Sintex Industries Ltd. Vs Commissioner of Central Excise

Court: Gujarat High Court

Date of Decision: April 11, 2012

Acts Referred: Central Excises and Salt Act, 1944 â€" Section 2(e), 35, 35G

Citation: (2013) 287 ELT 261

Hon'ble Judges: Bhaskar Bhattacharya, Acting C.J.; J.B. Pardiwala, J

Bench: Division Bench

Advocate: B.L. Narasimhan and A.P. Nainawati, for the Appellant; Darshan M. Parikh, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, Actg. C.J.

1. At the stage of admission, we have heard out all these appeals as similar questions of law are involved. The first 7 appeals are at the instance of

the assessee and are directed against order dated June 17, 2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, Ahmedabad

(""the Tribunal"" for short) in Appeal Nos. E/438, 439/2007 & E/2171-2174 and 2905 of 2006 and Tax Appeal Nos. 1295 and 1264 of 2011 are

also at the instance of the assessee and are directed against order dated February 24, 2011 passed by the Tribunal in Appeal Nos. E/619 and 620

of 2010, by which the appeals preferred by the appellant were dismissed.

2. Being dissatisfied, the appellant has come up with the present Appeals.

3. For the purpose of convenience, facts are narrated from the Tax Appeal No. 376 of 2011.

4. The case made out by the appellant can be summed up thus:

4.1 The appellant is a company incorporated under the Companies Act, 1956. The appellant has, inter alia, two divisions. The Textile Division is

known as M/s. Bharat Vijay Mills, which is engaged in the manufacture of cotton yarn, processed cotton fabrics, processed man-made fabrics,

etc. The other division is Plastic Division, The present appeals relate to the Textile Division of the appellant.

4.2 The appellant is holding Central Excise Registration No. AADCSO858EXM005.

4.3 The Plastic Division owned by the appellant holds Central Excise Registration No. AADCSO858EXM004. Both these units are part of the

one single legal entity, i.e. Syntex Industries Ltd., having a common PAN under the Income Tax Act. Both the above units are located on the

common ground surrounded by a common boundary wall and adjoining to each other.

4.4 The appellant, in order to receive continuous and uninterrupted supply of electricity, installed DG sets/electricity generation plant to be used in

the factory of the appellant and it has been using furnace oil as fuel in the generation of electricity.

4.5 The appellant has been availing Cenvat credit on the inputs, viz. furnace oil, used as fuel for the generation of electricity, which is used for

captive consumption in their own factory. Whenever there is lower utilization of electricity and/or when the appellant''s other unit, i.e. the Plastic

Division, requires electricity, the appellant supplies part of the electricity so generated to its own Plastic Division,

4.6 In response to the letter dated March 12, 2004, of the Superintendent of Central Excise, ARI, requiring the appellant to reverse the credit

taken on furnace oil used in the generation of electricity and supplied to the Plastic Division, the appellant by its letter dated April 23, 2004 after

referring to the relevant provisions of law, contended that it was not required to reverse the said credit availed by it. By the said letter, the appellant

also submitted a list giving details of electricity supplied to the Plastic Division.

4.7 In response to further letter dated July 21, 2004 of the Superintendent of Central Excise, Kalol Division, the appellant by its letter dated July

31, 2004 informed the Deputy Commissioner of Central Excise that it has reversed the credit of Rs. 15,65,416/- taken on furnace oil used for the

generation of electricity supplied to the Plastic Division from January, 2004 to May, 2004 under protest and under intimation to the office of the

Deputy Commissioner of Central Excise.

4.8 The appellant further reversed under protest the Cenvat credit from time to time from the period of June, 2004 to September, 2004 being

proportionate credit on furnace oil used in the generation of electricity, partly supplied to the Plastic Division. The appellant, vide its letters dated

June 29, 2004, July 31, 2004, August 31, 2004, September 30, 2004 and October 5, 2004, brought to the notice of the Deputy Commissioner of

Central Excise the above fact that the said reversal was under protest as contended by it.

