

Sharman Fabrics Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-15-2006

Judge : M Ravindran

Appellant : Sharman Fabrics

Respondent : Commissioner of Central Excise

Judgement :

1. Since the issue involved in all the three appeals are same, all the three appeals are taken up together for disposal, after granting stay, with the consent of both sides.
2. All the three appeals are directed against the order of the Commissioner (Appeals), wherein it was upheld that all the three appellants are liable to pay/reverse the excess deemed credit availed by the appellants.
3. The relevant facts that arise for consideration are that the appellants are engaged in manufacturing & knitted garments. The appellants availed deemed credit as per the provisions of Rule 9A of Cenvat Credit Rules, 2002. The appellants availed credit of the inputs lying stock, in WIP & finished goods as per the rate notified in Notification No. 35/2003 C.E. (N.T.), dated 10th April, 2003. The Revenue issued a SCN for demanding the excess deemed credit availed by the appellants on the pretext that the appellants case of availing deemed credit is covered by the provisions of Notification No.47/2003-C.E. (N.T.), dated 17.5.2003. The appellants contested the demand on the ground that, when the deemed credit

was availed by them the provisions of Notification No. 35/2003-C.E. (N.T.) were in force, and not the provisions of Notification No. 47/2003-C.E. (N.T.). The adjudicating authority confirmed the demand and also imposed penalty, on an appeal against the said order the appellants could not get any relief from the appellate authority. Hence this appeal.

4. The learned Advocate for the appellants submits that the government by enacting Rule 9A of Cenvat Credit Rules, 2002, wanted to give benefit of the Cenvat to the appellants, of the duty paid inputs in stock and the inputs in the W.I.P. and finished goods. He also further submits that they followed procedure given in the Rule 9 A of the Cenvat Credit Rules, 2002, read with Notification No. 35/2003-C.E.(N.T.), dated 10.4.2003. He submits that since they availed the deemed credit during the time when Notification No. 35/2003 was in force, credit should not be denied to them. He submits that the effect of Notification No. 47/2003 C.E. (N.T.), dated 17.5.2003 is prospective in effect. He also submits that the SCN's issued are time barred, as the deemed credit has been availed by them in April, 2003 and SCN was issued in June, 2004.

5. The learned DR submits that the appellants have been allowed deemed credit as per the Rules and calculations envisaged in Notification No.47/2003 and that the said notification clearly applies to the knitted garments manufactured by the appellants. He submits that the SCN is within time as, the appellants availed the deemed credit in April, 2003, the appellants as S.S.I.S submitted the monthly ERI returns to the authorities for the quarter April to June, 2003, on or about 5th July, 2003, i.e. the last date for submission of Returns. He submits that the SCN is issued within a period of one year from July, 2003 hence there is no question of Time bar in this case.

6.1. Considered the submission made by both sides and passed Record. I find that Rule 9A of Cenvat Credit Rules, 2002 was inserted by Notification No. 25/2003-C.E.(N.T.), dated 25.3.2003 to be effective from 1.4.2003. In order to appreciate the correct provisions it is necessary to reproduce the said Rule, which is as under: (1) [A manufacturer, producer, first stage dealer or second stage dealer of goods falling under Chapters 50 to 63 of the First Schedule to the Tariff Act] shall

be entitled to avail credit equal to the duty paid on inputs of such finished product, lying in stock or in process or contained in finished products lying in stock as on 31st day of March, 2003 upon making a written declaration of the description, quantity and value of the stock of inputs (Whether lying in stock or in process or contained in finished products lying in stock) and subject to availability of the document evidencing actual payment of duty thereon.

(2) Notwithstanding anything contained in Sub-rule (1), the manufacturer, producer, first stage dealer or second stage dealer, as the case may be, referred to in the said Sub-rule, who is unable to produce the document evidencing actual payment or duty, shall be entitled to avail credit, calculated in a manner referred to in Sub-rule (3), on in puts falling under Chapter 50 to 163 of the First Schedule to the Tariff Act, lying in stock or in process or contained in finished products lying in stock as on 31st day of March, 2003 upon making a written declaration of the description, quantity and value of the stock of each of such goods. The declaration made under this sub-rule shall exclude quantity of stock declared under Sub-rule (1).

