

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CEA No.9 of 2020
Date of Decision: 22.02.2023**

The Principal Commissioner, Central Goods
& Services Tax Commissionerate, Ludhiana ... Appellant

Versus

M/s. Suraj Solvents & Vanaspati Industries,
Presently M/s Globus Industries & Services
Limited ... Respondent

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Mr. Ram Pal Kohli, Advocate,
for Mr. T.K. Joshi, Senior Standing Counsel,
for the appellant.

Mr. Amrinder Singh Gill, Advocate,
for the respondent.

MANISHA BATRA, J.

1. The facts relevant for the purpose of disposal of the instant appeal are that the respondent-M/s Suraj Solvents & Vanaspati Industries was engaged in the manufacture of Vanaspati Ghee and Refined Vegetable Oil. These goods fell under Chapter 15 of the Schedule 1 to the Central Excise Tariff Act, 1985 (for short 'Act, 1985') and were exempted goods. During the course of the manufacture of these exempted goods, soap stock was produced which was captively consumed by the respondent in the manufacture of acid oil which was a

dutiable product falling under sub-heading No.3823.00 of the 1st Schedule to the Act, 1985. An inquiry was initiated by the department and it was observed that the main raw material for carrying out the manufacturing process of the exempted goods was raw oil which was firstly treated in a neutralizer, with phosphoric acid and caustic lye. Two different products namely, neutral oil and soap stock emerged from that stage. Neutral oil was further used in the manufacture of exempted goods and soap stock was consumed in manufacture of acid oil, which was a dutiable product. The respondent had availed facility of modvat credit of duty paid on inputs used in the manufacture of acid oil. It had filed a declaration dated 10.02.1998 under the Rule 57-G of the erstwhile Central Excise Rules, 1944 (for short “Rules, 1944”) with the department, wherein the final product was mentioned as acid oil and inputs have been mentioned as, i) caustic soda lye/flakes ii) sulphuric acid and iii) phosphoric acid. In that declaration, no mention was made of Vanaspati Ghee and Refined Oil. It was revealed that phosphoric acid and caustic lye have been used in the manufacture of exempted as well as dutiable goods because the manufacturing process was an integrated process, till it could be differentiated for exempted and dutiable goods. Accordingly, common inputs were used by the respondent in the manufacture of both an exempted as well as dutiable goods. The respondent had not maintained any separate inventory and accounts of the receipt and use of the inputs and had taken modvat credit of whole quantity of inputs in the manufacture of dutiable as well as exempted products though in pursuance of Rule 57CC (1) of the Rules, 1944, it was required to pay an amount equal to 8% of the price of the exempted goods, charged by it for sale of exempted goods at the time of their clearance from its factory.

The respondent had also failed to declare to the department that the inputs on which the respondent intended to avail modvat credit would also be used in the manufacture of exempted goods and hence did not comply with sub-Rule 9 of Rule 57 CC(1) of the Rules, 1944.

2. It was further submitted that there was no mention of exempted goods also being final products and that the inputs on which the respondent would be availing modvat credit would also be used in the manufacture of exempted goods and thereby the respondent appeared to have suppressed the material facts from the knowledge of the department with the intent to avail the benefit of modvat credit of duty paid on inputs being used by it in the manufacture of both exempted and dutiable final products and with the intent to fraudulently evade payment of amount of 8% of the sale price of exempted final products. During the period from 10.02.1998 to 31.03.1999, the respondents had cleared exempted final products valuing Rs.1,53,24,49,527/- and the amount which was required to be paid under Rule 57CC (1) of the Rules, 1944 worked out to be Rs.12,25,95,962/- which was recoverable along with the interest. A show cause notice dated 27.08.2002 was accordingly issued to the respondent under Section 11-A of Central Excise Act (for short 'Excise Act') by invoking extended period of five years along with the interest and penalty. The said show cause notice was adjudicated by the Commissioner vide order dated 16.04.2003 and the adjudicating authority ordered recovery of sum of Rs.4,51,574/- only under Rule 57-1 read with Section 11-A of the Excise Act along with interest and also imposed equivalent penalty. Feeling aggrieved, the department filed an appeal before the Tribunal and vide order dated 06.11.2006 the said appeal was dismissed. Thereafter, Central Excise Appeal No.70 of 2007 was filed

by the department before this Court and vide order dated 29.03.2010, while setting aside the impugned order passed by the Tribunal, the case was remanded back to the adjudicating authority for deciding the same afresh. The matter was then adjudicated by the Commissioner, Central Excise Commissionerate vide order dated 23.06.2011 whereby demand of Rs.12,25,95,962/- by invoking the extended period of five years was confirmed and penalty of equivalent amount was imposed.

3. The respondent filed an appeal against the said order before the Tribunal. The said appeal had been allowed by the Tribunal vide order dated 25.04.2018 while holding that the demand of 8% of the value of exempted goods was not maintainable. The Tribunal had observed that the actual amount of cenvat credit availed on common inputs attributable to exempted products had already been reversed by the respondent and differential interest @24% per annum had already been deposited. It was also observed that though at the relevant time, the entitlement of the respondent to reverse the credit to the extent of common inputs used in the manufacture of exempted final products was in doubt, however, due to subsequent insertion of Rule 57CCC in the Rules, 1944, for reversal of actual credit by the manufacturer availing the credit of specified duty in respect of inputs used for manufacture of final products, which were not chargeable to duty or chargeable to nil rate of duty by payment of amount equivalent to amount of credit attributable to inputs used in the manufacture of such final products, the impugned period was covered as the amendment by which Rule 57 CCC was inserted was retrospective in nature.

