IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 67 OF 2004

The Commissioner of Central Excise	**}**	**Appellant**
versus		
M/s. Manish Rubber Enterprises	**}**	**Respondent**

Ms. Suchitra Kamble for the Appellant.

Mr. D. H. Nadkarni with Mr. Vinay Ansurkar i/b. M/s. Legal Solutions for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
SUNIL P. DESHMUKH, JJ.
DATED :- JANUARY 28, 2015

P.C. :-

This Appeal of the Revenue challenges the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai, dated 20th November, 2003/17th December, 2003.

2) The Respondent Assessee approached the Tribunal, because it was denied credit and in terms of the rules which enable it to avail of the same.

3) The show cause notice alleged that the Assessee had wrongfully availed of credit on inputs in the final products under Chapter 9306 and 3506. The Assessee was a manufacturer of rubber articles falling under Chapter sub-head Nos. 40, 59, 35 and 93 of the

Central Excise Tariff Act, 1985. The Assessee desired to avail of this credit on inputs in terms of the MODVAT Rules. It filled a form, but that form, which is stipulated under Rule 57G and against certain columns, contained an entry, which would denote that the Assessee withdrew the finished products under Chapter 9306 and 3506 from the list of final products and on which the credit for inputs was claimed. In such circumstances, the show cause notice directed reversal of that wrongful credit and recovery of a sum of Rs.3,83,789/-.

4) This demand in the show cause notice was confirmed by the Additional Commissioner of Central Excise, Mumbai, who passed an order on 25th October, 1996. The Commissioner (Appeals) dismissed the Assessee's Appeal and confirmed this order. Hence, the Assessee was required to go and approach the Tribunal.

5) Upon careful perusal of the entire record, the Tribunal found that the show cause notice, though alleging wrongful availment of credit and which was inadmissible, essentially projected a grievance that the Assessee filled in a form for availing of this credit. In that form, he has withdrawn the products under Chapter 9306 and 3506. The withdrawal is from the list of final products. If they were deleted from the declaration, then, the credit was not admissible. The Tribuanl found that the allegations in the show cause notice project a grievance or issue

pertaining to wrongful availment of credit or availment of inadmissible credit. However, the orders proceeded on the footing that the declaration under section 57G did not contain the reference to the finished products under Chapter 9306 and 3506. Rather they were withdrawn from the list of final products mentioned in the declaration. Thus, the allegations in the show cause notice, based and founded on which the orders should have been passed by the Commissioner and the Commissioner (Appeals), are not adhered to by them. They have traveled beyond the same and by referring to the declaration. If the credit was inadmissible and therefore wrongfully availed of, then, that was required to be reversed/recovered. That was the foundation on which the show cause notice was issued. That was the principal allegation. There was no reference therein to the declaration under Rule 57G or the deletion of the final product from the purview of the same. In such circumstances, the Tribunal rightly interfered with the concurrent orders and allowed the Assessee's Appeal. In any event, a declaration requiring the Assessee to mention the final product and which declaration is to be filled in, in compliance with the procedural provision, would not govern the issue of admissibility of the credit. That is how the Tribunal proceeds as well. On both counts, we do not find that its order is perverse or vitiated by error of law apparent on the face of the record. The substantial question of law would therefore have to be answered against the Revenue and in favour of the Assessee. As a result, the Appeal fails and is dismissed.

(SUNIL P. DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**