

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NO. 579 OF 2008

The Commissioner of Central Excise
Chennai IV Commissionerate
692, MHU Complex
Nandanam, Chennai 600 035.Appellant/Respondent

- Vs -

M/s.Kyungshin Industrial Motherson Ltd.
Unit-II, 123, Poonamallee High Road
Velappanchavadi
Chennai 600 077.Respondent/Applicant

Appeal filed under Section 35-G of the Central Excise Act
against the order dated 5.7.2007 passed by the Customs, Excise &
Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in
Final Order No.829/2007.

For Appellant : Mr. E.Vijay Anand

For Respondents : Mr. Thriyambak S.Kannan for
M/s.Karthik Sundaram

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal
filed by the Revenue, the appellant/assessee is before this Court by
filing the present appeal. Vide order dated 22.02.08, this Court,
while admitting the appeal, framed the following substantial
questions of law for consideration :-

"Whether the CESTAT is correct in law to hold that
finished goods cleared without payment of duty under
job work procedure to the principal manufacturer would

not come within the scope of expression 'exempted final products' used under Rule 57-R (1) and Rule 57-C of the Central Excise Rules, 1944 or under Rule 6 (4) of the CENVAT Credit Rules, 2002?"

2. The facts, in a nutshell, are as hereunder :-

The respondent/assessee has two units, viz., Units-I and Unit-II. They manufacture rubber grommets and wiring harness. The Department, based on intelligence, found that the respondent/assessee's Unit-II had wrongly availed Cenvat credit on duty paid on capital goods, which were exclusively used in the manufacture of exempted excisable goods. Therefore, a show cause notice was issued to the assessee for wrongful availment of Cenvat credit and also for imposition of penalty and interest. For better clarity, the show cause notice reads as under :-

"(i) Cenvat credit of Rs.18,19,930/= (Rupees Eighteen Lakhs Nineteen Thousand Nine Hundred and Thirty only) wrongly taken on such capital goods in terms of Rule 57-I of the CE Rules, 1944 and Rule 12 of the Cenvat Credit Rules 2001/2002 r/w proviso to Section 11A of the Central Excise Act, 1944, as the case may be applicable during the relevant period, should not be demanded from them;

(ii) Duty of Rs.4,10,147/= (Rupees Four Lakhs Ten Thousand One Hundred and Forty Seven only) due on rubber grommets cleared by them since inception till 28.7.2004 utilising the cenvat credit of duty paid on the capital goods used in manufacture of wiring harness should not be demanded in terms of proviso to Section 11A of the Central Excise Act, 1944;

(iii) Penalty under Rule 173Q of the CE Rules, 1944;

(iv) Rule 13 of the Cenvat Credit Rules, 2001/2002 r/w Section 11AC of the CE Act, 1944, should not be imposed on them; and

(v) interest under Rule 57-I of the CE Rules, 1944, or Rule 12 of the CE Rules, 2001/2002 r/w Section 11AB of the CE Act, 1944, as the case may be applicable during the relevant period should not be collected from them."

3. After adjudication, Order-in-Original dated 25.10.05 came to be passed against the assessee reversing the cenvat credit and also demanding interest and penalty. Aggrieved against the said order, the assessee pursued the matter in appeal before the appellate authority, viz., the Commissioner (Appeals).

4. In the appeal filed by the assessee, the Commissioner (Appeals) upheld the order of the adjudicating authority following the Larger Bench decision in Kirloskar Oil Engines Ltd. - Vs - CCE, Pune (1994 (73) ELT 835) on the ground that Section 57-C and 57-T of the Central Excise Rules, 2002, provides that no credit of duty paid on inputs used in the manufacture of final products should be given if the final product is exempted from payment of duty or chargeable to 'Nil' rate of duty.

5. The further appeal by the assessee to the Tribunal came to be allowed placing reliance primarily on the decision of the Larger Bench of the Tribunal in Sterlite Industries (I) Ltd. (2005 183 ELT 353 (Tri. - LB), which was followed by other Tribunals in Bharat Fritz Werner Ltd. - Vs - CCE, Bangalore (2005 (191) ELT 1099) (Tri. - Bang.) and (CCE, Chennai - Vs - Ucal Machine Tools Ltd. (2006 (74) RLT 511 (CESTAT - Che.)). The Tribunal, on consideration of the appeal, held as under :-

