IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

C.M.A. No.2253 of 2005
and C.M.P. Nos.12029 and 12030 of 2005

M/s.Madura Coats Pvt. Ltd.,
Madura Industrial Textiles Division,
P.B.No.35, New Jail Road,
Madurai-625 001. ... Appellant

Versus

1. The Customs, Excise And Service Tax
Appellate Tribunal, South Zonal Bench,
Chennai, Shastri Bhavan Annex,
Haddows Road, Chennai-34.

2.The Commissioner of Central Excise,
Madurai I Division,
Bibikulam, Madurai – 625 002. .. Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, to set aside the impugned common final Order Nos.538-539/2005 dated 28.03.2005 passed by the first respondent in so far as, it seeks to uphold the common Order-In-Appeal No.119-120/2004 dated 25.05.2004 of the Commissioner of Central Excise (Appeals), Madurai, giving liberty to the lower authority to disallow credit on account of any short payment of duty or short reversal on the rejected/returned goods at the time of subsequent clearance by the appellant.

For Appellant : Mr. T.Mohan
for M/s.R.Anishkumar

For Respondents :Mr.T.Promod Kumar Chopda

JUDGMENT

(Judgment of the Court was made by MOHAMMED SHAFFIQ, J.,)

The short question that arises for consideration :

Whether the order of the Tribunal insofar as it issued directions which travel beyond the scope of the show cause notice is without and in excess of jurisdiction.

BRIEF FACTS:

2. The appellant availed MODVAT credit and rejected / returned final products which where rejected by its customers. The rejected or returned goods were either subjected to dipping or testing or repacking and later cleared on payment of appropriate duty on the assessable value. The original authority denied / rejected the appellant's claim of credit on the premise that the defective or rejected final product is not entitled to credit inasmuch as the returned defective / rejected final products do not constitute "inputs". The goods returned / rejected do not satisfy the prerequisite for availing MODVAT credit viz., that the inputs must be used in or relation to manufacture of final products in terms of

Rule 57 AA of the CENVAT CREDIT RULES 2000. The following findings of the original authority is relevant:

"18.From the foregoing analysis of facts and the case-laws discussed above, in respect of receipt of duty paid rejected final products which were not intended to be used in or in relation to the manufacture of any final product as contemplated in Rule 57AA of Rules read with definition of "manufacture" contained in Section 2(1) of CEA and read with any Chapter Note given in the CEA, the rejected goods cannot be considered as "inputs". Therefore, I pass the following order.

ORDER

I disallow the CENVAT credit of Rs.27,86,573/- - (BED : Rs.23,21,069-AED(T&TA) : Rs.6225/- and AED (GST):Rs.459279/-) taken by MCL on the rejected final products mentioned against the sl.nos.1 to 51 of Annexure B to the Show Cause Notice OC No.2/2002 dated 3.1.2002 and order recovery of the said amount from MCL under Section 11A(1) of CEA read with rule 57AH of Rules read with rule 12 of CCR and read with Section 38A of the CEA. The amount of credit of Rs.2070/- said to have been reversed already may be adjusted towards recovery *ordered. I also impose penalty of Rs.5000/-(Rs.Five Thousand Only) Under rule 173Q of Rules read with rule 25 of CER, rule 12 & 13 of CCR read with Section 38A of CEA.*

I also disallow the CENVAT credit of Rs.1,42,666/- taken by MCL on the rejected final products mentioned against the sl.no.1 to 3 of Annexure B to the Show Cause Notice OC No.146/2002 dated 1.3.2002, and order recovery of the said amount from MCL under Section 11A(1) of CEA read with rule 57AH of Rules read with rule 12 of CCR and read with Section 38A of the CEA. I also impose penalty of Rs.500/- (Rs.Five Hundred Only) under rule 173Q of Rules read with rule 25 of CER, rule 12 & 13 of CCR read with Section 38A of CEA."

3. The Appellant preferred an appeal before the Commissioner of Central Excise Appeals, wherein, the Commissioner(Appeals) while agreeing that the appellant is entitled to avail CENVAT credit had proceeded to issue directions whereby, CENVAT credit shall be allowed subject to the condition that there cannot be any short reversal of credit or short payment of duty while clearing the rejected / returned goods subsequently and that the lower authority was directed to allow CENVAT credits on rejected / returned goods on verifying

the duty paid nature of the rejected / returned inputs and on ensuring that the duty paid on subsequent clearance is not less than the credit so availed. The following passage of the 1st Appellate Authority order is relevant and thus extracted:

> *"The dispute of allowing credit on the duty paid rejected/returned inputs has been finally settled by the Larger Bench of the Tribunal in favour of the manufacturers in the case of Hindalco Industries Ltd., Vs. CCE – 2000 (119) ELT 711 (Tri-LB). However, in that case the inputs returned were subjected to the process of remanufacture. Nevertheless, the South Zonal Bench of the Tribunal in the case of Lakshmi Machine Works Ltd., Vs. CCE – 2002 (144) ELT 424 (Tri-Chennai) permitted the manufacturer to avail MODVAT/CENVAT credit on the returned goods (since both inputs as well as final products being notified), despite there being specific provisions under Rule 173 H and 173 L. The South Zonal Bench of the Tribunal further held that MODVAT Credit is not deniable merely because goods had gone outside the factory on payment of duty and returned. The appellants also submitted that on similar issue for the previous period the Commissioner (Appeals) had issued orders in favour of them and for the later period, the lower authority vide Order-*

in-Original No.18/2003 dated 31.03.2003 allowed credit of duty paid on the returned goods. Consequently, in view of the above discussions and considering the facts and circumstances of the case, I do not see any valid reason to hold a strict view of denying CENVAT credit during the interregnum. Thus the appellants are allowed to avail CENVAT credit of duty paid on the rejected /returned goods.