(3) (a) The credit of duty on each such input lying in stock and in process [shall be calculated on the basis of such rates or such manner] as may be notified by the Central Government in this behalf, having regard to the average price of such inputs, and the applicable rate of duty and the quantity of input as declared by the assessee under Sub-rule (2).

(b) [The credit of duty on inputs contained in fabrics or garments lying in stock] as on the 31st day of March, 2003 shall be calculated in the following manner, namely: (i) Where the inputs and the finished products are covered under Notification No. 52/2001-Central Excise (N.T.), dated the 29th June, 2001, subject to such conditions as prescribed under the said notification, the credit shall be equal to the such rate of credit as may be notified by the Central Government in this behalf, multiplied by the quantity of such finished product as declared by the assessee; or (ii) Where the inputs and the finished products are covered under Notification Nos. 54/2001-Central Excise (N.T.), dated the 29th June, 2001, or 6/2002-Central Excise (N.T.), dated the 1st March, 2002, subject to such

conditions as prescribed under the said notifications, the credit be equal to the product of,- (A) the applicable percentage credits in terms of the said notifications; (C) the duty rate applicable to such final product in terms of Notification No. 7/2003-Central Excise dated [28th day of February, 2003; or].

(iii) in all other cases, in such manner as may be notified by the Central Government in this behalf.] It can be seen from the above reproduced Rule that the Credit equal to the duty paid on inputs lying in stock was permitted under Sub-rule (1) of said Rule, provided declaration is filed. There is no dispute that the appellants filed the declaration of the stocks. Sub-rule 3(a) provides that Central government may notify the amount of duty calculated as the stocks of inputs lying in stock. Rule 3(b) classifies the assesseees who can avail the credit of duty under (i), (ii) & (iii) and to what extent. I find that the appellants before me get covered under the category as provided under Sub-rule 9A(3)(b)(iii) and hence they have to follow the procedure as may be notified by the government for the amount that can be availed as credit. Government issued Notification No. 35/2003-C.E. (N.T.), dated 10.4.2003 for the amount of credit that can be availed by the assessee. The said Notification No.35/2003-C.E. (N.T.) is reproduced below: In exercise of the powers conferred by Sub-rule (3) of rule 9A of the Central Excise Rules, 2002, the Central Government, hereby declares, for the purposes of the said rule, the amount of credit of duty, as specified in column (3) of the table below, on inputs lying in stock or in process or on inputs contained in finished goods lying in stock, as specified in the corresponding entry in column (2) of the said Table, namely:_____

Description	Amount	of
Credit_____		

(2) (3) (a) Texturised yarn lying in Rs. 18 per Kg of texturised yarn stock in a composite mill; multiplied by quantity in Kg of such texturised yarn.

(b) Yarn other than (a) above Deemed value multiplies by the (c) Fabrics (unprocessed or rate of duty on such yarn- Deemed processed value multiplied by the rate of duty on such fabrics.

(a) Unprocessed fabrics of Declared value multiplied by 26% cotton not containing any of the rate of duty on such unproc- other textile material; essed fabrjcs.

(b) Unprocessed fabric other Declared value multiplied by 60% than (a) above.

of the rate of duty on such unproc- essed fabrics.

Explanation 1. - For the purposes of this notification, "Deemed value" shall be calculated in the following manner: Explanation 2. - For the purpose of this notification, "rate of duty" shall mean the rate of duty leviable under the Central Excise Tariff Act, 1985 (5 of 1986), the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978), as the case may be, read with any notification, as on the 1st day of April, 2003.

Explanation 3. - For the purposes of this notification, "composite mill" means a manufacturer who is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and weaving or knitting or crocheting of fabrics within the same factory and includes a multi-locational composite mill, i.e. a public limited company which is engaged in the processing of fabrics with the aid of power along with the spinning of yarn from fibres and wearing or kintting or crocheting of fabrics in one or more factories owned by the same-public limited company.

The appellants availed the credit of duty on inputs calculated on the basis as given in Sub-rule (1) of the table in the above notification.

It is not in dispute that appellant are manufacturers of the Garments.

