

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal No.2940 of 2007

The Commissioner of Central Excise,
Chennai - III Commissionerate,
26/1, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 34.

... Appellant/1st Respondent

versus

1. M/s.Joy Foam Pvt. Ltd.
53, B/3, SIPCOT Industrial Complex,
Ranipet - 632 403. ... 1st Respondent/Appellant

2. Customs, Excise and Service Tax Appellate
Tribunal (CESTAT),
South Zone Bench, Shastri Bhavan Annexe,
1st Floor, No.26, Haddows Road,
Chennai - 600 006. ... 2nd Respondent/2nd respondent

PRAYER: APPEAL under Section 35 of the Central Excise Act, 1944 against the final order dated 18.05.2007 made in Final Order No.616 of 2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai and against the final order dt.2.6.06 made in order No.20/06 on the file of the Commissioner of Central Excise, Chennai.

For Appellant : Mr.J. Haja Mohideen Gisthi

For Respondent : No appearance - R1

J U D G M E N T

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This Civil Miscellaneous Appeal filed as against the order of the Tribunal was admitted by this Court on the following substantial questions of law:

"1. Whether the decision of the Tribunal is correct in law in rejecting the claim of reversal of CENVAT credit by the Department especially when Rule 21 of the Central

Excise Rules, empowers the Commissioner/appellant herein to grant remission, subject to conditions as may be imposed by him?

2. Whether the 1st respondent is entitled to seek remission of duty without reversal of CENVAT credit when Rule 21 of Central Excise Rules, contemplates only a conditional remission?"

2. Despite notice, none appears for the first respondent. Hence, after hearing the learned counsel appearing for the appellant and after perusing the relevant materials placed before this Court, the following order is passed.

3. The brief facts of the case are as follows:

In the fire accident occurred in the factory premises of the first respondent on 25.9.1999, the stock of manufactured goods, raw materials, work-in-progress and the returned goods were destroyed. The assessee reversed the credit availed on stock of raw materials, returned goods and inputs contained in semi-finished goods, which destroyed in the fire accident. Taking note of their application for remission of duty on the finished goods destroyed in the fire accident, the Commissioner allowed remission of duty to the tune of Rs.9,85,744/-. In the same order, the assessee was directed to pay cenvat credit of Rs.6,67,138/- along with interest.

4. Aggrieved by this portion of the order of Commissioner seeking payment of cenvat credit, an appeal was filed before the Tribunal by the assessee. Before the Tribunal, The Department relied upon the decision in the case of Mafatlal Industries Ltd. V. CCE, Ahmedabad reported in 2003 53 RLT 578, which held that input credit should be reversed in such circumstances. The first respondent/assessee relied upon the decision of the Tribunal in the case of Inalsa Ltd. V. CCE, New Delhi reported in [1997] (90) ELT 417 (Tri.), wherein the Tribunal took a contrary view. In the decision reported in 2006 (199) ELT 437 (Grasim Industries Ltd. Vs. CCE, Indore), the single Member of the Tribunal referred the issue to the Larger Bench and the Larger Bench of the Tribunal approved the view taken in the case of Inalsa Ltd. V. CCE, New Delhi reported in [1997] (90) ELT 417 (Tri.) and overruled the decision in the case of Mafatlal Industries Ltd. V. CCE, Ahmedabad reported in 2003 53 RLT 578. Following the decision of the Larger Bench, the Tribunal allowed the appeal filed by the assessee.

5. Aggrieved by the said decision of the Tribunal, the Department is before this Court in this appeal.

6. The issue that arise for consideration is whether on remission of duty, the assessee is liable to reverse the cenvat credit. We find that the reasoning given by the Larger Bench of the Tribunal, which took note of the factors that i) reading of Rule 49 of the

Central Excise Rules 1944 read with Rule 21 of the Central Excise Rules 2002, which provides for remission of duty in respect of goods lost or destroyed by natural cause or unavoidable incidence and consequently become unfit for consumption or for marketing or production, does not make it mandatory that there should be reversal of credit in respect of inputs used in the manufacture of such goods and ii) Modvat rules prohibits the credit of duty paid in respect of inputs, which are used in the manufacture of exempted goods, which are chargeable to nil rate of duty. However, in the decision in the case of Inalsa Ltd. V. CCE, New Delhi reported in [1997] (90) ELT 417 (Tri.), a finding was rendered that goods destroyed due to natural cause or by unavoidable accident cannot be equated with exemption of goods and inputs can be considered to have been put to intended use for manufacture of the finished products. In other words, the provision of Modvat Rules prohibits reversal of credit in respect of exempted goods, whereas in the present case, the remission of duty is on account of goods being lost or destroyed by natural cause or accident and as such, the order of remission was granted, but it does not provide for any condition regarding reversal of credit taken in respect of inputs used in such goods.

7. In the decision reported in 2007 (208) E.L.T. 336 (Tri.-LB) (Grasim Industries Ltd. Vs. CCE, Indore), the Larger Bench of the Tribunal approved the view taken in the decision in the case of Inalsa Ltd. V. CCE, New Delhi reported in [1997] (90) ELT 417 (Tri.). We extract the relevant portion of the decision of the Larger Bench as such for better clarity.