However it is also made clear that no CENVAT credit can be allowed contrary to the provisions of Rules and hence the appellants are not entitled to avail credit where they are not in a position to produce eligible documents to substantiate the duty payment. It is also ordered that the CENVAT credit is allowed subject to the condition that there cannot be any short reversal of credit or short payment of duty while clearing the returned/rejected goods subsequently.

The lower authority is directed to allow CENVAT credit of duty paid on the rejected/returned goods on verifying the duty paid nature of the rejected/returned inputs and after ensuring that the duty paid on subsequent clearances is not be less than the credit so availed."

4. Aggrieved by the same, the appellant preferred an appeal before the Tribunal on the premise that the direction on remand in an appeal proceedings by the Commissioner (Appeals) traverses beyond the scope of the Show Cause Notice and it is impermissible for an Appellate Authority. The Tribunal rejected the above plea of the appellant and confirmed the directions issued by the 1st appellate authority on the premise that the directions issued by the Commissioner (Appeals) is incidental to the relief sought and that the directions are not something which are impracticable. The finding of the Tribunal is extracted as under:

> *"5. We are not able to subscribe to the view of the appellants that the Commissioner(Appeals) traversed beyond the scope of the notice while directing the lower authorities to check up the exact quantum of credit admissible. Such directions are only incidental to the main issue. We observe in several cases,while the Tribunal grants relief in the matter of refund of excise duty, direct the lower authorities to check whether the bar of unjust enrichment is crossed or not even though such an issue was not specifically mentioned in the show cause notice seeking to reject the refund. We observe that it is in the interest of justice to give each one its due. There is no harm at all to check up whether the quantum of credit is correctly arrived at or not. It is not that the Commissioner (Appeals) is directing something which is impracticable. The appeals are rejected."*

5. Now, it is trite law that the Tribunal cannot issue directions which in effect traverse beyond the Show Cause Notice nor can it issue directions in respect of the aspects never canvassed by the Revenue. Placing reliance on the above proposition, it is submitted by the learned counsel for the appellant that the direction of the Commissioner (Appeals) and its affirmation by the Tribunal results in traversing beyond the Show Cause Notice and thus bad in law. In our view, there is no doubt that the Tribunal would be acting in excess of its jurisdiction, if it were to issue directions which traverse beyond the Show Cause Notice and thus not maintainable. In this regard, it may be relevant to refer to the following judgments:

a. GTC Industries Vs. CCE [1997 (94) E.L.T.9] case, the Supreme Court held that:

"As we see it, each show cause notice must be limited to the case that is made out therein by the Revenue. It is not within the jurisdiction of the Tribunal to direct otherwise; to do so is to go beyond its purely adjudicatory function."

b. Reckitt & Colman of India Ltd., Vs. Collector of Central Excise 1996 (088) E.L.T.641 (SC), in para 3, it was held that:

"It was beyond the competence of the Tribunal to make out in favour of the Revenue a case which the Revenue had never

canvassed and which the appellant had never been required to meet. It is upon this ground alone that the appeal must succeed."

c. In the case of SACI allied Products Ltd., Vs. Commissioner of Central Excise, Meerut 2005 (183) E.L.T.225 (SC), it was held that:

"It is thus seen that the Tribunal has gone totally beyond the show cause notice and the order of the Collector, which is impermissible. The appellate Tribunal cannot sustain the case of the Revenue against the appellants on a ground not raised by the Revenue either in the show cause notice or in the order."

d. In the case of Bhor Industries Ltd. Vs. Union of India 2011 (266) E.L.T.444 (Bom.), in para no.10, it was held that:

"10.We are clearly of the opinion that the tribunal misdirected itself in travelling beyond the show cause notice. To that extent the direction issued in terms of Para 10 of the order of the tribunal directing Assistant Commissioner to communicate to the appellant duty required to be paid being without jurisdiction is set aside."

e. In the case if Unichem Laboratories Ltd., Vs. CCE 2002 (145) ELT 502, it was held that:-

"No doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue

by levying and collecting the duty in accordance with law no less and also no more – It is no part of their duty to deprive any assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly."

6. The question as to whether the issue of imposing a cap on the extent of the credit to which the appellant is not available and unjust enrichment, was never part of the Show Cause Notice and thus, the directions of the 1st Appellate Authority affirmed by the Tribunal raising the issue of extent of credit eligibility and also the impact of the doctrine of unjust enrichment is beyond the scope of the show cause notice. The Appellate Authority be it the Commissioner (Appeals) or the Tribunal is not empowered to issue directions which traverse beyond show cause notice. It seems that the order of the Tribunal affirming the order of the Commissioner (Appeals) is bad insofar as it affirms directions which traverse beyond show cause notice and hence it is set aside. The appeal is thus allowed. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]

01.09.2022

Index : Yes/No
Speaking/Non-Speaking Order
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