Commr. of Cus. and C. Ex. Vs Gauri Components (P) Ltd.

Court: Allahabad High Court

Date of Decision: April 2, 2012

Acts Referred: Central Excise Rules, 1944 â€" Rule 57F(20), 57G

Citation: (2013) 292 ELT 332

Hon'ble Judges: Prakash Krishna, J; Ashok Bhushan, J

Bench: Division Bench

Advocate: Surya Prakash Kesarwani, A.K. Nigam and K.C. Sinha, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the appellant. This appeal u/s 55 of Central Excise Act, 1944 is challenging the order of the Tribunal dated 17th July,

2003. By this appeal, the Tribunal has rejected the appeal filed by the Revenue against the order passed by the Commissioner (Appeals). The

adjudicating authority has disallowed the Modvat credit on two grounds, firstly, that there was non-compliance with the provisions of Rule 57F(20)

and secondly, no declaration was also filed within a period of six months. The Commissioner (Appeals) reversed the decision of the adjudicating

authority by referring to the earlier judgment of Customs, Excise & Service Tax Appellate Tribunal. Tribunal had dealt both the two reasons on

basis of which the Modvat Credit was disallowed by the adjudicating authority in para Nos. 2 and 3 of the judgment. It is useful to refer the para

Nos. 2 and 3 of the Tribunal in order which are as follows:

(2) The perusal of the impugned order shows that the Commissioner (Appeals) had not accepted the first ground for disallowing the Modvat credit

to the respondents on the ground that no such allegation was made in the show cause notice and that the adjudicating authority had travelled

beyond the scope of the show cause notice. He has followed the ratio of the law laid down in the case of 2001 (129) ELT 663 , wherein it has

been held that any order passed beyond the scope of show Cause Notice, is liable to be struck down on that ground only.

(3) Similarly, the second ground has also not been accepted by the Commissioner (Appeals) by following the ratio of the law laid down by the

Tribunal in the case of 1996 (87) ELT 193 and 1999 (105) ELT 194 , wherein it has been observed that even if the declaration had not been filed

within the specified time, the credit could not be declined to the assessee, if otherwise available. The learned JDR has not been able to cite any

contrary law for challenging the correctness of the impugned order of the Commissioner (Appeals). In the grounds of appeal, the main ground

taken is that, the Department had filed a reference application against the above law and order of the Tribunal and as such could not be followed

by the Commissioner (Appeals), but this ground is wholly misconceived and cannot be accepted for reversing the impugned order-in-appeal.

2. Learned counsel for the appellant, Sri Shukla, contended that the declaration was necessary to be made by the Unit under Rule 57G. The said

issue has been considered by the appellate authority and for repelling the aforesaid contention following observations were made by the appellate

authority:

The CEGAT in its decision in the case of 1996 (65) ECR 64 . 1999 (112) ELT 1057 , 1996 (66) ECR 45 & 1999 (85) ECR 457 has held that

so long as the manufacturing unit remained intact & if the appellant continued to manufacture the very same goods out of the same inputs, the

declaration already filed has to be considered adequate for Modvat purposes. Even if the declaration by the new unit is called for, it can only be

construed to be a technical requirement & can not construe to be a violation of Rule 57G The fact that a fresh registration was applied & granted

does not itself justify the view fresh declaration is needed under Rule 57-G.

3. Learned counsel for the appellant has not been able to meet the reasons which was relied by the appellate authority and judgment which were

relied. The following question has been framed in the memo:

(a) Whether the respondent (manufacturer) could avail Modvat Credit under Rule 57A of the Rules on the basis of declaration filed by a unit

earlier existed inn the same premises, without filing a declaration under Rule 57G or without seeking permission under Rule 57F(20) of the Rules

from the Commissioner?

(b) Whether Modvat credit can be availed by manufacturer without observing/following the provisions of Rule 57G or Rule 57F(20) of the Rules?

(c) Whether the scope of the provisions relating to Modvat credit can be relaxed/widened by the Appellate Tribunal or the Commissioner

(Appeals) who themselves are statutory authorities credit under the Act inasmuch as the Appellate Tribunal has not given any weight to the

provisions and the Rule 57F(20) and Rule 57G of the Rules and also observed that ""even if the declaration had not been filed within the specified

time the credit could not be declined to the assessee, if otherwise available.

4. The first question, which has been framed for consideration is as to whether Modvat credit under Rule 57A can be availed on the basis of

declaration filed by unit earlier existed in the premises without filing the declaration under Rule 57G or without seeking permission under Rule

57F(20) of the Rules. In so far as permission under Rule 57F(20) is concerned, finding has been recorded that said allegation was not made in the

show cause notice, nor the assessee was required to seek permission under Rule 57F(20) when an allegation is not made in the notice. The

adjudicating authority committed error in relying on the Provisions of 57F(20). The findings recorded by the Tribunal that show cause notice did

not contain any allegation regarding violation of Rule 57F(20) has not been challenged. No such substantial question of law arises for

consideration. In so far as filing of declaration under Rule 57G of Central Excise Rules, 1944 is concerned the declaration was submitted by the

assessee on 8-12-1999 i.e. with delay. The declaration filed with delay was rejected without any valid reason. Rule 57G(9) empowers the

authority to condone the delay in filing of such declaration and allow the manufacturer to take credit of the duty already paid on the inputs.

Declaration of the assessee is claimed to have been filed well within a period of six months from the receipt of input in the factory.

5. We are of the view that the Tribunal has rightly dismissed the appeal of the revenue confirming the order of the Commissioner (Appeals). The

appeal is concluded by findings of the facts and no substantial question of law as noted above arises for consideration in this appeal. The appeal is

dismissed.