

Cce Vs. U.T. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-20-2004

Reported in : (2004)(93)ECC82

Judge : Author: P Chacko

Appellant : Cce

Respondent : U.T. Ltd.

Judgement :

1. The respondents were engaged in the manufacture of goods falling under Chapters 68, 84 and 87 of the CETA Schedule and availing the Modvat credit facility under Rules 57A and 57Q of the erstwhile Central Excise Rules, 1944. They stopped production of "self-propelled container pallet transporter" [SPCPT, for short] in October 1996 but continued production of other products including "High Pressure Water Jetting Pump & Accessories" [HPWJP, for short]. When they stopped production of SPCPT, they had in their Modvat account (RG 23A Part II) unutilized balance credit of Rs. 11,87,431.38 in respect of inputs used in the manufacture of that product, which credit they transferred to the Modvat account pertaining to HPWJP. In March 1998, they utilized this credit for payment of duty on HPWJP without taking permission from the jurisdictional Asstt. Commissioner of Central Excise. The department objected to such utilization of the credit which was allegedly barred by the proviso to sub-rule (12) of Rule 57F. The original authority sustained the department's objection and ordered recovery of the amount from the party under Rule 571. That authority also disallowed to the party another

credit of Rs. 706.39 on polythene bags on the ground that the input had not been declared under Rule 57G.It, however, allowed yet another credit of Rs. 975.80 to the respondents in respect of lubricating oil (input). In the appeal preferred by the party against the order of the original authority, the Commissioner (Appeals) reversed the decision of the lower authority as regards the Modvat credits of Rs. 11,87,431.38 and Rs. 706.39 and allowed these credits to the respondents. In the present appeal of the Revenue, the challenge is only in regard to the credit of Rs. 11,87,431.38.

2. We have heard both sides and considered their submissions. The only ground raised in the appeal and reiterated by the SDR against the utilisation of the above credit for payment of duty on HPWJP in March 1998 is that, as the inputs had been received in the factory and used in the manufacture of one final product before 1.3.1997, credit of the duty paid on the inputs could not be utilized for payment of duty on another final product after the said date 3 on account of the bar contained in the proviso to Sub-rule (12) of Rule 57F. According to the Revenue, the credit would only lapse. The appellant, however, has not said anything, in this appeal, against the reliance placed by the Commissioner (Appeals) on the Tribunal's decision in the cases of Indian Aluminium Co. Ltd. v. CCE, 2001 (137) ELT 1092. The counsel for the respondents has also relied on these decisions. He has also pointed out that the appellant's challenge to the decision taken by the Commissioner (Appeals) following decisions of the higher appellate forum is not to be countenanced. In this connection, counsel has drawn support from the Tribunal's order in Indian Oil Corporation Ltd. v.CCE, 3. It was held in Mahindra & Mahindra (supra) that the Modvat Scheme did not envisage one-to-one correlation between input and final product and therefore credit of duty paid on inputs used in the manufacture of one specified final product could be utilized for payment of duty on another specified final product cleared from the same factory. The decision in Indian Aluminium Co.'s case (supra) was also to the same effect. It has been pointed out by Ld. DR that, in the above cases, any provision of law analogous to the proviso to Sub-rule (12) of Rule 57F had not been considered.

4. We find that, when the credit of Rs. 11,87,431.38 (lying unutilized in respect of the product SPCPT) was transferred to the Modvat account pertaining to HPWJP, a proviso to Sub-rule (4) of Rule 57F was there in force, which authorized the assessee to utilize the credit towards payment of duty on the latter product when cleared for home consumption. Neither under the said proviso nor under any other provision of Rule 57F was it stipulated that the credit would lapse in any event or beyond any date. Had it been the intention of the legislative authority that such credit should lapse on a particular date or in a particular event, it would have been so stipulated in the Rule. In this context, Sub-rule (4A) of Rule 57F, which was also in force at that time, is noteworthy. That Sub-rule said that any credit of specified duty lying unutilized on 16.3.95 with a manufacturer of tractor (Heading No. 87.01) or other motor vehicles (Heading Nos. 87.02 and 87.04) shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods. The provision of law which has been invoked by the Revenue in the present case is the proviso to Sub-rule (12) of Rule 57F. This proviso came into force on 1.3.97 and the same laid down that the credit of specified duty on any inputs may be utilized towards payment of duty of excise on any other final product, whether or not such inputs have actually been used for the manufacture of such other final product, if the said inputs have been received and used in the factory of production on or after the first day of March 1997. Here again, we find, there is no specific provision for lapsing of credit. In the absence of specific provision for lapsing of credit, we are of the view that the Modvat credit which accrued to the respondents in respect of HPWJP upon transfer of the credit to RG--23A Part-II relating to the said product cannot be said to have lapsed. In our view, the respondent's right to utilize the credit for payment of duty on a final product in terms of the aforesaid proviso to Sub-rule (4) of Rule 57F was a vested right, which was not hit by anything contained in the proviso to Sub-rule (12) of Rule 57F which came into force later on. The Tribunal's decisions in Mahindra & Mahindra (supra) and Indian Aluminium Company (supra) seem to support this view. Ld. Commissioner (Appeals) has relied on these decisions, but the appellants have not challenged the applicability of the case law.

The appellant has not claimed that the department has not accepted the decisions in Mahindra & Mahindra (supra) and Indian Aluminium Company (supra). Yet, they

have filed this appeal. Without commenting on this aspect, we would like to follow the ratio of the cited decisions and hold that the utilization of the above credit towards payment of duty on HPWJP cleared for home consumption in 1998 is in order. Accordingly, we uphold the order of the Commissioner (Appeals) and reject the present appeal of the Revenue.

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