"6. We find that the Tribunal in the case of Inalsa Ltd. v. CCE, New Delhi (supra) held that the final product has not suffered duty only as a result of remission of duty given a fulfilling the conditions, therefore, under Rule 49, it is not to be equated to a general exemption from duty or goods being charged to nil rate of duty. Therefore, the credit in respect of inputs used in the manufacture of such goods need not be reversed. In the case of Mafatlal Industries (supra), the Tribunal agreed with the earlier view in the case of Inalsa Ltd. (supra) that remission of duty on finished goods cannot be equated with exemption to goods. However, it is further held that in case remissions granted to finished goods destroyed in fire, a manufacturer is not entitled for credit of duty in respect of inputs used in the manufacture of such goods. We find that the Tribunal in the case of CCE v. Indchem Electronics reported in 2003 (151) ELT 393 has taken the view that inputs which were to be used in the manufacture of final product and the final product was destroyed due to fire and remission of duty was granted the credit in respect of inputs used on such inputs is not desirable. The Revenue filed appeal against this order and the same was dismissed by Supreme Court

reported in CCE v. Indchem Electronics reported in 2003 (157) ELT A206.

7. We find that reading of Rule 49 of Central Excise Rules, 1944 and Rule 21 of Central Excise Rules, 2002 which provides for remission of duty in respect of goods lost or destroyed by natural cause or by unavoidable accidents or in case goods become unfit for consumption or for marketing at any time before removal does not provide reversal of credit in respect of inputs used in the manufacture of such goods. The Modvat rules prohibits the credit of duty paid in respect of the inputs which are used in the manufacture of exempted goods in respect of the inputs which are used in the manufacture of exempted goods which are chargeable to nil rate of duty. The Tribunal in both the cases, that is Mafatlal Industries (supra) and in the case of Inalsa Ltd. (supra) held that in case the goods were destroyed due to natural cause or by unavoidable accident during handling or storage, cannot be equated with exemption to goods and the inputs can be considered to have been put to intended use for manufacture of the final product. Reading of rules under which remission is granted in respect of goods which were lost or destroyed by natural cause or by natural accident, does not provide any condition regarding reversal of credit taken in respect of inputs used on such goods, hence we are unable to support the view taken in respect of inputs used on such goods, hence we are unable to support the view taken in the case of Mafatlal Industries (supra) whereby it has been held that assessee has to reverse the credit taken of inputs used in such goods on which remission is granted. Therefore, we approve the view of the Tribunal taken in the case of Inalsa Ltd. (supra) in this regard. The issue to the Larger Bench is answered in the above terms and the matter be placed before the Regular Bench."

8. We find that once the goods are destroyed or lost due to natural cause, remission of duty is granted on such goods. Since the inputs are considered to be put to intended use in the manufacture of finished products, it is deemed to have been consumed in the process of manufacture and since the goods are lost or destroyed due to unavoidable accident, the claim of reversal of credit cannot be countenanced, more so, when the said provision does not provide for reversal of credit, as has been observed by the Tribunal, which we approve.

9. In the light of the above, the questions of law are answered in favour of the assessee and against the Revenue. Consequently, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

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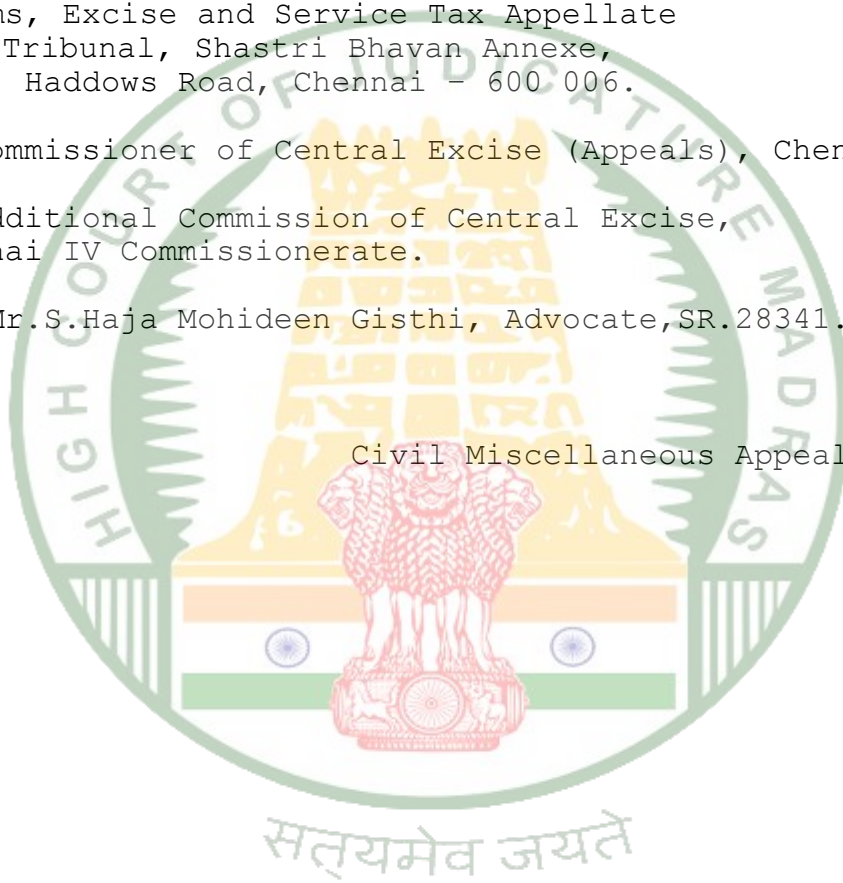
Sub Assistant Registrar

To

1. Customs, Excise and Service Tax Appellate
Tribunal, Shastri Bhavan Annexe,
No.26, Haddows Road, Chennai - 600 006.
 2. The Commissioner of Central Excise (Appeals), Chennai.
 3. The Additional Commission of Central Excise,
Chennai IV Commissionerate.
- +1 cc to Mr.S.Haja Mohideen Gisthi, Advocate,SR.28341.

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