IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 16 of 2014 (O & M)
Date of Decision:- 12.05.2015

Talbro Forgings, Jalandhar ......Appellant(s)

vs.

Customs, Excise and Service Tax Appellate Tribunal and another
......Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sudhir Malhotra, Advocate, for the appellant.

Mr. Sunish Bindlish, Advocate, for the respondent.

S.J. VAZIFDAR, A.C.J. (Oral)

We would assume that there was a genuine mistake on the part of the parties, especially the appellant. The show cause notice *inter alia* stated as follows:-

> *"As per the aforesaid circular and the Rule 57CC of the Central Excise Rules, simultaneous availment of S.S.I. exemption for home consumption and modvat credit for export would be available provided S.S.I. units maintain separate accounts and Inventory for the receipt and use of inputs right from Raw Material stage to the final production stage for export production as well as for home consumption production.*
>
> *During the scrutiny of the RT-12 Return of the "Noticee" for the quarter ending 12/98 it has been observed that the party had wrongly taken and availed modvat credit of Rs. 501221 (as per Annexure 'A' enclosed) under Rule 57H of the Central Excise Rules, 1944 for export clearances under Rule 12(1) a) of the*

Rules, 1944 against the inputs received during the period 1/4/98 to 26/10/98 as the party had not maintained separate accounts and inventory for the receipt and use of inputs right from Raw Material stage to the final production stage for export production as well as for home consumption production in violation of the Rule 57CC of the Central Excise Rules, 1944 and the Board's Circular No. 323/39/97-CX dated 14/7/97."

Learned counsel for the appellant contended that the respondent has rejected the claim only on the ground that the appellant had not maintained the separate accounts and inventory for the receipt and use of inputs right from the raw material stage to the final production stage for export and for home clearance.

That does not seem to the correct. The claim has not been rejected only because separate account books were not maintained for home clearance and for export production. The respondents appear to have rejected the claim on the ground that the separate account books not having been maintained, it was difficult to ascertain as to whether the inputs in respect of which CENVAT Credit was claimed have actually been used for the purpose of the production of the goods which were exported. In other words, the mere fact that separate account books had not been maintained for the period April, 1998 to 27.10.1998 is not the ground for rejecting the claim.

Added to this is the fact that the appellant's invoices indicated the product to be alloys bars whereas the stock register refers to the goods as steel. It would be necessary initially at least for the appellant to establish that the goods were the same.

In the circumstances, it is only fair that the appellant has an opportunity of establishing its claim on merits. It is clarified that the appellant would be entitled to establish the same independently and the mere fact that the appellant had not maintained separate books during the period April 1998 to 27.10.1998 would not be a ground for rejecting the claim. The impugned order and judgment is, therefore, set aside only to enable the appellant to establish its claim. The matter is remanded to the Adjudicating Authority to pass a fresh order.

The appeal stands disposed of in the above said terms.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

12.05.2015
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