4.9 Subsequently, the appellant filed claim of refund for Rs. 18,43,853/- with the office of the Deputy Commissioner of Central Excise, Rural

Division, Kalol on September 23, 2004, claiming refund of excise duty/re-credit of the proportionate credit reversed on the furnace oil used in the

generation of electricity and supplied to its Plastic Division during the period from January, 2004 to June, 2004.

4.10 The appellant made further claim of refund of Rs. 7,01,902/- with the office of the Deputy Commissioner of Central Excise, Rural Division on

October 28, 2004, claiming refund of central excise duty/re-credit of proportionate credit reversed on furnace oil used in the generation of

electricity and supplied to its Plastic Division during the period from July, 2004 to September, 2004.

4.11 Subsequently, show cause notices were issued to the appellant as to why the protest lodged by the appellant should not be rejected by

recalling the Cenvat credit availed by the appellant.

4.12 By its letters dated March 25, 2005 and August 9, 2005, the appellant submitted its detailed reply to the show cause notices.

4.13 The Additional Commissioner of Central Excise, Ahmedabad-II/ Deputy Commissioner of Central Excise, Div. Kalol adjudicated the

aforesaid show cause notices and passed orders rejecting the protest lodged by the appellant and held that Cenvat credit already reversed by the

appellant is legal and proper and turned down the claim of refund of the appellant and imposed penalty on the appellant.

4.14 The appellant preferred separate appeals before the Commissioner of Central Excise (Appeals) against the aforesaid Orders-in-Original

passed by the Additional Commissioner of Central Excise, Ahmedabad-II u/s 35 of the Central Excise Act, 1944.

4.15 The Commissioner of Central Excise (Appeals-III) [""CIT (Appeals)], by a common Order-in-Appeal Nos. 32 to 35 of 2006 dated 21st

April, 2006 rejected all the above appeals filed by the appellant by upholding the Orders-in-Original. The CIT (Appeals-III), in the said order

relied upon the judgment in the case of Vikram Cement Vs. Commnr. of Central Excise, Indore, and held that the adjudicating authority has rightly

disallowed the credit inputs used for manufacture of electricity but not used within the factory. He further held that when credit of fuel was

disallowed, the question of sanctioned refund claims did not arise.

4.16 The appellant preferred separate appeals against the order passed in Appeal Nos. 32 to 35 of 2006 before the Customs, Excise & Service

Tax Appellate Tribunal, Ahmedabad and the said Tribunal, by order dated June 17, 2010 disposed of the appeals filed by the appellant by

rejecting the appellant''s refund claim for various period.

5. Being dissatisfied, the appellant has preferred all these Appeals u/s 35G of the Central Excise Act, 1944 (""the Act"" for short).

6. Mr. B.L Narasimhan, the learned counsel appearing on behalf of the appellant strenuously contended before us that the learned Tribunal below

committed grave error of law in holding that the appellant is not entitled to credit of duty paid on inputs used in the generation of electricity to the

extent supplied to the other unit of the appellant by following the decision of the Supreme Court in the case of Maruti Suzuki Ltd. Vs.

Commissioner of Central Excise, Delhi-III, . According to Mr. Narasimhan, the learned Tribunal totally misread the aforesaid judgment. Mr.

Narasimhan contended that the learned Tribunal failed to appreciate that the appellant did not sell the electricity to an outsider for price and that the

credit of duty paid on input was sought to be denied to the extent used in the generation of electricity supplied to the appellant''s own unit and

utilized in the manufacture of final product. According to Mr. Narashimhan, the learned Tribunal below committed substantial error of law in not

appreciating that both the units are, in substance, common factory and electricity so supplied to the Plastic Division is used within the factory of

production and thus, denial of credit was ex facie erroneous. Mr. Narashimhan further contended that the learned Tribunal below erred in law in

not appreciating the fact that the order passed by the CIT (Appeals) was based on the assumption that the appellant and its Plastic Division are

two different entities. Mr. Narashimhan further submitted that both the units of the appellant are located in the same premises surrounded by a

common boundary wall adjoining to each other as can be seen from the certificate issued by the Superintendent of Central Excise. He further

contended that separate central excise registration does not make it two separate factories as would appear from the definition of the ""factory"" as

contained in Section 2(e) of the Act. Mr. Narasimhan, thus, prayed for setting aside the order passed by the learned Tribunal.

