
(2007) 11 MAD CK 0269

In the Madras High Court

Case No : C.M.A. No. 2081 of 2005 and C.M.P. No. 10977 of 2005

The Commissioner of Central Excise

APPELLANT

Vs

ITC Limited, Packaging and Printing Limited and Customs,
Excise and Service Tax Appellate Tribunal, South Zonal Bench

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, 57G, 57G(1), 57G(10), 57G(11)
Central Excises and Salt Act, 1944 — Section 37

Citation : (2008) 128 ECC 134 : (2008) 154 ECR 134 : (2008) 224 ELT 226

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

Bench : Division Bench

Advocate : S. Udayakumar, SCGSC, for the Appellant; L. Maithili, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—This Appeal is filed against the Final Order No. 131 of 2005 dated 24.1.2005 made by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The question of law formulated for entertainment of the appeal are as follows:

1. Whether the credit of duty on capital goods can be allowed when the respondents have not filed statutory declarations which is a mandatory provisions under Rule 57T(1) of CER 1944?

2. Whether credit of duty on capital goods can be allowed when the respondents have not intimated about the date of receipt of capital goods into the factory which is a mandatory provisions under Rule 57T(2) of CER 1944?

3. Whether the Hon"ble Tribunal is right in holding that the Revenue has no case that any of the substantive conditions for capital goods credit was not fulfilled by the respondents when the respondents have violated to sub-rules namely Rule 57T(1) and 57T(2)?"

3. Though the questions of law are framed as above, the facts of the case proceed as follows:

The first respondent herein being manufacturers of coated boards, printed boards, printed cartons and printed slides falling under Chapter 48 of the Central Excise Tariff Act, 1985, taken capital goods credit of a sum of Rs. 19,92,778/- in their RG 23C Part II Register during the period July to November 1995 in respect of capital goods received by them from time to time and taken into use. The appellant/Department was of the view that the respondent/assessee have not fulfilled the statutory obligation prescribed under Rule 57T of the Central Excise Rules, 1944 by not filing statutory declaration before receipt of capital goods and by not giving intimation in respect of receipt of capital goods into their factory. Therefore, the amount of Rs. 19,92,778/- taken as credit was irregular. Accordingly, the Revenue issued a show cause notice dated 18.1.2006 calling upon the respondent assessee to show cause as to why a sum of Rs. 19,92,778/- erroneously taken credit of should not be disallowed under Rule 57U and as to why penalty should not be imposed under Rule 173Q(i) (bb). After due enquiry, the Assistant Commissioner of Central Excise by his order dated 10.3.1998 allowed the credit for a sum of Rs. 4,46,436/- and disallowed the remaining amount of Rs. 15,46,362/- (Rs. 14,43,365 + Rs. 1,02,997) under Rule 57U and imposed penalty in a sum of RS.3 lakhs under Rule 173Q(i)(bb). Aggrieved by the order of the Assistant Commissioner, the respondent filed a statutory appeal before the Commissioner (Appeals), who by his order dated 16.3.2000 allowed the credit of Rs. 1,02,997/- for which statutory declaration was filed late but before condonable time limit of three months and confirmed the remaining part of the order of the Assistant Commissioner. The respondent carried the matter on further appeal before the Customs, Excise and Service Tax appellate Tribunal, which by its order dated 24.1.2005 set aside the order of the Commissioner (Appeals) impugned therein by allowing the appeal. The correctness of the same is put in issue in this appeal by formulating the above questions of law for entertainment of the appeal.

4. Learned Counsel appearing for the revenue/appellant submitted that Rule 57T as was obtaining during the relevant time required the manufacturer to file a declaration indicating the particulars of the capital goods, the description of the final product manufactured in his factory and such other information as the Assistant Commissioner might require. If the manufacturer was not in a position to make declaration within the period, he could make an application within a period of one month or such further period as might be allowed by the Assistant Commissioner within the maximum period of two months from the date of receipt of the capital goods in the factory. The manufacturer intending to take credit of the duty paid on capital goods under Rule 57Q shall intimate the particulars regarding the full description of the capital goods along with brand name and identification marks and any other particulars as the Collector might require. But in the facts of the present case, the respondent manufacturer infringed the conditions prescribed under the Rules. That aspect of the matter

has been totally lost sight of by the Tribunal.

5. We heard the argument of the learned Counsel appearing for the Department/appellant.

6. It could be seen from the order of the Tribunal that in the instant case the capital goods credit was disallowed to the assessee on the ground that the relevant modvat declarations under Rule 57T were filed beyond the prescribed period of three months. The Tribunal has also recorded a finding to the effect that no other reason has been cited for denial of the credit. Thus, the final fact finding authority has recorded a finding to the effect that the capital goods credit was disallowed to the assessee on the ground that the relevant modvat declaration under Rule 57T was filed beyond the period prescribed. The Tribunal has taken note of the amendment notification No. 7 of 1999 C.E. (N.T) dated 9.2.1999, which amended Rules providing that Modvat credit should not be disallowed for procedural lapses like declaration having not been filed in time, all particulars having not been stated in duty paying document etc., held in favour of the assessee.

