

Commissioner of Central Excise Vs. Srf Limited

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Court : Chennai

Decided On : Feb-20-2013

Judge : The Hon'Ble Mrs.Justice R.Banumathi

Appellant : Commissioner of Central Excise

Respondent : Srf Limited

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated :

20. 02.2013 Coram : THE HONOURABLE MRS.JUSTICE R.BANUMATHI and THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU Civil Miscellaneous Appeal No.3878 of 2005 Commissioner of Central Excise, Chennai. ... Appellant vs. M/s.S.R.F. Limited ... Respondent Appeal is filed under Section 35G of Central Excise Act, 1944 against the order of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.464 of 2005 dated 22.03.2005. For Appellant : Mr.Rajnish Pathiyil For Respondent : Mr.Lakshmi Kumaran JUDGMENT R.BANUMATHI,J Being aggrieved by the order of the Tribunal allowing the credits taken in RG23A Part II after expiry of six months from the date of document (Bill of Entry) which is beyond the stipulated period of six months time limit provided under Rule 57G sub-rule 5 of Central Excise Rules 1944, Revenue has preferred this appeal. The appeal was admitted on the following substantial questions of law:- "1. Whether the Commissioner of Appeals and the Appellate Tribunal are right in allowing the credits taken in RG 23.Part II Account after expiry of 6 months from the date of document (Bill of Entry) when

there is a provision under Rule 57G (5) of the Central Excise Rules, 1944 stipulating 6 months time limit for taking such credit? 2. Whether the diversion of imported goods in question by M/s.Goodyear India Limited (Importer) to M/s.S.R.F. Limited (Manufacturer) without endorsement on the Bill of Entry by Customs authority for availment of MODVAT Credit of duty under Rule 57G of Central Excise Rules, 1944 is correct as per Board's Circular No.179/13/96 CX dated 29.02.1996." 2. Brief facts:- Respondent M/s.S.R.F. Limited, Chennai-68 is manufacturers of Nylon Chips, Filament Yarn and Tyre Cord Fabrics falling under Chapter 39; 54 and 59 of Central Excise Tariff Act, 1985, besides doing job work to M/s.Goodyear India Limited. Respondent is registered with the department and hold Central Excise Registration Certificate. Respondent supplies Processed Tyre Cord Fabrics otherwise known as Dipped Tyre Cord Fabrics. They are availing credit of duty paid on inputs used in the manufacture of the above said products.

3. M/s.Goodyear India Limited supplied certain chemicals to Respondent for the manufacture of the above products between February 1999 to April 1999. In all, they supplied eight consignments of imported materials and in token of their receipt, Respondent made entries in their statutory register in Form RG23A Part I Account. Documents accompanied the said consignment were in the name of original importer viz., M/s.Goodyear India Limited. Respondent did not avail the credit of Countervailing Duty suffered on the said consignments immediately. Respondent took credit of Rs.13,22,122/- in their MODVAT Account (RG23A Part II) under Serial No.712 to 719 on 03.07.2000 after a lapse of six months from the date of payment of Countervailing Duty by the original importer. The details of Bills of Entry, description of goods and credit of duty taken are as follows:-

Sl.No.	Bill of Entry	Description of Goods	RG23A Part I Sl.No./Date	RG23A Part II Sl.No./Date	Credit of Duty taken Rs
20684.	/11.02.99	SBR Latex	9022/117 19.02.99	712/03.07.2000	129670.8
20822.	/22.02.99	VPL Fendic	9025/123 06.03.99	713/03.07.2000	219511.9
20822.	/22.02.99	SBR Latex	9025/128 13.03.99	714/03.07.2000	111288.4
21044.	/12.03.99	SBR Latex	9025/141 31.03.99	715/03.07.2000	111158.0

20684. /11.02.99 SBR Latex 9022/117 19.02.99 712/03.07.2000 129670.8

20822. /22.02.99 VPL Fendic 9025/123 06.03.99 713/03.07.2000 219511.9

20822. /22.02.99 SBR Latex 9025/128 13.03.99 714/03.07.2000 111288.4

21044. /12.03.99 SBR Latex 9025/141 31.03.99 715/03.07.2000 111158.0

20648. /09.02.99 Fabric Adhesive 6401/1 21.04.99 716/03.07.2000 217732.6

21113. /17.03.99 VPL Fendic 3001/1 21.04.99 717/03.07.2000 190926.6

21024. /11.03.99 Fabric Adhesive 5401/2 21.04.99 718/03.07.2000 193436.0

6097. 19.03.99 VP Latex 3001/2 21.04.99 719/03.07.2000 148398.00 TOTAL
13221 2.30 4. As per Rule 57G of Central Excise Rules 1944, a manufacturer shall take credit of duty paid within a period of six months from the date of issue of the document specified viz., Bill of Entry. Respondent has taken the Credit of duty after a lapse of six months.