7. The aforesaid contentions of Mr. Narasimhan have been opposed by Mr. Darshan Parikh, learned counsel appearing on behalf of the Revenue.

Mr. Parikh strongly relied upon the decision of the Supreme Court in the case of Maruti Suzuki Ltd. v. CCE, Delhi relied upon by the Tribunal and

contended that the Tribunal having correctly applied the relevant provisions of law, this Court should not interfere with the concurrent findings

recorded by all three authorities. Mr. Parikh, therefore, prays for dismissal of these appeals.

8. Therefore, the only question that arises for determination in these appeals is whether in the facts of the present case, the Tribunal below was

justified in affirming the order of the authorities below.

9. After hearing the learned counsel for the parties and after going through the materials on record and also the decision of the Supreme Court in

the case of Maruti Suzuki Ltd. (supra), relied upon by the Tribunal below, we find that the Apex Court in that case, ultimately arrived at the

following conclusion:

To sum up, we hold that the definition of ""input"" brings within its fold, inputs used for generation of electricity or steam, provided such electricity or

steam is used within the factory of production for manufacture of final products or for any other purpose. The important point to be noted is that, in

the present case, excess electricity has been cleared by the assessee at the agreed rate from time to time in favour of its joint ventures, vendors,

etc., for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, the assessee was not entitled

to CENVAT credit.

46. In short, the assessee is entitled to credit on the eligible inputs utilised in the generation of electricity to the extent to which they are using the

produced electricity within their factory (for captive consumption). They are not entitled to CENVAT credit to the extent of the excess electricity

cleared at the contractual rates in favour of joint ventures, vendors, etc., which is sold at a price.

(Emphasis supplied by us).

10. Mr. Narasimhan, the learned Advocate appearing on behalf of the appellant, in this connection, strenuously contended before us that the

factory premises of the unit of the assessee and that of its Plastic Division being situated in the same compound bounded by a common boundary

wall, the electricity supplied to the Plastic Division should be treated to have been supplied not to a different entity but within its own factory. He

further contends that merely because the Plastic Division is separately registered under the Central Registration Rules, such fact will not make it a

different factory. In this connection, he relied upon the definition of the factory given in the Central Excise Act, which is as follows:

(e) ""factory"" means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured,

or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily

carried on;

Mr. Narasimhan, contends that the Plastic Division of the assessee should be treated to be a factory of the assessee and thus, the decision of the

Supreme Court in the above case goes in favour of his client.

11. We are, however, not impressed by the above submission of Mr. Narasimhan for the simple reason that the appellant itself has registered the

Plastic Division factory separately under Rule 9 of the Central Excise Rules, 2002/Rule 174 of the Rules of 1944.

11.1 Rule 174 (present Rule 9) read with Rule 175(2) mandates that if the same person wants to have licence for carrying on business in more

than one capacity, he is required to file separate applications. Rule 175(3) [present Para 2 of the Notification No. 35/2001-C.E. (N.T.), dated

June 26, 2001] provides that in a case where the applicant has more than one place of business, he shall obtain a separate licence in respect of

each of such places of business. In the case before us, the appellant itself having described the factory of its Plastic Division as a separate place of

business by applying for separate registration and having obtained such separate registration, it is estopped from contending that the said Plastic

Division Factory is also within the factory of the present unit of the appellant simply because both the separately registered factories are situated

within a common boundary wall.

12. We, therefore, find that the Tribunal below rightly applied the above decision of the Supreme Court in the case of Maruti Suzuki Ltd. to the

facts of the present case as the assessee is entitled to credit on the eligible inputs utilized in the generation of electricity to the extent to which it is

using the produced electricity within its factory which is registered for that purpose but not to the extent supplied to a factory which is registered for

a different unit.

13. We, therefore, hold that the factory of the Plastic Division of the appellant cannot be said to be the factory of the present unit which is

registered separately from that unit. The appeals are thus dismissed.