7. The Notification No. 7/99 C.E. (N.T) dated 9.2.1999 reads as under:

In exercise of the powers conferred by Section 37 of the Central Excise Act, 1944 (1 of 1944), the Central Government hereby makes the following rules further to amend the Central Excise Rules, 1944, namely:

1. (1) These rules may be called the Central Excise (3rd Amendment Rules, 1944.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Excise Rules, 1944, -

(a) in Rule 57G, after Sub-rule (10), the following sub-rule shall be inserted, namely, -

(11) Credit under Sub-rule (2) shall not be denied on the grounds that -

(i) any of the documents, mentioned in Sub-rule (3) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse;

(ii) the declaration filed under Sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under Sub-rule(1).

Provided that the Assistant Commissioner of Central Excise having jurisdiction over the factory of manufacturer intending to take credit is satisfied that duty due on the inputs has been paid and such inputs have actually been used or are to be used in the manufacture of final products, and such Assistant Commissioner shall record the reasons for not denying the credit so in each case.

(b) in Rule 57T, after Sub-rule (12), the following sub-rule shall be inserted, namely:

(13) Credit under Sub-rule (6) shall not be denied on the grounds that -

(i) any of the documents specified under Sub-rule (3) of Rule 57G does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the capital goods, assessable value, name and address of the factory or warehouse;

(ii) the declaration filed under Sub-rule (1) does not contain all the details required to be contained therein or the manufacturer fails to comply with any other requirements under Sub-rule (1):

Provided that the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer intending to take credit is satisfied that the duty due on the paid and such capital goods have actually been used or are to be used in the manufacture of final products, and such Assistant Commissioner shall record the reasons for not denying the credit so in each case.

The said notification was followed by Guidelines in Circular No. 441/7/99- CX dated 23.2.1999 which reads as under:

Modvat rules - Guidelines to be followed in respect of Notification NO.7/99-C.E. (N.T.), dated 9-2-1999 or amendment to Rule 57G and 57T.

I am directed to refer to Notification NO.7/99-C.E. (N.T.), dated 9-2-1999 issued to amend Modvat Rules. The aforesaid notification has been issued to insert Sub-rule (11) in Rule 57G and Sub-rule (13) in Rule 57T of the Central Excise Rules, 1944 so as to empower the Assistant Commissioner of Central Excise having jurisdiction over the factory of the manufacturer to allow credit of duty paid on inputs/capital goods ignoring minor procedural lapses in filing the declaration or in the invoice/document based on which credit is to be taken. However, the Assistant Commissioner should ensure that inputs/capital goods have suffered duty and are being used/are to be used in the process of manufacture. The Assistant Commissioner is also required to record the reasons in file for allowing Modvat credit in each case.

2. The Assistant Commissioner, before issuing Show Cause Notice for wrong avilment of Modvat Credit by the assessee on any procedural grounds, shall conduct enquiries with regard to duty paid nature of the goods at the suppliers and, ensure that necessary information as mentioned in the Notification are available on the invoice and satisfies himself whether the goods have been used or are intended to be used as contemplated in the Modvat Rules. In case the assessee's invoice contains the details viz., description of the goods, assessable value, name and address of the factory or warehouse where the goods are to be received, and if the assessee has filed a declaration as contemplated in the Modvat rules, the Assistant Commissioner having jurisdiction over the factory would allow the credit of duty so paid after making enquiries as above.

3. It should hereafter be ensured that Show Cause Notices are not issued for procedural lapses as mentioned in the Notification without making proper enquiries. Wherever the Assistant Commissioner, after making enquiry due, is satisfied that the Modvat credit taken by the assessee is incorrect, adjudication proceedings in the normal course should be initiated. Efforts, however, should be directed towards reduction of litigation.

8. From the above, it is clear that the modvat credit should not be disallowed for procedural lapses and the circular further instructed the authorities that the minor procedural lapses in the matter of filing modvat declaration should be ignored while considering the modvat claim in respect of capital goods in pending cases, where the substantive conditions of modvat credit were fulfilled to the satisfaction of the original authority.

9. Having regard to the above said amendment brought out in notification No. 7/99-CE (N.T.) dated 9.2.1999 and the subsequent circular No. 441/7/99-CX dated 23.2.1999 and taking note of the fact that the instant case is not even one of non-filing of the modvat declaration, but one of belated filing of such declaration, as per the finding recorded by the Tribunal, we are of the view that the amendment notification dated 9.2.1999 and the circular dated 23.2.1999 followed by it, would squarely covers the issue and the order of the Tribunal is in accordance with the amendment notification No. 7/99-C.E. (N.T.) dated 9.2.1999 and the Circular No. 441/7/99 dated 23.2.1999. Therefore, the appeal is dismissed. However, there is no order as to costs. Consequently, the connected C.M.P. is also dismissed.