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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-04-2003

Reported in : (2003)(158)ELT72Tri(Mum.)bai

Judge : S T Gowri, K Kumar

Appellant : Rochem Separation Systems (i)

Respondent : Commissioner of Central Excise

Judgement :

1. The application by Rochem Separation System (I) Pvt Ltd is for waiver of deposit of a sum of Rs. 1.38 crores demanded under Rule 6 of the Cenvat Credit Rules, 2002, penalty imposed of equal amount under Section 11AC and Rule 173Q, Rule 25 of Cenvat Rules, 2001 and Cenvat Excise Rules, 2002. The application by Kamleshkumar Goel, its managing director, is for waiver of penalty of Rs. 5 lakhs.

2. The assessee was engaged in the manufacture of desalination plants.

It cleared such plants either on payment of duty or as supply stores to the ships of Indian navy or coast guard in terms of entry 3 of the Table to notification 64/95. It availed of the modvat credit procedure (latter Cenvat Credit Procedure). It is stated that it was maintaining separate accounts for four types of inputs for the goods manufactured by it which are common. Notice issued to it demanded duty in terms of Rule 57CC for the period up to 30.3.2000, in terms of Rule 57AD from

31.3.2000 to 30.6.2001, Rule 6 of the Cenvat Credit Rules, 2001 from 1.7.2001 to 28.2.2002 and in terms of Rule 6 of the Cenvat Credit Rules, 2002 from 1.3.2002 onwards on the ground that the applicant had not maintained separate accounts and inventories of the inputs used in the manufacture of the exempted final product. The Commissioner has confirmed the demand so issued and imposed penalties.

3. The counsel for the appellant explains that, while the applicant generally maintained separate account and inventories for inputs used in the manufacture of the exempted and non exempted goods, on some occasion, due to urgency, it did not follow this procedure. Even on such occasion, the credit which has been taken on the inputs was first debited before they were issued for manufacture. He therefore places reliance upon the judgment of the Supreme Court in Chandrapur Magnetic Wires Pvt Ltd v. CCE 1996 (81) ELT 3. He further contends that in any event, there was no provisions in any of the rules under consideration, except the Cenvat Credit Rules 2002 for recovery of amounts payable in terms of Rule 57CC and the corresponding provisions in the succeeding rules. Each of the rules was being repealed before the succeeding set of rules and therefore the provisions contained in the explanation (ii) under Sub-rule (3) of Rule 6 of the Cenvat Credit Rules, 2002 could not be invoked for recovery of credit taken in terms of the earlier rules.

He submits that inputs, on which credit was taken, was utilised by the applicant for the period from June 2001 onwards in the manufacture of the exempted product.

4. In terms of the explanation (ii) of Sub-rule (3) of Rule 6 of the Cenvat Credit Rules, 2002, if the manufacturer fails to pay amount payable by application of Sub-rule (3) of Rule 6 it shall be recovered along with interest in the manner provided in Rule 12. Rule 12 is for recovery of Cenvat Credit. In the light of this rule, the position prevailed earlier that, in the absence of any machinery to recover the sum payable under Rule 57CC and since that amount was neither duty nor credit, it could not be recovered would prima facie not hold good. We are also unable to, on the fact of it, say that the Supreme Court's decision in Chandrapur Magnet Wires Pvt Ltd v. CCE and the decisions of the Tribunal following it would apply to a

situation in which the rule itself provides in addition to reversal of credit taken, the amount equal to the credit. In some case for recovery of credit and any other case for 8% of the sale price of the goods. The Supreme Court in the judgment was not dealing with such a statutory requirement. Therefore, for the period in which the rules 2002 apply the amount in question would prima facie only be deposited if the provisions of Rule 6 (3) applies.

5. The contention, that the applicant did not, during this period, utilise any inputs from which credit was taken in the manufacture of finished goods, is not substantiated by any material and we find it was not even raised in the written submissions filed before the Commissioner after hearing. Whether, as is claimed that, credit was taken or not cannot be gone into at this stage.

6. It will follow from these discussions that the provisions contained in Sub-rule (3) of Rule 6 of Cenvat Credit Rules, 2002 will not apply to credit that was taken in terms of any of the preceding set of rules.

The departmental representative refers to the provisions of Rules 9 and 14 of these rules. Sub-rule (1) of Rule 9 provides for credit earned by a manufacturer under rules 2001 will continue to be utilised in accordance with the present rules. Rule 14 provides that any notification, circular, instruction, standing order, trade notice or other order issued by the Board or any other authority shall be deemed to be valid. Neither of these provisions, in our view, provides retrospective application to the recovery provisions that we are concerned with. On the other hand, Rule 3 itself provides that the manufacturer for taking cenvat credit of various kinds of specified duty paid on the inputs or capital goods received in the factory on or after 1.3.2001. The provisions contained in Rule 6 (3) therefore will not apply to the earlier period.

7. On this prima facie therefore we direct the applicant to deposit Rs. 27 lakhs, which relates to the amount payable in terms of Cenvat Credit Rules, 2002, within two months from today upon which we waive deposit of the remaining amount of duty and penalty. We also waive deposit of the penalty on Kamleshkumar Goel.

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