

Sunsui India Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-18-2004

Reported in : (2004)(170)ELT459TriDel

Judge : A T V.K., P Chacko, S Kang

Appellant : Sunsui India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Sunsui (India) Ltd. (appellants in E/2106/2002/NB) were engaged, in the manufacture of wrist watches and alarm clocks of Headings 91.02/91.05 of the Central Excise Tariff Schedule and were availing the facility of MODVAT/CENVAT credit. Watches and clocks of MRP not exceeding Rs. 500/- were exempted from payment of duty under Notification No. 6/2000-C.E., dated 1-3-2000. The issue involved in this case is whether the appellants were liable to reverse MODVAT/CENVAT credit amounting to Rs. 4,22,434/- which they had already availed in respect of duty-paid inputs lying as such in stock as on 29-2-2000 as well as duty-paid inputs contained in the final products lying in stock as on the said date and cleared at 'Nil' rate of duty (under the above Notification) on or after 1-3-2000. The original authority, following the Tribunal's Larger Bench decision in Khanbhai Esoofbhai v. Collector [1999 (107) E.L.T. 557] and the CBEC Circular No. 591/28/2001/C.E., dated 16-10-2001, held that the assessee was liable to reverse the above credit and to pay interest on the amount under Rule 57AH. That authority also imposed a penalty of Rs. 5000/- on the party under Rule 173Q. The

first appellate authority upheld the decision of the original authority insofar as it related to the credit taken on the inputs lying as such in stock as on 29-2-2000. This credit amounted to Rs. 3,00,173/-. In respect of the remaining credit amounting to Rs. 1,22,261/- which was taken on the input contained in the finished products which were lying in stock as on 29-2-2000 and were removed at 'Nil' rate of duty under the above Notification on or after 1-3-2000, the appellate authority decided in favour of the assessee by following the decision of the Tribunal's Larger Bench in C.C.E. v. Ashok Iron and Steel Fabricators [2002 (140) E.L.T. 277].

Both the authorities rejected the assessee's claim that the demand was time-barred. However, the Commissioner (Appeals) set aside the penalty imposed on the assessee by the original authority. He also upheld the demand of interest. The assessee's appeal is against the demand of Rs. 3,00,173/- with interest, while the Revenue's appeal (E/2022/2002) is against the order of the Commissioner (Appeals) vacating the demand of Rs. 1,22,261/- and setting aside the penalty.

2. Heard both sides. Ld. Consultant for the assessee submitted that the issue involved in this case was squarely covered in their favour by the Tribunal's Larger Bench decision in Ashok Iron and Steel Fabricators (supra). The said decision required to be followed in the instant case in the absence of any stay of operation of the decision, by the Supreme Court. Ld. Consultant also relied on the judgment of the Kerala High Court in C.C.E., Cochin v. Premier Tyres Ltd. [2001 (130) E.L.T. 417] as also on the decision of the Hon'ble Supreme Court in C.C.E. v. Dai Ichi Karkaria Ltd. [1999 (112) E.L.T. 353 (S.C.)]. Ld. DR, on the other hand, submitted that the decision of the Tribunal's Larger Bench in the case of Raghuvar (India) Ltd. v. C.C.E. [2002 (140) E.L.T. 280] had to be followed in the instant case. On the limitation issue, Ld. DR submitted that, as the return for the month of March 2000 had been submitted by the assessee on 5-4-2000, the limitation period of one year had to be reckoned from that date and, accordingly the demand raised in the show cause notice dated 21-3-2001 was well within the time limit of one year laid down under Rule 57AH. The consultant argued that the period of limitation had to be reckoned from 5-3-2000, the date on which the assessee had submitted their return for the month of February 2000. This argument was on the basis that the demand of Cenvat credit was in respect of the stock lying as on 29-2-2000. Ld.

Consultant contended that the demand raised on 21-3-2001 was beyond the limitation period of one year commencing on 5-3-2000.

3. We have carefully examined the record of the case and considered the submissions. What appears to us is that, prior to 1-3-2000, M/s. Sunsui (India) Limited had taken and utilized credit of the duty paid on those inputs which were as such lying in stock as on 29-2-2000 as well as those inputs which were contained in the finished products lying in stock as on 29-2-2000. Apparently the said finished products as well as the finished products manufactured from the inputs of the first category (i.e., inputs which were lying as such in stock on 29-2-2000) were cleared on or after 1-3-2000 at "nil" rate of duty under Notification No. 6/2000-C.E., dated 1-3-2000. The amount of credit relating to the first category of inputs is Rs. 3,00,173/- and that relating to the second category is Rs. 1,22,261/-. The lower appellate authority has upheld the demand of the former and vacated that of the latter. In their appeal against the order of the Commissioner (Appeals), the assessee has relied mainly on the Tribunal's Larger Bench decision in Ashok Iron & Steel Fabricators (*supra*). In the Revenue's appeal, it has been submitted that they have not accepted the said decision of the Larger Bench and have preferred appeal against it to the Supreme Court. *Ld. DR*, however, has not claimed that there is any stay of operation of the Tribunal's decision.

