
(2018) 01 GAU CK 0089
In the Gauhati High Court
Case No : 1 of 2015

UNION OF INDIA and ORS.

APPELLANT

Vs

M/S. OIL INDIA LTD

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0089

Hon'ble Judges : Ajit Singh, Manojit Bhuyan

Bench : Division Bench

Advocate : S C KEYAL

Final Decision : Disposed

Judgement

1. Heard Mr. S.C. Keyal, learned Assistant SGI for the appellants. There is none to represent the sole respondent M/s Oil India Ltd.

2. By reason that the respondent was availing CENVAT Credit on various input services and utilising such credit for their output services by not

maintaining separate accounts for dutiable and exempted products, which was in contravention of Rule 6(3) of the Cenvat Credit Rules, 2004, the

Show Cause Notices dated 23.04.2007 and 11.12.2007 were issued. The respondent was made to show cause as to why Cenvat credit wrongly

availed should not be demanded and recovered, together with interest and penalty under the provisions of the Cenvat Credit Rules, 2004, read

with the relevant provisions under the Finance Act, 1994.

3. At the instance of the respondent, the matter received consideration of the Commissioner of Central Excise, Dibrugarh and vide Order dated

03.06.2008 the charges brought against the respondent vide the aforesaid Show Cause Notices dated 23.04.2007 and 11.12.2007 were

dropped. Aggrieved, the appellant filed appeal before the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata on

15.09.2008. Thereafter, the appellant had sent proposal to the Technical Officer, Central Board of Excise & Customs (CBEC), New Delhi on

26.09.2008 seeking clearance from the Committee on Disputes (CoD) for preferring appeal. The said appeal along with the Misc. Application

were dismissed by CESTAT by Order dated 13.10.2008 for want of CoD clearance, however, with liberty to the Department to apply for

restoration in the event of obtaining CoD clearance later on.

4. In the matter of the requirement of clearance by CoD, the Supreme Court of India had deliberated on the issue and rendered Judgment dated

17.02.2011 in the case of Electronics Corporation of India Ltd. v. Union of India & Others, reported in (2011) 3 SCC 404. It was held, inter alia,

that CoD clearance would not be required in those cases where application for clearance was pending before the Committee as on 17.02.2011. In

the light of the order of the Supreme Court, the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs issued letter

dated 24.03.2011 intimating all concerned that CoD clearance would not be required in such cases where proposals were pending before the

Committee until 17.02.2011.

5. Emboldened, the appellant filed Misc. Application before CESTAT on 12.04.2011, on the strength of liberty so granted, for restoration of the

appeal that had been dismissed on 13.10.2008. On 24.09.2012, the said application was dismissed. Another Misc. Application was filed on the

basis of confirmation obtained from CBEC that the proposal for CoD clearance was under examination before the Board. By Order of

19.04.2013, CESTAT dismissed the application on the following lines:

1. This Miscellaneous Application is filed by the Revenue seeking restoration of the appeal dismissed by this Tribunal vide Order No.M-282/A-

1009/KOL/08 dated 13.10.2008.

2. The Ld. A.R. for the Revenue has submitted that as on the date of delivery of the judgment of the Hon"ble Supreme Court in the case of

Electronics Corporation of India Ltd. vs. UOI - 2011 (265) ELT 11, the application for clearance from CoD was under consideration by Central

Board of Excise & Customs. In support, he has referred to the letter dated

11.09.2012 of the CBEC addressed to the Commissioner of Central

Excise, Dibrugarh enclosed with the Misc. Application. He has submitted that in view of para 3 of the Circular issued by CBEC on 24.03.2011,

no CoD permission is required in the event, the application is under consideration before CBEC.

3. Sri Abhishek Anand, learned Advocate for the respondent has submitted that it is clearly mentioned at para 3 of the said circular that CoD

permission would not be required in those cases where proposals had been sent to the Committee and the decisions pending as on 17.02.2011,

but the said Circular cannot be applied to cases under consideration before CBEC.

4. We agree with the contention of the learned Advocate for the respondent and in view of the decision by this Tribunal in Burn Standard Co.'s

case - Order No. M-540/KOL/2012 dated 17.09.2013. CoD permission would not be required in those cases where application for clearance

from CoD was pending before Committee as on 17.02.2011 or permission was granted as on the date. In these circumstances we do not find

merit in the application of the Revenue. Accordingly the same is dismissed.

6. Aggrieved, the present appeal has been preferred, which was admitted on 11.12.2017 on the following substantial question of law:

Whether the Hon''ble Tribunal has erred in rejecting the Misc. Application of the Appellant No. 3 on the ground that the proposal of CoD

clearance was pending before Central Board of Excise & Customs and not before CoD as on 17.02.2011 as per the Order dated 17.02.2011

passed by the Apex Court?

7. We have heard the counsel for the appellants and have also closely perused the decision of the Supreme Court in Electronics Corporation of

India Ltd. (supra). As held by the Supreme Court, the mechanism to resolve disputes involving the State Governments and their instrumentalities by

the setting up of a high-powered Committee, finally termed as ""Committee on Disputes"" (CoD), has outlived its utility. Also not in dispute is that as

on 17.02.2011, the proposal made by the Department had been sent to the Committee for clearance and was pending consideration. In this view

of the matter, the Tribunal was not justified in rejecting the miscellaneous application vide its Order dated 19.04.2013.

8. In view of the above, we set aside the Order dated 19.04.2013 passed by

CESTAT in MA(ROA)494/12 (in Appeal No. S.T. 166/2008) with direction to hear and dispose of the said Misc. Application on merits having regard to the observations above. We hope and trust that the said application be heard on an early date. The Tribunal shall issue notices to the parties concerned intimating the first date of hearing. Appeal stands disposed of. The substantial question of law stands accordingly answered.