

The Commissioner of Central Excise Vs. Maize Products

The Commissioner of Central Excise Vs. Maize Products

SooperKanoon Citation : sooperkanoon.com/745607

Court : Gujarat

Decided On : Aug-25-2008

Reported in : 2009(234)ELT431(Guj)

Judge : D.A. Mehta and; H.N. Devani, JJ.

Acts : Central Excise Rules, 1944 - Rule 57AD; Cenvat Credit Rules, 2001 - Rule 6; Cenvat Credit Rules, 2002 - Rule 6, 6(2) and 6(3)

Appeal No. : Tax Appeal No. 1058 of 2007

Appellant : The Commissioner of Central Excise

Respondent : Maize Products

Advocate for Def. : Mihir Joshi, Sr. Adv.,; Devang Nanavati and; Vijay Nani

Advocate for Pet/Ap. : Harin P. Raval and; P.R. Abichandani, Advs.

Disposition : Appeal dismissed

Judgement :

D.A. Mehta, J.

1. The appellant - Revenue has challenged the order dated 4.1.2007 made by the Customs, Excise & Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad (the Tribunal), by proposing the following questions:

[a] Whether the Tribunal, in the facts and circumstances of the case, is justified in holding that the demand is highly disproportionate to the credit availed on common inputs which could be attributed to goods which have been cleared without payment of duty?

[b] Whether the Tribunal, in the facts and circumstances of the case, is justified in accepting the offer of the respondent to reverse the entire credit attributable to the exempted product covered in the nine show cause notices?

[c] Whether the Hon'ble CESTAT is justified, in the facts and circumstances of the case, in setting aside the order of the Commissioner confirming the demands in nine Show Cause Notices by not considering the provisions of erstwhile Rule 57AD of Central Excise Rules, 1944, Rule 6 of CENVAT Credit Rules, 2001 and Rule 6 of CENVAT Credit Rules, 2002 which were in force during the period under reference?

2. Heard the learned Counsel for the appellant and the respondent.

3. The brief facts necessary for the present are that the respondent Company manufactures certain dutiable products narrated in paragraph No. 3(a) of the impugned order of the Tribunal. In the course of manufacturing process, two inputs, namely, Caustic Soda Lye and Hydrochloric Acid are used, resulting in manufacture of both dutiable and non-dutiable products. The revenue took a view that no duty was payable on some of the final products and hence, duty at the rate of 8% of the value of such final products was required to be paid and CENVAT credit was wrongly availed of. Four show cause notices relating to an exempted product and nine show cause notices relating to bye-products were issued, the period being from April 2000 to March 2004. The four show cause notices were dropped by the Commissioner himself, while in case of nine show cause notices, the proposal to levy duty was confirmed. The matter was carried in appeal before the Tribunal.

4. After hearing the parties, the Tribunal has issued the following directions:

[6] We have carefully considered the submissions. We are convinced that the demand is highly disproportionate to the credit availed on the common inputs which could be attributed to goods which have been cleared without payment of duty. We are not going to the merits of the decision of the Commissioner in so far as the same relates to dropping of the demand in the four show cause notices as the Department is not in appeal before us. We are inclined to accept the offer of the appellant company to reverse the entire credit attributable to the exempted product covered in the nine show cause notices and accordingly we set aside the order of the Commissioner confirming the demand in respect of the nine show cause notices with the direction to consider and accept their offer to reverse the entire credit on the common inputs i.e. caustic soda lye and hydrochloric acid. The department shall redetermine the credit taken on the common inputs i.e., caustic soda lye and hydrochloric acid in so far as they relate to demand proposed in the 9 show cause notices. The assessee shall produce the necessary evidence in the form of chartered accountant's certificate for the relevant period. If any further credit is to be reversed, the same shall be reversed within four weeks from the date of receipt of the communication from the department.

5. The appellant has produced relevant extracts from the relevant Rule of Cenvat Credit Rules, 2002 which relates to obligation of manufacturer of dutiable and exempted products. Under Sub-rule (2) of the said Rules, a manufacturer is required to maintain separate accounts regarding inputs used for manufacturing of dutiable products and inputs used for manufacturing of exempted products. However, Sub-rule (3) stipulates that, in a case where the manufacturer opts not to maintain separate accounts, the manufacturer shall follow either condition (a) or condition (b), as the case may be. Under the Rule, Explanation-I provides that the amount mentioned in any of the conditions shall be paid by the manufacturer by debiting the cenvat credit or otherwise.

6. Thus, in effect, the directions issued by the Tribunal are merely in consonance with the requirement of the relevant rule, and it is not possible to state that the Tribunal has committed any error in issuing such directions. The respondent - assessee having accepted before the Tribunal to reverse the cenvat credit as recorded by the Tribunal in paragraph No. 4 of the impugned order as regards

reversal of the amount involved and any more amount that may be reversible, the Tribunal has issued directions accordingly.

7. In fact, the directions of the Tribunal primarily go to show that the direction was to re-determine the credit taken on common inputs and accept the offer to reverse such entire credit on common inputs insofar as they relate to demand proposed in the nine show cause notices. The Tribunal has also recorded the undertaking given by the respondent assessee that if any further credit is to be reversed, the same shall be reversed within four weeks from the date of receipt of the communication from the Department. Hence, in the facts and circumstances of the case, it is apparent that the entire controversy has been decided by the Tribunal by merely remitting the matter back to the Adjudicating Authority to re-determine the credit in accordance with law. If any reversal has been made by the respondent assessee, the same is subject to verification and adjustment if ultimately any further amount is found reversible.

8. According to the respondent assessee, the exercise directed by the Tribunal has been carried out as recorded in order dated 2.4.2007, which statement is disputed by the learned advocate for the appellant.

9. In the circumstances, in absence of any question of law, as proposed or otherwise, much less a substantial question of law, the appeal is dismissed.