"4. As rightly pointed out by ld. counsel, the appellant's challenge to the demand of Rs.18,91,930/= is squarely supported by the Tribunal's Larger Bench decision in Sterlite Industries (supra). The Larger Bench decision was followed in the other cases cited by counsel. We note that in the case of Ucal Machine Tools (supra), the ratio of the Larger Bench decision was lucidly examined and applied in favour of the assessee as under :-

"After giving careful consideration to the submissions, I find that the Larger Bench did not recognize job-worked goods as "exempted goods" for purposes of Rule 57C, which provision mandated that no credit of duty paid on input shall be allowed where the final product manufactured out of such input was wholly exempted from the payment of duty of excise leviable thereon or was chargeable to 'nil' rate of duty. It was observed that, in the special procedure laid down under rule 57F (3), duty did not get paid to the job worker's end at the time of clearance of goods, but ultimately got paid at the principal manufacturer's end. In other words, assessable value of the goods cleared by the job worker without payment of duty to the principal manufacturer would ultimately become an ingredient of the assessable value of the final product cleared by the latter on payment of duty. Thus, duty gets paid on the job-worked goods at a later stage and, therefore, such goods cannot be

categorized as "exempted goods" for purposes of Rule 57C or Rule 57R. Thus, the Larger Bench decision operates in favour of the respondents."

5. In the instant case, it is not in dispute that the capital goods in question were used for the manufacture of 'wiring harness', which were removed without payment of duty, under job work procedure, to the principal manufacturer. Finished goods so removed by job worker without payment of duty would not come within the scope of the expression "exempted final products" used under Rule 57R (1) *ibid* or under equivalent provisions of law like Rule 6 (4) of the Cenvat Credit Rules, 2004. In the result, the availment of MODVAT credit on such capital goods by the appellant (job worker) is in order and consequently the entire demand is liable to be vacated. The appeal succeeds and is allowed with consequential relief."

Aggrieved by the said order, the Revenue is before this Court by filing the present appeal.

6. Learned counsel appearing for the appellant/Revenue contended that in the cases cited by the assessee, which were taken into consideration by the Tribunal, the same related to inputs in one or other form, but in the present case it relates to credit involved on capital goods exclusively used by the manufacturer for the manufacture of exempted goods. It is further submitted that the rule as was existing then, viz., Rule 57R (1) and also Rule 6 (4) of the Cenvat Credit Rules, 2002, have not been considered by the Tribunal in its proper perspective, as the said rules categorically debar the person from claiming credit by the manufacturer/assessee in respect of capital goods. The Tribunal has also failed to consider the ratio laid down in Kirloskar's case (*supra*), wherein it is clearly held that Rule 57C of the erstwhile Central Excise Rules, 1944, mandates that no credit of duty paid on inputs used in the manufacture of final products shall be given if the "final product is exempted" from payment of duty or is chargeable to 'Nil' rate of duty. It is further submitted that the Tribunal failed to note that though Unit-I and Unit-II belong to the respondent/assessee, they are treated as two separate entities for the purpose of Central Excise Law and the facility of exemption has to be seen with reference to the activity carried on by each unit. For the reasons aforesaid, it is submitted that the order of the Tribunal is liable to be interfered with.

7. Per contra, learned counsel appearing for the respondent/assessee submitted that the Tribunal, after careful

consideration of the matter and on an in-depth reading of the decisions placed before it, has come to the just conclusion that the credit availed by the assessee is in order and, accordingly, allowed the same and, therefore, this Court, shall not interfere with the well considered findings recorded by the Tribunal. It is also further submitted by the learned counsel for the respondent/assessee that the products manufactured by the respondent/assessee is semi-finished products and, therefore, the decision of Kirloskar's case (supra) has no applicability and the Tribunal, taking the entire gamut of facts, has arrived at the just decision and, therefore, no interference is called for with the said finding of the Tribunal.

8. Heard the learned counsel appearing on either side and perused the materials available on record as also the judgments relied on by the counsel for the respective parties.

9. We find that in the present case, the manufacture of wiring harness is done at Unit-I. The inputs are sent by Unit-I to Unit-II, viz., the principal manufacturer to the respondent/assessee for manufacture semi-finished wiring harness and the job-worked goods are cleared under delivery challans and not on payment of duty. The respondent/assessee is availing the exemption under Notification No.214/86-CE for the job work done by the assessee.

10. The contention of the Department is that the Cenvat facility cannot be availed by the respondent/assessee. The original authority came to hold that even if duty is paid by Unit-I, it is immaterial, since no duty was paid while clearing the goods from Unit-II to Unit-I and, therefore, the credit taken is not in order, which was affirmed by the Commissioner (Appeals).

