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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-10-2005

Reported in : (2005)(101)ECC553

Judge : J Balasundaram, Vice, A M Moheb

Appellant : Raymond Limited

Respondent : Cce and C

Judgement :

1. M/s. Raymond Woollen Mills Ltd., Jalgaon (hereinafter referred to as 'the assessee') are engaged in the manufacture of "other woven fabrics of synthetic staple fibre" falling under sub-heading 5513.10 and 5513.29, Woollen Blankets/Shoddy Blankets under 6301.20, Shoddy Shawl under sub-heading 6202.00 of Central Excise Tariff Act, 1985 and availing Cenvat credit on the inputs and capital goods as per Cenvat Credit Rules, 2002.

2. Notification No. 24/94-CE(NT) 20.5.94 issued under erstwhile Rule 57-A of Central Excise Rules, 1944, specifies the final product viz Fabrics of Cotton or man-made fibre subjected to any process or whether processed or not falling under Chapter 52, 54, 55 and 58.02, 58.06 of Central Excise Tariff Act, 1985 in respect of which the credit of:- (ii) the Additional duty of excise under Section 3 of Additional duties of Excise [Textile and Textile Articles] Act, 1978 (iii) the Additional duty of excise under Section 3 of the Additional duties of excise [goods of special importance] (iv) the Additional duty under Section 3 of the Customs

Tariff Act, 1985 equivalent to the duty already paid on inputs have been allowed as credit when used in or in relation to the manufacture of the said final products and credit of duty so allowed be utilized for the payment of the duty of excise [Textiles and Textile Articles] only be utilized towards payment of duty leviable under Additional Duties of Excise [Textile and Textile Articles] Act, 1978 on the final products or as the case made be.

Notification No. 21/99-CE(NT) dated 28.2.99 issued under erstwhile Rule 57-A of Central Excise Rules, 1944 para 2(a) of the said notification stipulates that-- 2(a) credit of specified duty insofar as it relates to duty paid under the Additional Duties of Excise [Textile and Textile Articles] Act, 1978 (40 of 1978) or equivalent additional duty paid under Section 3 of the Customs Tariff Act, 1975 (5 of 1975) shall be utilized only towards payment of duty of excise leviable under the said Additional Duties of Excise [Textile and Textile Articles] Act, 1978.

The Rule 3(1) of Cenvat Credit Rules, 2002 provides for an assessee to take credit of-- (i) the duty of excise specified in the first schedule to the Tariff Act leviable under the Act (ii) the duty of excise specified in the Second Schedule to the Tariff Act (iii) the Additional duty of excise leviable under Section 3 of the Additional duties of Excise [Textile and Textile Articles] Act, 1978.

(iv) The Additional duty of excise leviable under Section 3 of the Additional Duties of Excise [Goods of Special Importance] Act, 1957.

(v) The national calamity contingent duty leviable under Section 136 of the Finance Act, 2001, and; (vi) The Additional duties leviable under Section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under Clause [1], [2], [3], [4] and [5] above but utilization of Cenvat is governed by Sub-Rule 6(b) of Rule 3 of Cenvat Credit Rules, 2002 to the extent that; [1] the Additional duty of excise leviable under Section 3 of the Additional duties Of Excise [Textile and Textile Articles] Act, 1978.

[2] the Additional duty of excise leviable under Section 3 of the Additional Duties of Excise [Goods of Special Importance] Act, 1957.

[3] the national calamity contingent duty leviable under Section 136 of the Finance Act, 2001, and; [4] the Additional duties leviable under Section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under Clauses 1 to 3 above.

only be utilized towards the payment of duty of excise leviable under the said Additional Duties of Excise [Textile and Textile Articles] Act, or under the said Additional Duties of Excise [Goods of Special Importance] Act or the national calamity contingent duty respectively, on any final products manufactured or removed as such on payment of duty.

3. During the visit of the Central Excise officers to the factory of the assessee in May, 2003, it was noticed that the assessee had wrongly utilized the credit of Additional Excise (T&TA) towards payment of basic excise duty and additional excise duty (ST). As per the Rule 57AB of Central Excise Rules, 1944 read with Notification No. 21/99-CE(NT) dated 28.2.99 as amended by Notification No. 10/2000-CE(NT) dated 1.3.2000 further read with Sub-rule 6(b) of Rule 3 of Cenvat Credit Rules, 2002, the assessee was not entitled to use the Cenvat Credit of Additional Excise Duty (T&TA) towards payment of Basic Excise Duty and Additional Duty (ST) on final product. As per the above said provisions of Rules and Notifications, the assessee can utilize the credit of Additional Excise Duty (T&TA) towards the payment of Additional Excise duty only. However, the assessee has utilized the credit of Additional Excise duty (T&TA) of Rs. 2,65,76,666 towards the payment of basic excise duty and Additional (ST) during the period from January 2003 to April 2003: 4. The Assessee had taken and

wrongly utilised	cenvat credit	as under:-----	S.No.	Period
BED	AED			(ST)
TOTAL-----			1	January
2003	34,48,048			14,70,560
49,18,608-----			2	February
2003	51,70,006			22,05,097
76,75,103-----			3	March
2003	60,48,165			14,78,105
75,26,270-----			4	April

2003	52,31,268	12,25,417
64,56,685-----		
1,98,97,487		66,79,179
2,65,76,666-----		

thereby contravening the provision of Sub-rule 6(b) of Rule 3 of Cenvat Credit Rules, 2002. Further in January, 2003, the assessee utilised total cenvat credit of Rs. 49,18,608 through Additional Duties of (Textile and Textile Articles) Act, 1978 while they had balance credit of basic excise duty of Rs. 41,33,272 thereby resulting in short payment of duty to the extent of Rs. 7,85,336.

