

(2005) 12 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 1523 of 2005

Union of India (UOI)

APPELLANT

Vs

Grasim Industries Ltd.

RESPONDENT

Date of Decision : 14-12-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57B, 57G, 57G(1), 57G(11)
Central Excises and Salt Act, 1944 — Section 35G
Income Tax Act, 1961 — Section 32

Citation : (2006) 204 ELT 230 : (2006) 2 WLC 552

Hon'ble Judges : Rajesh Balia, J; R.P. Vyas, J

Bench : Division Bench

Advocate : Vineet Kumar Mathur, for the Appellant; Rajendra Mehta, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties. This appeal u/s 35G of the Central Excise Act, 1944, is against the order of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, dated 25th May, 2004.

2. The substantial question which was framed at the time of admission which arose for consideration reads as under:

Whether in the facts and circumstances of the case, keeping in view the provisions of Rule 57-T(3) of the Central Excise Rules, 1944, the Tribunal was justified in allowing the respondent to avail the modvat credit on ground of delayed filing of declaration?

3. Briefly stated the facts necessary for the present purpose which led to this appeal are that the respondent assessee has availed MODVAT credit of Duty paid on capital goods received in factory as per Rule 57-Q of Central Excise Rules, 1944. However, declaration required to be filed u/s 57-T(1) was filed after 3 months of the receipt of the capital goods in factory and availing MODVAT credit

of duty. It is stated that the goods were received in factory on 31st March, 2000 vide invoice dated 16-3-2000. However, declarations were made on 12th of July, 2000 by which period of filing declaration had expired. The period within which declaration are to be filed is provided under Rule 57T(1) to 57T(3), which is part of one scheme. Rule 57-T(1) envisages that every manufacturer intending to take credit of the duty paid on the capital goods under Rule 57-Q shall, before receipt of the capital goods, file a declaration with the Assistant Commissioner of Central Excise having jurisdiction over his factory, indicating therein the particulars of the capital goods, description of the final products manufactured in his factory and such further information as the Assistant Commissioner may require, and shall obtain a dated acknowledgement of the said declaration, Sub-rule (3), though, numbered independently indicates that it is operative as proviso to Sub-rule (1) and Sub-rule (2) which says that in case where a manufacturer was not in a position to make the declaration under Sub-rules (1) and (2) and makes the declaration subsequently but ordinarily within a period of one month or in exceptional cases, within a further period not exceeding, in any case, more than another two months from the date of receipt of the said capital goods in the factory, the Assistant Commissioner of Central Excise may, on sufficient cause being shown to him, allow the filing of the declaration.

4. The manufacturer shall be allowed to take the credit of specified duty only if the capital goods are received in the factory premises of the manufacturer under the cover of a document specified under Rule 57G evidencing the payment of duty on such capital goods.

5. If the matter would have rested as that, obviously, respondent assessee was not entitled to avail MODVAT credit in case requisite declarations were made beyond 3 months from receipt of capital goods in factory. However, vide Notification No. 7/99 C.E.(N.T.), dated 9-2-99 Sub-rule (13) was inserted as under:

57T(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 or Deputy Commissioner of Central Excise having jurisdiction over the factory of the manufacturer intending to take credit is satisfied that the duty due on the capital goods have been paid and such capital goods have actually been used or are to be used in the manufacture of final products, and such Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall record the

reasons for not denying the credit so in each case.

It is on the basis of aforesaid rule, it is contended by the learned Counsel for the assessee respondent, as was contended before the Tribunal, that as a result of this sub-rule rigors character of procedural requirement of filing of declaration within time or filing declaration with full particulars have been softened and it is indicated as a matter of legislative policy that for merely procedural lapses the benefit of MODVAT credit, to which manufacturer is otherwise entitled on substantive premise, is not to be denied. In view thereof it was submitted before the Tribunal by the assessee that since with the invoice submitted by the assessee full requisite particulars were furnished, and there is no dispute that Duty Paid capital goods were in fact received in the factory and, used in manufacture of goods, substantive requirement of availing benefit of MODVAT credit on capital goods used in manufacturing of end product as per Section 57-Q have been fulfilled, therefore, the Tribunal has rightly allowed the appeal of the assessee to retain the benefit of MODVAT credit availed by it on receipt of such duty paid capital goods in factory, notwithstanding that declarations were filed belatedly. It was pointed out that limitation for filing declaration is part of procedural law and not substantive content of requirements.

6. Learned Counsel for the appellant Revenue has relied on Sub-rule (3) of Rule 57-T to contend that declarations filed after 3 months of receipt of capital goods in factory premises cannot be of any effect, therefore, show cause notice was rightly issued by the Assessing Authority for withdrawing MODVAT credit availed by the respondent and subsequently ordered recalling the MODVAT credit in respect of such capital goods was justified.