11. However, on a careful perusal of the decisions relied on by the parties, it is evident that the above view of the Department does not appear to be correct.

12. In the case of Escorts Ltd. - Vs - commissioner of Central Excise, Delhi (2003 (160) ELT 623 (Tri. - Del.)), the Tribunal, while interpreting Rule 57-C of the Central Excise Rules, in the said case, rejected the assessee's claim for Modvat credit of duty on the inputs used in the manufacture of parts, which were cleared without payment of duty to the assessee's other unit under Chapter-X procedure and utilised in the manufacture of tractor, which were cleared on payment of duty holding that no duty was paid on the parts at the time of clearance. It held that Rule 57-C will apply and no Modvat credit would be admissible. Such a view, on appeal, was reversed by the Supreme Court in Escorts Ltd. - Vs - Commissioner of Central Excise, Delhi, (2004 (171) ELT 145 (SC), wherein the Supreme

Court held as hereunder :-

"8. It is to be seen that the whole purpose of the Notification and the Rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. rule 57D (2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where intermediate product comes into existence, even though no duty has been chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product.

9. In cases of manufacturers like the appellants the final product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus 57C would have no application. The mere fact that the parts are cleared from one factory of the appellants to another factory of the appellants would not disentitle the appellant from claiming benefit of Notification No.217/86-C.E., dated 2nd April, 1986. As stated above, the Notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer."

13. The above principle, laid down by the Supreme Court, was followed in the case of Sterlite Industries Ltd. - Vs - Commissioner of Central Excise, Pune (2005 (183) ELT 353 (Tri. - LB)) by the Larger Bench of the Tribunal, wherein it has been held thus :-

"2. The revenue is denying the Modvat credit to the present job worker on the grounds that the inputs were used in the manufacture of the goods which were cleared without payment of duty. Pausing here for a second, let us take a situation where the basic inputs is sent by the principal manufacturer after debiting the Modvat credit taken by him. The job worker takes the credit of the same his factory, utilises other inputs procured directly by him after taking the Modvat credit on the same and clear the processed goods to the principal manufacturer on payment of duty and the principal manufacturer takes the credit of the same in his factory and utilises such credit for payment of duty on his final products at the time of clearance. In such a situation, there can be no objection or dispute by the revenue as

regards the admissibility of the credit on the inputs received directly by the job worker and utilised in his factory. The only effect of the above procedure adopted by the principal manufacturer and the job worker would be additional paper work. It is basically to avoid such a situation the procedure under Rule 57F (3) has been enacted. As rightly observed by the earlier decision's the mechanical application of Rule 57C which destroys the basic benefit intended to be extended to the assessee should be avoided. If the interpretation adopted by the revenue is upheld, the benefit otherwise intended to be given will get frustrated apart from leading to discriminatory situation, where the manufacturer has himself processed the inputs and in the other case where he is sending it to the job worker.

3. We are also in agreement with the appellant's contention that Rule 57C debars taking of credit in respect of the inputs used in the manufacture of the final product, if final product is exempted from the whole of duty of excise leviable thereon or chargeable to nil rate of duty. As such, to attract the provisions of Rule 57C, two situations in respect of the final product should be satisfied. Either the final product should be exempted which situation can arise only when there is an exemption notification issued under Section 5A of the Central Excise Act or the final product is chargeable to nil rate of duty. Expression chargeable to nil rate of duty or exempted from whole of duty was considered by the Tribunal in the case of Orissa Synthetics Ltd. - Vs - Collector of Central Excise (1995 (77) ELT 350 (Tri.)) and after taking note of the Ministries clarifications issued vide Circular No.10/75/CX.6 , it was held that clearance under goods under provision of 191BB for export without payment of duty would not get covered by the above expression. Reference was made to the advice received from the Ministry of Law dealt in the paragraph of 9 in the said decision. It was opined in the said letter of the Law Ministry that the term 'exempted' has a definite connotation. The same as attributed to the notification issued by the Central Government. Similarly, the chargeable to nil rate of duty would refer to the tariff rate being nil and the goods cleared in terms of provision of Rule 199BB would not be covered by the said expression inasmuch as the same are not chargeable to nil rate. In the

present case, we find the job worker could have cleared the goods on payment of duty and manufacturer could have claimed credit of the same. It is only under the special procedure laid down in terms of Rule 57F (3) that the duty does not get paid at the job worker's end at the time of clearance of the goods, but ultimately gets paid at the manufacturer's end. In these circumstances, we are in agreement with the decision rendered in the case of Bajaj Tempo and Jindal Polymers."