4. In the case of Ashok Iron & Steel Fabricators, the issue considered by the Larger Bench was whether Modvat credit availed and utilized when the final products were dutiable was liable to be reversed subsequently on the final products being exempted from duty. Relying on the Supreme Court's decision in *Dai Ichi Karkaria* (*supra*), the Larger Bench held that the subsequent exemption of final products from payment of duty was no reason for reversal of the credit. The decision in Ashok Iron & Steel Fabricators is squarely applicable, in the present case, to the question whether the credit taken and utilized prior to 1-3-2000 in respect of the inputs lying as such in stock as on 29-2-2000 was liable to be reversed by the assessee. The ratio of the decision will be equally applicable to the similar question in respect of the inputs contained in the finished products lying in stock as on 29-2-2000. The reliance placed by *Id. Commissioner (Appeals)* on the Larger Bench decision in *Raghuvar (India) Limited* (*supra*), for denying the

credit of Rs. 3,00,173/- to the assessee is erroneous inasmuch as, in the instant case, the finished products manufactured out of the inputs (which were lying as such in stock as on 29-2-2000) were also cleared on or after 1-3-2000. In Raghuvar (India) case, it was an admitted fact that the finished products in question were yet to be cleared. The assessee in the present case had no liability to reverse either the credit of Rs. 3,00,173/- or that of Rs. 1,22,261/-. Having so found, we need not examine the time bar issue in these appeals.

5. In the light of our above decision, we set aside the demand of Rs. 3,00,173/- upheld by the lower appellate authority. Appeal No.E/2106/2002 is allowed and Appeal No. E/2022/2002 is rejected.

6. [Contra per : V.K. Agrawal, Member (T)]. - I have the opportunity of perusing the Order as recorded by learned Member (Judicial). I, however, find myself unable to agree with the Order as far as it allows the appeal filed by M/s. Sunsui India Limited. The Commissioner (Appeals), under the impugned Order has disallowed the Modvat Credit amounting to Rs. 3,00,173/- pertaining to inputs lying in stock as on 1-3-2000 following the decision of the Larger Bench of the Tribunal in the case of Raghuvar (India) Ltd. v. C.C.E., Delhi, 2002 (140) E.L.T.280 (T-LB).

7. In Raghuvar (India) Ltd., a show cause notice was issued to the assessee alleging that consequent upon withdrawal of duty on vegetable products, they ought to have reversed the Modvat Credit taken on the inputs which were still to be converted into finished products. The Larger Bench of the Tribunal, after considering the decision in the case of C.C.E. v. Ashok Iron and Steel Fabricators, 2002 (140) E.L.T.277 (T-LB) has held as under: "In the present case it is admitted that the final products manufactured by utilising part of the duty paid inputs and the remaining portion of the duty paid inputs are not yet cleared. Since the final product is now exempt from duty, the Modvat Credit taken can be reversed. To that extent the impugned Order is upheld...." 8. I find that the decision of the Larger Bench in Raghuvar (India) Limited squarely applies to the appeal preferred by M/s. Sunsui India Limited in as much as inputs were lying in stock as on 1-3-2000 when the final product manufactured by them was exempted wholly from payment of duty of excise. The subsequent manufacture of the final product out of

the inputs lying in stock as on 1-3-2000 and their clearance are not material for deciding the appeal. The ratio of the decision in Raghuvar (India) applies on all fours as the facts are similar. I, therefore, reject the appeal filed by M/s. Sunsui India Ltd. Whether the appeal filed by M/s. Sunsui India Limited is to be allowed as ordered by the learned Member (Judicial) or the appeal is to be rejected as ordered by the learned Member (Technical).

Sd/-(P.G. Chacko) (V.K. Agrawal) Member (J) Member (T) 10. In this case the dispute is regarding the reversal of unutilized input credit when subsequently the final product is exempted from payment of Central Excise duty. The contention of the appellant is that when the credit was taken, the final product, manufactured out of the inputs on which the credit was taken, was liable to duty. Hence at the time of taking credit appellants were entitled for the credit.

Subsequently, when the final product was exempted from payment of duty they are not liable to reverse the credit in respect of the inputs lying in stock. *Albert David Ltd. v. Commissioner of Central Excise, Meerut*, reported in 2003 (151) E.L.T.443 (Tri.-Del.) held that the input credit is recoverable in respect of the inputs lying in stock when the final product becomes exempted from duty. The Hon'ble Supreme Court dismissed the appeal filed by *Albert David Ltd.*, reported in 2003 (157) E.L.T. A81.

12. Further, I find that the Larger Bench of the Tribunal in the case of *Raghuvar (India) Ltd. v. Commissioner of Central Excise, Delhi*, reported in 2002 (140) E.L.T. 280 (Tri.-LB) after considering the earlier decision of the Larger Bench in the case of *C.C.E., Rajkot v. Ashok Iron and Steel Fabricator*, reported in 2002 (140) E.L.T. 277 (T) held that Modvat credit in respect of the inputs lying in stock is liable to be reversed when the final product becomes exempted from payment of duty. In view of the above decisions, I agree with the view taken by Hon'ble Member (Technical) and the appeal filed by M/s. Sansui India Ltd. deserves to be dismissed.

13. As per majority the Modvat Credit in respect of inputs lying in stock of M/s. Sunsui (India) Ltd. is liable to be reversed when the final product manufactured by them became exempted from payment of duty. Accordingly the appeal filed by M/s. Sunsui (India) Ltd. is rejected. (P.G. Chacko) (V.K. Agrawal) Member (J)

Member (T)

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