

M/s.Shivani Detergent Pvt.Ltd. Vs Commissioner Of Central Goods And Service Tax and Central Excise

Court: Customs, Excise And Service Tax Appellate Principal Bench, New Delhi

Date of Decision: Oct. 14, 2021

Acts Referred: Cenvat Credit Rules, 2004 " Rule 15(2), 57G
Central Excise Act, 1944 " Section 11AC(1)(C)

Hon'ble Judges: Anil Choudhary, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Cenvat,,,Difference of excess credit taken,,,

Actual Cenvat Credit taken by the

Noticee" ,,,,,,

16%,2%,1%,4%,16%,2%,1%,Total

9,10,11,12,13,14,15,16

8,73,995",17480,8740,--,1883,38,19,1940

3,05,178",6104,3052,--,19431,389,194,20014

6,27,718",12554,6277,--,42443,849,424,43706

,,,63747,1276,637,65660

Rs.7,18,818/-(for clearance of waste spent acid) was set aside by the Commissioner (Appeals). The aforementioned other 3 demands were confirmed" ,,,,,,

along with the penalty imposed. ,,,,,,

7. Being aggrieved the appellant is in appeal before this Tribunal. ,,,,,,

8. Heard the parties. ,,,,,,

8.1 The appellant Counsel, Mr. Ankur Upadhyay, Advocate urges that they do not press the demand of Rs.3,175, the same being small in nature and" ,,,,,,

also the relevant supporting documents with them are not available. ,,,,,,

8.2 As regards the demand of Rs.25,705 it is urged that admittedly appellant have taken the credit of additional duty, which is as per the invoice/bill of" ,,,,,,

entry. It is urged that the raw material in question is a chemical having volatile nature, and there is bound to be some loss in transit, which is a normal" ,,,,,,

loss. Accordingly revenue is not justified in confirming the demand on the ground that appellant should have taken less credit for the actual quantity of,,,,,,,,,

inputs received. Reliance is placed on the ruling of Hon'ble Rajasthan High Court in the case of *Union of India versus Wheelbarrow Spearing Ltd.* ,,,,,,,,,,

2008 (222) ENT 362 where the facts were that the assessee had received in the factory, the consignment of HFO which was marginally less than the" ,,,,,,,,,,

actual quantity stated in the invoice, which was a normal loss on account of transit operation. The assessee had availed the modvat credit on the basis" ,,,,,,,,,,

of CVD paid on the goods received by him, as per invoice. The payment was evidenced by the invoices. However the Assistant Commissioner" ,,,,,,,,,,

pointed out that, to the extent the lesser quantity of HFO was received in the factory, the assessee was not entitled to avail Modvat credit on such" ,,,,,,,,,,

short receipt of the HFO, and directed reversal of Modvat credit to that extent. The Commissioner (Appeals) and the Tribunal were of the opinion that" ,,,,,,,,,,

the Tribunal were of the opinion that the assessee is entitled to avail full modvat credit on the basis of CVD paid on inputs received by them in the,,,,,,,,,

factory, as evidenced by the invoices, but the marginal loss of goods in transit, as well as due to normal evaporation, cannot be taken note of for the" ,,,,,,,,,,

purpose of reducing the modvat credit. Since the availing of modvat credit was found to be in order, the penalty levied by the assessing officer for" ,,,,,,,,,,

availing of modvat credit more than alleged entitlement, was set aside. The Hon'ble High Court agreed with the view taken by the Tribunal, observing" ,,,,,,,,,,

that there is no dispute of any diversion of the goods covered under the invoices in question, and entire goods were received under consignment, have" ,,,,,,,,,,

not been put to any use other than as input in the end product manufactured by the assessee and the transit loss was found by the Tribunal to be,,,,,,,,,

normal loss due to evaporation, it must be held that the CVD paid by the consignor/importer was paid in respect of the goods, entirely used by the" ,,,,,,,,,,

assessee as input in the manufacture of the end product. It was further observed that Rule 57 G envisages that such amount of modvat credit availed,,,,,,,,,

by the assessee which is evident by the invoices, has inherent correlation with the payment of duty with the goods, covered by such invoices. Thus no" ,,,,,,,,,,

curtailment of modvat credit was permissible. Unless the assessee is found to be wrong or in case of diversion of inputs received under invoice, there" ,,,,,,,,,,

is no provision to avail lesser modvat credit than what had been proved to have been paid on the entire goods received and used in the factory of the,,,,,,,,,

manufacturer. Accordingly this ground is allowed and the demand of Rs. 25, 705 is set aside." ,,,,,,,,,,

8.3 So far the demand of Rs.65,660/- is concerned, the learned counsel points out that the appellant have taken lesser credit, where due to normal loss" ,,,,,,,,,,

appellant have received marginally lesser quantity than that mentioned in the invoice/bill of entry, proportionately. Similarly they have availed" ,,,,,,,,,,

proportionately excess credit in respect of some of the invoices/bill of entry, where they have received marginally excess quantity than that mentioned" ,,,,,,,

in the invoices/bill of entry. Such marginal excess happened as the dispatcher/shipper dispatches some excess quantity to take care of the loss in ,,,,,,,

transit. It is further urged that as revenue have not objected to taking of lesser credit, than that mentioned in the invoices/bill of entry, accordingly there" ,,,,,,,

should be no objection to the excess credit taken where the appellant have received some excess quantity. ,,,,,,,

8.4 The learned counsel further urges that from a plain reading of the show cause notice it is evident that, the issues raised in the notice are of" ,,,,,,,

interpretation in nature. Admittedly appellant have recorded the transactions in the books of accounts and statutory registers in the normal course of ,,,,,,,

business. Further appellant have filed the returns regularly. Further no malafide have been attributed and/or alleged in the show cause notice save and ,,,,,,,

except the only charges, that if the audit had not taken place, these facts would not have come to notice, resulting in loss of revenue." ,,,,,,,

9. Opposing the appeal, Id. Authorised Representative for the Revenue supports the impugned order." ,,,,,,,

10. Having considered the rival contentions I find that the appellant is registered with the Department and have maintained proper books of accounts ,,,,,,,

and registers. I further find that the issue involved herein is wholly interpretational in nature. I further find that the show cause notice is also erroneous," ,,,,,,,

as revenue have sought to recover an amount of Rs.1,04, 890 + Rs.7,18,818/- which are been finally dropped by the court below. Further, this Tribunal" ,,,,,,,

found that the demand of Rs.25,705/- is not sustainable and the same have been raised by misconception, as regards treatment of normal loss. I" ,,,,,,,

further find that there is no Mala fide on the part of the appellant as they have taken less credit in case of normal loss of the quantity, and have" ,,,,,,,

erroneously taken excess credit for the normal gain or excess quantity received. In this view of the matter I hold that extended period of limitation is ,,,,,,,

not available to revenue. Accordingly the impugned order in appeal is set aside so far it have confirmed the demand and penalty. ,,,,,,,

11. Accordingly this appeal is allowed. The impugned order-in-appeal stands modified as indicated hereinabove. The appellant shall be entitled to ,,,,,,,

consequential benefits in accordance with law. ,,,,,,,

[Order pronounced on 14.10.2021.] ,,,,,,,