14. The above order of the Larger Bench of the Tribunal traces the manner in which Modvat credit could be taken by a job worker. The abovesaid decision came to be approved by the Division Bench of the Bombay High Court in the case of Commissioner - Vs - Sterlite Industries (I) Ltd. (2009 (244) ELT A89 (Bom.)).

15. Similar view was taken by this Court in Commissioner - Vs - Hwashin Automotive India Pvt. Ltd. (2014 (304) ELT A16 (Mad.)) and Commissioner of Central Excise - Vs - Sivaramakrishna Forgings Pvt. Ltd. (2015-TIOL-813-HC-MAD-CX).

16. We find on fact that in this case also, the Tribunal was correct in holding that wiring harness was removed without payment of duty under job work procedure to the principal manufacturer and that semi-finished goods removed by the job worker from its unit to the principal, without payment of duty, would not come within the scope of expression "exempted final product" used in Rule 57-R (1) equivalent to Rule 6 (4) of the Cenvat Credit Rules, 2004. The Tribunal has rightly held that availment of Modvat Credit on capital goods to be job work is in order. For the reasons aforesaid, the substantial question of law is answered in favour of the assessee and against the Revenue.

17. Accordingly, this appeal fails and the same is dismissed confirming the order passed by the Tribunal. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

GLN

To

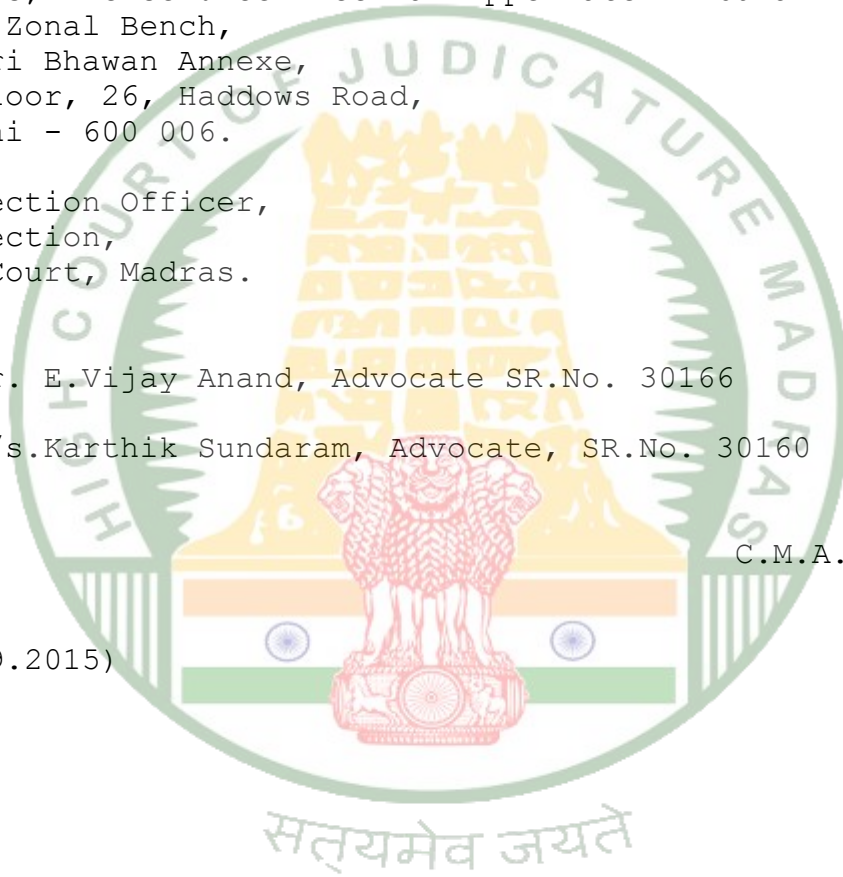
1. The Commissioner of Central Excise
Chennai IV Commissionerate
692, MHU Complex
Nandanam, Chennai 600 035.
2. The Asst.Registrar,
Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench,
Shastri Bhawan Annexe,
1st Floor, 26, Haddows Road,
Chennai - 600 006.
3. The Section Officer,
V.R.Section,
High Court, Madras.

1 CC to Mr. E.Vijay Anand, Advocate SR.No. 30166

1 CC to M/s.Karthik Sundaram, Advocate, SR.No. 30160

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GR (CO)
PSI (21.09.2015)



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