I find that Sub-rule 9A(3)(b) provides for the credit of the duty on inputs contained in Fabrics or Garments. The Notification No. 35/2003 as reproduced above gives procedure for calculation of duty or credit on inputs lying in stocks and as in also in fabrics. The said notification does not specify for the calculation of the duty on the inputs lying in 'Garments'. The appellants are entitled to avail the credit of duty of inputs which are Fabrics form. The appellants contended that they calculated the duty on inputs treating the WIP and finished goods, as fabrics, would be farfetched

as the fabrics and the final products 'T Shirts' are different.

6.2. The Central Government, having noticed the error in Notification No. 35/2003 C.E.(N.T.), vide Notification 47/2003 C.E.(N.T.), dated 17.5.2003 amended the Notification No. 35/2003 C.E.(N.T.). The said Notification No. 47/2003 C.E.(N.T.) is reproduced below: In exercise of the powers conferred by Sub-rule (3) of Rule 9A of the CENVAT Credit Rules, 2002, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 35/2003-Central Excise (N.T.), dated the 10th April, 2003, namely: In the said notification, in the Table, for S.No. 2 and the entries relating thereto, the following shall be substituted, namely: (1) (2) (3) 2 finished goods lying in (a) Unprocessed fabrics Declared value multiplied by of cotton not containing 26% of the rate of duty on such any other textile material; (b) Unprocessed fabrics Declared value multiplied by other than (a) above; 60% of the rate of duty on such eligible for exemption, the rate of duty on such yarn as on 31st March, 2003, (d) Articles of apparel Declared value multiplied by and clothing accessories 12% of the rate of duty on such falling under Chapter article of apparel and clothing It can be seen that the table in the above notification has provided for the credit of duty lying in inputs in respect of the Articles of apparel and clothing accessories falling under provision 2(d) of the above Notification No. 47/2003 C.E. (N.T.) that, the Sr. No. 2 in the table to Notification No. 35/2003 C.E. (N.T.) is 'Substituted' by the table in the Notification No. 47/2003-C.E. (N.T.). The effect of the table in notification is the substitution of the table in earlier notification. This substitution will result in an effect, that, the table in Notification No. 47/2003 C.E. (N.T.) is Super imposed at Sr.

No. 2 of the Table in Notification No. 35/2003 C.E. (N.T.) and would have effect from the date of the said Notification No. 35/2003 C.E.(N.T.) i.e. from 10.4.2003. Government of India v. Indian Tobacco Association The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing", or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or

thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague.

The Hon'ble Supreme Court in the said judgment at Para 23 has also held as under: It may, therefore, be safely concluded that by reason of the amended notification, the Central Government only intended to rectify a mistake and, thus, the same will have retrospective effect and retrospective operation.

6.4. I find that by issuing Notification No. 47/2003 C.E. (N.T.) the Central Government has rectified the error of omission of the Garment manufacturer's eligibility to avail the credit of duty on inputs lying in stocks. By issuing Notification No. 47/2003 C.E. (N.T.) the Central Government has given full effect to the provisions of Rule 9(A)(3)(b), in as much as that the Garment manufacturers would not have been able to take the credit of the duty on inputs under Notification No.35/2003-C.E. (N.T.). The Central Government wanted all the manufacturers of fabrics and garments to be benefited by this Rule.

6.5. The intention of the Government to extend the Credit to the Government manufacture was evident from the Rule 9A(3)(b) but due to an error in drafting Notification No. 35/2003 C.E. (N.T.) the same could have precluded the manufacturers of garments from availing the credit of duty on inputs lying in stock. This rectification of error was undertaken by Notification No. 47/2003 C.E. (N.T.), dated 17.5.2003. I find, that, amending Notification No. 47/2003 C.E. (N.T.) dated 17.5.2003 is issued to rectify a mistake, the effect of substitution of the table in Notification No. 35/2003-C.E. (N.T.) will have effect from 10.4.2003.

7. In view of the above findings, the credit of duty on inputs lying in stock of the appellants has to be calculated as per the provisions in table "substituted" by Notification No. 47/2003 C.E. (N.T.).

8. Since the issue of availment of amounting of on Credit inputs was a question the interpretation of the notification, the imposition of penalty on the appellants is unwarranted. The penalty imposed on all appellants is liable to be set aside.

9. In view of the above circumstances, all three Order-in-Appeals are liable to be upheld to the extent of demand of the duty of credit on inputs, availed in excess of the calculations as envisaged under Notification No. 47/2003-C.E. (N.T.), but the imposition of penalty on all appellants are set aside.

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