5. On the above basis, show cause notice dated 13.8.2003 was issued proposing A personal penalty on the Dy. General Manager (Admn.) in terms of Rule 25 of the Central Excise Rules, 2001 was also proposed.

The notice was adjudicated by the Commissioner, rejecting the contention of the assessee that it was entitled cross utilization of credit, confirming the demand of Rs. 2,65,76,666 together with interest under Section 11AB of the Central Excise Act and imposing a penalty of Rs. 5 lakhs on the assessee and Rs. 50,000 on its Dy. General Manager.

He, however, dropped the duty demand of Rs. 7,85,336 since it was already included in the duty amount confirmed. Hence this appeal.

6. We have heard both sides. We see force in the appellants' submission that additional excise duty paid under the Additional Duties of Excise (Textile and Textile Articles) Act is available for utilization towards payment of additional" excise duty under the Additional Duties of Excise (Goods of Special Importance) Act; in the light of the Tribunal's decision in Reliance Industries Ltd. v. CCE, 2002 (150) ELT 479 (T) and Grasim Industries Ltd. v. CCE, [2003 (54) RLT 288 (T)].

Hence, we set aside the demand of additional excise duty of Rs. 66,79,179. As regards basic excise duty, the submissions of the appellants are two fold:- (1) for the period from 1.4.2000 till 30.6.2001 cross utilization was held to be admissible by the Tribunal in the case of Reliance Industries and Grasim Industries Ltd. cited supra. During that period, the appellants had paid additional duty under the

Additional Duties of Excise (Goods of Special Importance) Act worth Rs. 6 crores through PLA instead of debiting additional duty under the Additional Duties of Excise (Textiles & Textile Articles) Act.

Unutilized credit balance in the ADE(T&TA) account as on 1.4.2000 was approximately Rs. 1.7 crores. Between 1.4.2000 to 30.6.2001, further credit of ADE(T&TA) taken but was not utilized is worth Rs. 1.2 crores. Rs. 2 crores 66 lakhs approximately was paid by them towards BED and ADE(GSI) during the period from January, 2003 to April, 2003 from the above accumulated balance of ADE(T&TA) account as on 30.6.01. If the additional excise duty under the ADE(GSI) Act payable on the final product cleared during the period 1.4.2000 to 30.6.01 was now debited from the credit balance in ADE(T&TA) account as on 30.6.01 to the extent of about Rs. 2.9 crores, then the PLA balance in the ADE(GSI) account would appear as Rs. 2.7 crores and this PLA credit would be available for payment of excise duty.

(2) Under the Modvat Rules as they existed prior to 1.4.2000, right accrued to the assessee to take credit of additional excise duty paid on inputs and utilise it for payment of duty on any other final product. This was the provision of 4th proviso to Rule 57F as it stood from 16.3.1995 until 1.3.97 and thereafter, this provision continued in the proviso to Rule 57F(12). The right to accrue additional excise duty paid on inputs for discharging duty liability on any other final product vested in the appellants on the date of receipt of inputs in their factory. If Rule 57AG(1) which provides that any amounts of credit earned by a manufacturer under Rule 57A prior to 1.4.2000 and remaining unutilised on that day shall be allowable as Cenvat credit to such manufacturer under these rules and can be utilized in accordance with these Rules. (Rule 57AA to 57AK - and Rule 57AB(2)(b) permits utilization of additional excise duty on inputs only towards payment of additional excise duty on any final product is construed as taking away that right, it would be retrospective in nature since Rule 57AG(1) would affect the right already accrued to an assessee to utilise credit of duty paid on inputs under Additional Duties of Excise (Textiles & Textile Articles) Act for payment of additional excise duty under the ADE (GSI) Act or basic excise duty on any other final product. It is the appellants' contention that under Section 37 of the Central Excise Act, the Central Government has no power

to make rules only with retrospective effect and, therefore, Rule 57AG(1) can only operate prospectively. They rely upon the decision on Eicher Motors v. UOI, 1999 (106) ELT 3 (SC) and the provisions of Section 38A of the Central Excise Act introduced by the Finance Act, 2001 with retrospective effect from 28.2.94, in support of this plea.

7. We find that as regards the arguments on vested right, although it was raised before the Commissioner, no finding has been recorded thereon by the Adjudicating Authority. The first argument viz. that of recasting of accounts does not appear to have been raised by the appellants before the Commissioner but since it is a legal plea the appellants are permitted to raise it before us. In the absence of any finding on these two contentions, as regards the demand of basic excise duty, we see no alternative but to remand the case to the jurisdictional Commissioner for fresh decision in the interest of justice, on the appellant's stand that basic excise duty liability is not sustainable in view of their submissions. He shall pass fresh orders after extending them a reasonable opportunity of being heard in their defence.

8. In the result we set aside the demand of additional duty of excise and remand the issue of liability basic excise duty to the Commissioner as above.

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