7. It may be noticed that Rule 57-G lays down procedure to be followed by a manufacturer intending to take credit of the duty paid under Rules 57A and 57B on inputs used in manufacture of end product shall file a declaration in respect of in-puts with the Assistant Commissioner of Central Excise having jurisdiction over his factory.

8. Rule 57-Q provides for availing MODVAT of specified duty paid on the capital goods used by the manufacturer in his factory and for utilising the credit so allowed towards payment of Excise leviable on the final products. Rule 57-R provides for availing of MODVAT credit of the specified duty paid on the capital goods not owned by it shall be allowed if such capital goods are acquired by a manufacturer, on lease, hire-purchase, loan, other financial arrangements are to be used in manufacturing of end product by the manufacturer.

9. Rule 57R envisage substantive provision for availing MODVAT credit in respect of duty paid on capital goods though not owned by the assessee but acquired on lease or by loan for being used in manufacturing of end product by utilizing such capital goods in his factory.

10. The procedure for availing MODVAT credit of Duty paid on capital goods under Rule 57-Q or Rule 57-R has been provided under Rule 57-T. In this

connection, it may necessary to notice Sub-rule (6) and Sub-rule (13) of Rule 57 which deals with condition for availing MODVAT credit in respect of capital goods.

Rule 57T(1), (2), (3), (6) & (13) reads as under:

Rule 57T Procedure to be observed by the manufacturer.

(1) Every manufacturer intending to take credit of the duty paid on the capital goods under Rule 57Q shall, before receipt of the capital goods, file a declaration with the Assistant Commissioner of Central Excise having jurisdiction over his factory, indicating therein the particulars of the capital goods, description of final products manufactured in his factory and such further information as the Assistant Commissioner may require, and shall obtain a dated acknowledgement of the said declaration.

(2) The manufacturer shall also file a declaration in accordance with the provisions of Sub-rule (1) of Rule 57R to the Assistant Commissioner of Central Excise having jurisdiction over his factory to the effect that such capital goods shall not be used exclusively for production of final product which is exempt from the whole of the duty of excise leviable thereon (other than a final product which is exempt from whole of the excise of excise leviable under any notification where exemption is granted based upon the value or quantity of clearances made in a financial year) or is chargeable to nil rate of duty and also that he shall not claim depreciation u/s 32 of the Income Tax Act, 1961 (43 of 1961), or as revenue expenditure under any other provision of the said Income Tax Act, in respect of that part of the value of capital goods which represents the amount of specified duty paid on such capital goods.

(3) In case where a manufacturer was not in a position to make the declaration under Sub-rules (1) and (2) makes the declaration subsequently but ordinarily within a period of one month or in exceptional cases, within a further period not exceeding, in any case, more than another two months from the date of receipt of the said capital goods in the factory, the Assistant Commissioner of Central Excise may, on sufficient cause being shown to him, allow the filing of the declaration.

(6) The manufacturer shall be allowed to take the credit of specified duty only if the capital goods are received in the factory premises of the manufacturer under the cover of a document specified under Rule 57G evidencing the payment of duty on such capital goods.

(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 particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of 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 or Deputy Commissioner of Central Excise having jurisdiction over the factory of the manufacturer intending to take credit is satisfied that the duty due on the capital goods have been paid and such capital goods have actually been used or are to be used in the manufacture of final products, and such Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise shall record the reasons for not denying the credit so in each case.

11. Sub-rule (6) says that manufacturer shall be allowed the credit of specified duty only if the capital goods are received in factory premises of the manufacturer under the cover of a document specified under Rule 57-G evidencing payment of Duty on such goods. In other words for the purpose of availing MODVAT credit in respect of capital goods received in factory, the requirement of document accompanied has been envisaged has been indicated in Rule 57-G. Rule 57-G (3) envisages that no credit under Sub-rule (2) of Rule 57G shall be taken by the manufacturer unless the inputs are received in the factory under the cover of any of the documents enumerated in-Sub-rule (3) of Rule 57-G.

12. It provides for documents viz., invoice evidencing that Duty has been paid on such goods. Proof of payment of Duty on the goods received in factory, whether as inputs envisaged under Rule 57G or Capital Good under Rule 57Q/57R is a substantive provision inasmuch as it is condition precedent that MODVAT credit is availed only in respect of such goods which have suffered Duty and that Duty has been paid thereon.

13. Rule 57-T too makes it imperative on manufacturer intending to get MODVAT credit on capital goods received in factory that capital goods must be received under the cover of documents enumerated in Sub-rule (3) of Rule 57-G. This again is another procedural requirement for evidencing payment of excise duty on the capital goods in respect of which modvat credit is availed by the assessee.

