/93-C.E. dated 28.2.1993 will be deemed to have paid duty under Rule 57-I of the Rules and the credit may be allowed to them at the rate fixed without production of any documents evidencing the payment of duty. Any

manufacturer whose total clearances did not exceed Rs. 2 crores was entitled to the benefit of exemption under the notification No. 1/93-C.E. No doubt the benefits under this notification were limited to clearances of Rs. 75 lacs but this does not mean that manufacturers whose clearances exceeded Rs. 75 lacs were not availing the exemption under the notification. In our considered view, the only interpretation which can be given is that the wording used in the notification identifies the category of manufacturers who are satisfying the criteria as set out in Notification No. 1/93-C.E. and are availing of the benefit of the said notification. The trade note limiting this benefit to those manufacturers whose clearances do not exceed Rs. 75 lacs is totally illegal and against the deemed credit order issued by the Ministry. We may also point out that though the department may be bound by its trade note, the industry is not bound by the same and has a right to challenge the same. In view of the above, we hold that the Tribunal misinterpreted the deemed credit order dated 1.3.1994 and the petitioner was entitled to avail benefit of the deemed credit order since he was availing benefit of the notification dated 28.2.1993. We also hold that the trade note No. 81/94 dated 25.7.1994 cannot override the deemed credit order and the said trade note is illegal. All the questions are answered accordingly.