

(2008) 02 MAD CK 0089

In the Madras High Court

Case No : C.M.A. No. 2557 of 2005 and C.M.P. No. 13382 of 2005

Sri Kalaivani Spinners (P) Limited

APPELLANT

Vs

The Customs, Excise and Service Tax Appellate Tribunal and
The Commissioner of Central Excise

RESPONDENT

Date of Decision : 20-02-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 52A, 57AC(2), 57AE(1)
Central Excises and Salt Act, 1944 — Section 3, 3(A)

Citation : (2008) 127 ECC 219 : (2008) 153 ECR 219 : (2008) 227 ELT 515

Hon'ble Judges : K. Raviraja Pandian, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : K. Jayachandran, for the Appellant; K. Ramakrishna Reddy, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The Civil Miscellaneous Appeal is filed against the Order No. 786/2005 dated 2.6.2005 in Appeal No.

E/563/2004 on the file of the Customs, Excise & Service Tax Appellate Tribunal, Chennai and the same was admitted on the following substantial

questions of law:

a. Whether ""Duty"" referred to in the CENVAT Credit Rules, 2001 means the duty payable u/s 3 or Section 3A of the Central Excise Act, 1944 or

reversal of credit?

b. Whether the appellant can take credit of excise duty originally paid by the manufacturer, in the circumstances of the case?

2. Heard the learned Counsel appearing on either side.

3. The appellant purchased capital goods from one M/s. Vairava Textiles Limited,

who had purchased the same from the manufacturer of machines. As per Rule 57AC(2) of the erstwhile Central Excise Rules, 1944, the credit of duty paid on capital goods could be availed only upto 50% of the duty paid on such capital goods in the financial year in which it was received and the balance credit may be taken in any subsequent financial year. M/s. Vairava Textiles Limited on purchase of the capital goods by them during the year 2000-01 availed 50 percent of the duty paid by the manufacturer. In the very same financial year, the said Vairava Textiles Limited sold the capital goods to the appellant and reversed the 50% of the credit availed by them and thus showing fifty percent of the reversed credit as duty paid. The appellant having purchased the capital goods availed 50 percent of the credit on the duty paid by the manufacturer during 2000-2001 and the balance 50 percent of the credit on the duty paid by the manufacturer during the year 2001-2002. That was rejected by the authorities. The original authority while non-suited the appellant for the claim of modvat credit for the total amount of duty paid by the manufacturer, has imposed penalty. On appeal, the Tribunal though confirmed the finding of the original authority as to the non-entitlement of 100% modvat credit on the duty paid by the manufacturer of the capital goods, however deleted the imposition of penalty on the ground that the appellant has availed the credit on a bona fide belief that it was entitled to such claim. The correctness of the said order of the Tribunal is put in issue in this appeal.

4. Before us also, the same contention, which has been raised before the authorities has been raised. After perusal of the order, we are of the view that in as much as that the capital goods were cleared to the appellant under Rule 57AE(1)(h), which provided that when the capital goods were removed from the factory, the manufacturer of the final product should pay appropriate duty of excise leviable thereon as if such capital goods had been manufactured in the said factory and such removal should be made under the cover of an invoice issued under Rule 52A and in terms of Rule 57AE(1)(h), an invoice issued by a manufacturer of final products for clearance of inputs or capital goods as such was a document for the purpose of taking Cenvat credit and admittedly, in the invoice issued by M/s. Vairava Textiles Limited, the credit availed was only 50 percent of the duty

paid by the original manufacturer, the view of the authorities that the appellant was not entitled to take the entire amount of duty paid by the original

manufacturer but was entitled to take credit of the amount which M/s. Vairava Textiles Limited incorporated in the invoice. Hence, we do not find

any substance to interfere with the order of the Tribunal.

5. Hence, the Civil Miscellaneous Appeal is dismissed as no question of law is involved. However, there is no order as to costs. Consequently, the

connected C.M.P. No. 13382 of 2005 is also dismissed.