5. Stating that Respondent was not eligible for the Credit of duty so taken, a show cause notice dated 23.04.2001 was issued to the Respondent proposing to deny the credit taken and to recover the same with a proposal to impose penalty under Rule 173Q of Central Excise Rules. The Adjudicating Authority Assistant Commissioner, Central Excise, Chennai ordered recovery of Rs.13,22,122.30 under Rule 57AH of Central Excise Rules read with Section 11A of Central Excise Act and further imposed penalty of Rs.3,00,000/- under Rule 173Q of Central Excise Rules, 1944.

6. In the appeal preferred by the Respondent, the Commissioner (Appeals) vide order dated 15.03.2002 held that the endorsed Bills of Entry from the Customs authorities were received by the Respondent on 03.07.2000 and they took credit in RG23A Part II on the same day itself and there is no delay in taking credit after the receipt of endorsed Bills of Entries. Observing that MODVAT Credit cannot be denied for procedural lapse, the Commissioner (Appeals) directed the Adjudicating Authority to extend MODVAT Credit after due verification.

7. The appeal preferred by the Revenue was rejected by the Tribunal on the ground that the Commissioner (Appeals) allowed the appeal upon a finding that the delay in taking credit was due to the delay in making the endorsement by the Customs authorities and observed that the Revenue cannot take advantage of their own default. Being aggrieved by the order of the Tribunal, Revenue has preferred this appeal.

8. The core contention of the Revenue in this appeal is that the Respondent-assessee is not entitled to take credit after six months from the date of Bills of Entry in respect of the inputs that were received in the factory. Thus, according to the Revenue, such claim for credit beyond six months is against Rule 57G sub-rule 5 of the Central Excise Rules, 1944.

9. Per contra, the learned counsel appearing for the Respondent contended that even though the Respondent was in possession of the Bills of Entry, the same cannot be utilised for availing the credit in the absence of an endorsement made by the Customs department. According to the learned counsel, Rule 57G sub-rule 3 specifically prohibits availing a credit under sub-rule 2, unless the inputs are received in the factory under the cover of any of the documents stipulated under sub-rule 3. Respondent being not the direct importer and on the other hand the inputs were only passed on to them by M/s.Goodyear India Limited for manufacture, unless such passing on the inputs to the Respondent by the importer is endorsed by the Customs department in the Bills of Entry, the mere possession of such Bills of Entry in the hands of the Respondent will not entitle them to take credit automatically. Therefore, according to the learned counsel, the document viz., Bills of Entry gets its life or validity for the purpose of availing the credit under sub-rule 2 of Rule 57G, only when the same was endorsed by the Customs department. Hence, the learned counsel contended that the date of endorsement made by the Customs department in the Bills of Entry is to be taken as the date of issuance of the document as referred to under sub-rule 5 of Rule 57G.

10. We have considered the rival submissions on this aspect.

11. For proper appreciation of the above said contention, it is relevant to extract sub-rules 1, 2, 3 and 5 of Rule 57G of Central Excise Rules as follows:- "RULE 57 . Procedure to be observed by the manufacturer -(1) Every manufacturer intending to take credit of the duty paid on inputs under rule 57A or rule 57B shall file a declaration with the Assistant Commissioner of Central Excise having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in the said final products and such other information as the said Assistant Commissioner may require, and obtain a dated

acknowledgement of the said declaration. (2) A manufacturer who has filed a declaration under sub-rule (1), may after obtaining the acknowledgement aforesaid, take credit of the duty on the inputs received by him. (3) No credit under sub-rule (2), shall be taken by the manufacturer unless the inputs are received in the factory under the cover of any of the following documents, namely,:-
..... (c) triplicate copy of a bill of entry;
(5) Credit shall also not be taken by the manufacturer after six months of the date of issue of any document specified in sub-rule (3) and where the intermediate products manufactured by the user of inputs specified under rule 57 are received by the manufacturer, after nine months.