14. If we read in that light Sub-rule (13) of Rule 57T, it leaves no room of doubt that the procedural requirement considered hitherto before as mandatory condition for availing benefit of MODVAT, has been relegated to subsidiary position and had been made subservient to fulfilment of substantive requirement for availing MODVAT credit.

15. The substantive requirement of availing MODVAT credit of Duty Paid on the inputs or capital goods received in factory is that such goods must have suffered excise duty required to be paid thereon. Payment of such excise duty must be evidencing by relevant document that inputs on which MODVAT credit can be availed under Rule 57-G or capital goods in respect of which MODVAT credit can be availed under Rule 57-Q or 57-R must be received in and used in the manufacturing of end products in the factory. If these conditions are fulfilled then

procedural lapses on the part of the assessee in making of declaration or furnishing incomplete particulars should not come in the way of assessee in availing MODVAT benefit is clear intent of insertion of Sub-rule 13 with effect from 9-2-99.

16. To this conclusion we find support from contemporaneous explanatory note issued by the Central Board of Excise & Customs explaining the import of bringing in existence of Sub-rule (13). The circular was issued by the Central Board of Excise on 23rd Feb."1999 soon after the rule was inserted. It envisaged that Sub-rule (11) in Rule 57G and Sub-rule (13) in Rule 57-T of the Central Excise Rules, 1944 has been issued 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 the file for allowing Modvat credit in each case.

Significantly it specifically directs that:

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 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 hereinafter 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.

Significantly in para Nos. (2) and (3) of the circular, the Board of Excise & Customs clearly indicated that Show Cause Notice to withdraw Modvat credit by the manufacturer on inputs and capital goods used in manufacturing of end product ought not to be issued for procedural lapses without making proper enquiries with regard to duty paid, nature of 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 that duty has been paid on such goods then merely because the assessee has failed to submit declaration as contemplated in the Modvat Rules or furnished incomplete declaration then for such procedural lapses in furnishing complete details in declaration or delayed declaration modvat benefit, ought not be withdrawn. It mandates not to issue show cause notice for withdrawing MODVAT credits availed by any manufacturer without conducting inquiries and satisfying that the Modvat credit availed by the assessee does not satisfy itself the substantive conditions. Adjudication proceeding in the normal course should not be initiated and show cause notice for withdrawal of modvat credit benefit be not issued lightly on technical grounds.

17. The expression used in Clause (ii) of Sub-rule (13) of Rule 57T envisages that credit under Sub-rule (6) shall not be denied on the ground that the manufacturer fails to comply with any other requirement under Sub-rule (1) : It must be in respect of requirement other than filing declaration containing requisite information i.e. to say it relates to limitation within which declaration has to be furnished. It leads to irresistible conclusion that while requirement of Sub-rule (1) to file declaration is necessary, the within limitation prescribed under Sub-rule (1) read with Sub-rule (3) which operates as proviso thereto, is not mandatory requirement. If other substantial conditions have been satisfied the MODAVT credit availed on Capital goods is not to be withdrawn. Taking any other meaning would frustrate very purpose of expression "manufacturer fails to fulfil other requirements under Sub-rule (1)". The first requirement of Sub-rule (1) of filing of declaration before the receipt of capital goods in the factory, and, second requirement is that declaration must contain necessary particulars. First Part of Sub-rule (1) deals with incomplete particulars. Necessarily, part second, deals with the requirement of filing of declaration before the receipt of goods in factory. If subsequent conditions refer only in respect of filing of declaration before receipt of the goods in factory, the expression would be meaningless because rigor of the rule of filing declaration before receipt of capital goods within factory is otherwise relaxed by making Sub-rule (3) which permits filing of declaration within further period of 3 months. In fact part second of Sub-clause (ii) of Sub-rule 13 clearly deals with question of availing of benefit of MODVAT credit availed as receipt of capital goods in factory without filing declaration before their receipt in factory or even within the extended period. Else very purpose of inserting that part of the expression in Sub-rule (ii) of Rule 13 would be meaningless. It is well settled canon of interpretation that no part of expression used in statutory document must be rendered meaningless and otiose.

18. Our above conclusion is also fortified with the contemporaneous circular issued by the Central Board of Excise & Customs which clearly says that merely procedural lapses be not allowed to defeat the modvat credit benefit, if substantive conditions about payment of Duty and user of goods in manufacture

of end product in factory are fulfilled. In the present case as per finding reached there is no complaint that assessee manufacturer has not satisfied the said substantive conditions for availing the MODVAT credit but only lapse alleged is filing of delayed declaration.

19. As discussed above, conclusion reached by the Tribunal with aid of Sub-rule (13) of Rule 57-T that this lapse cannot disentitle the manufacturer from availing Modvat credit does not require any interference.

The appeal fails and is hereby dismissed.