12. A combined reading of the above sub-rules of Rule 57G would go to show that a manufacturer who has filed a declaration under sub-rule 1 may take credit of the duty on the inputs received by him, provided such inputs are received in the factory under the cover of any of the documents referred to under sub-rule 3. It is further contemplated under sub-rule 5 that no such credit shall be taken by the manufacturer after six months of the date of issue of any document specified in sub-rule 3.

13. For manufacture of Dipped Fabrics, the import took place during the period February 1999 to April 1999 and on the Bills of Entry, the importer M/s.Goodyear India Limited made necessary declaration stating that the consignments are being delivered to the Respondent for manufacture and for availing the credit. These declarations were made immediately after the assessment of the goods imported and given to the Customs Officer for his endorsement as per Circular dated 29.02.1996. According to Respondent, as the Bills of Entry were not endorsed, the Respondent could not take credit since the Circular dated 29.02.1996 requires such endorsement.

14. M/s.Goodyear India Limited addressed letter to the Commissioner of Customs on 19.04.1999 about the denial of endorsement and requesting them to issue necessary instructions to resolve the issue. The Deputy Commissioner of Customs, Customs House, Chennai wrote to M/s.Goodyear India Limited on 03.09.1999, requesting them to approach the Assistant Commissioner of

Customs/Appraising Officer, Docks for endorsement of the Bills of Entry. The endorsed Bills of Entry from the Customs Authorities were received by the Respondent on 03.07.2000 and Respondent took credit in RG23A Part II on the same day itself. Even though the inputs were received during the month of February 1999 to April 1999, the Respondent had taken credit only on 03.07.2000 due to delay in endorsement on the Bills of Entry by Chennai Customs.

15. Even though the inputs were transferred in the hands of the Respondent by the importer also by handing over the Bills of Entry, such supply or transfer of the inputs to the Respondent by the importer has necessarily to be endorsed by the Customs department in the Bills of Entry. Then only, after endorsement, the said Bills of Entry becomes an effective document under Rule 57G sub-rule 3 for the limited purpose of availing the credit under Rule 57G sub-rule 2.

16. Admittedly, in this case, the endorsement was made by the Customs department on 3.7.2000, after a considerable delay. It is also an admitted fact that on the very same day, the Respondent took credit in RG23A Part II Register. Thus, the crucial question is as to whether the date of endorsement in the Bills of Entry is the date of issuance of the document as contemplated under sub-rule 5 or the date of Bills of Entry is the date of issue of such document. A plain reading of sub-rule 5 may indicate or suggest that the date of the Bills of Entry in this case as the relevant date. But, when we look into the language of the said provision, it would further reveal that the words "date of issuance of the document" should be read with wider meaning so as not to confine with the date of document alone and it can be further extended to the date of issuance of such document. Here, in this case only after the endorsement was made by the Customs department the issuance of such document viz., Bills of entry takes effect in favour of the Respondent. Therefore, the language used in sub-rule 3 that "the inputs are received in the factory under the cover of any of the following documents" shall have to be read to mean and referable to a 'valid document' and not a 'document simplicitor'. Necessarily, the authority should go into the question of validity of each and every document referred to under sub-rule 3 by taking into consideration of the facts and circumstances of each case. Therefore, when the Respondent in this case, admittedly not the importer of the inputs and the same were only

supplied to them by the importer viz., M/s. Goodyear India Limited, then the date of endorsement made by the Customs department is to be taken as the date of issuance of such document and consequently, if the Respondent had availed credit within six months from the date of making such endorsement, in our considered view, the Respondent is well within the time, as contemplated under sub-rule 5 in claiming the credit under Rule 57G sub-rule 2.

17. Upon consideration of facts and other materials, the Commissioner (Appeals) and the Tribunal concurrently held that the delay in taking the credit is only due to delay in endorsing the Bills of Entry by Customs authorities and therefore, benefit of MODVAT credit cannot be denied to the Respondent. We do not find any reason warranting interference in the order of the Tribunal. The substantial questions of law raised in this appeal are answered infavour of the Respondent and the appeal is dismissed. No costs. [R.B.I.,J.] [K.R.C.B,J.] 20.02.2013 Index : Yes/No Internet : Yes/No bbr To 1.The Assistant Commissioner of Central Excise, 'D' Division, Chennai I Commissionerate, Chennai-34. 2.The Commissioner of Central Excise (Appeals), Chennai-34. 3.The Customs, Excise and Service Tax Appellate Tribunal, Southern Regional Bench, Chennai-6. R.BANUMATHI,J.

and K.RAVICHANDRABAABU, J.

bbr Judgment in C.M.A.Nos.3878 o

20. 02.2013

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