4. Feeling dissatisfied, the revenue has come up in the present appeal. The following question of law was posed for adjudication in this

matter:-

“Whether the Customs, Excise and Service Tax Appellate Tribunal, New Delhi was right in dismissing the appeal filed by the department by holding that the assessee cannot be said to have taken credit in view of the reversal of the entire modvat credit taken on inputs, when the Rule 6 clearly says that the assessee who has not maintained separate inventory and has taken credit on common inputs to manufacture dutiable and exempted products has no option other than the exceptions mentioned in sub-rule 3(a) but to reverse 8% of the price of the exempted goods as per the provisions of sub-rule 3(b) of Rule 6 of Cenvat Credit Rules, 2002/erstwhile Rule 57CC of Central Excise Rules, 1944?”

5. Learned counsel for the appellant argued that the impugned order was liable to be set aside as the Tribunal had completely ignored the provisions of Rule 57CCC of Rules, 1944 which provided for moving an application with the Commissioner along with documentary evidence for verification of correctness of the amount already paid and it was a statutory requirement for verifying and calculating the amount of modvat credit so reversed or to be reversed. The delay in moving the application under a statutory scheme had been wrongly condoned. The benefit of provisions of Rule 57CCC (2) of the Rules, 1944 was not admissible retrospectively to the respondent without fulfilling the condition contained therein. The Tribunal, however, ignored the fact that such conditions had not been fulfilled. With these submissions, it was urged that the impugned order dated 25.04.2018 was liable to be set aside.

6. Per contra, it was argued by learned counsel for the respondent that the findings as given by learned Tribunal were well reasoned and did not warrant any interference. The respondent had reversed cenvat credit attributable to the common inputs used for manufacture of exempted final products and had also paid interest @24% per annum and had thereby met the requirement of scheme of retrospective amendment of Section 69 (2) of Finance Act, 2010 (for short 'Act, 2010') and, therefore, it was rightly held by the Tribunal that the demand of 8% of the value of exempted goods was not sustainable.

7. It would be proper to refer to certain relevant provisions. Rule 57-C of the Rules, 1944 laid down that no credit of the specified duty paid on the inputs used in the manufacture of a final product shall be allowed, if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. Rule 57 CC of the Rules, 1944 (as it stood at the relevant time) made provision for adjustment of credit if final products were exempted. Under the said Rule, where a manufacturer was engaged in the manufacture of any final product which was chargeable to duty as well as any other final product which was exempt from whole of the duty of excise leviable thereon or was chargeable to nil rate of duty and the manufacture took credit of the specified duty on any input which was used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer was to pay an amount equal to 8% of the price of the second category of final products charged by the manufacturer for the sale of goods at the time of clearance from their factory by adjustment in the credit account. The Rules,

1944 were subsequently amended vide Section 69 of the Act, 2010 and Rule 57 CCC was inserted. As per Section 69 sub-Section 1 of the Act, 2010, the Rules, 1944 shall stand amended and shall be deemed to have been amended retrospectively, in the manner specified in Column (3) of the Fourth Schedule, on and from and up to the corresponding date specified in column (4) of that Schedule. As per sub-Section 2, where a person opts to pay the amount in accordance with provisions of Rules, 1944 as amended by Sub-Section (1), he shall pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a certificate from a Chartered Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of the final products, which are exempted from whole of the duty of excise leviable thereon or chargeable to nil rate of duty, within a period of six months from the date on which the Finance Bill, 2010 receives the assent of the President.

8. The respondent admittedly availed cenvat credit on the inputs namely, phosphoric acid, caustic lye and sulphuric acid which were used for the manufacture of acid oil which is undisputedly a dutiable product as well as vanaspati ghee/refined vegetable oil which falls within the definition of exempted goods. The respondent was admittedly maintaining a common inventory/account of receipt and use of the said common inputs. The dispute related to maintenance of separate accounts and inventory of the inputs meant for exempted final products as well as dutiable final products. The respondent reversed the modvat credit amounting to Rs.4,51,574/- on proportionate basis in respect of the inputs used in the manufacture of exempted final products and also paid interest @24% per annum on the

amount of reversed credit during the pendency of the appeal pending before the Tribunal earlier. By way of amendment in the Act, 2010, the Rules, 1944 were amended and Rule 57 CCC was inserted for reversal of actual credit by the manufacturer availing the credit of specified duty in respect of inputs used for manufacture of final product, which was chargeable to duty or chargeable to nil rate of duty by payment of amount equivalent to amount of credit attributable to inputs used in the manufacture of such final products. As per Section 69 of the Act, 2010, the amendment was retrospective in nature and a person opting to pay the amount in accordance with the provisions of Rules, 1944, was required to pay the same along with interest specified thereunder.

9. In this case, the respondent reversed cenvat credit attributable to the common inputs used for manufacture of exempted final products by meeting with the requirement of scheme of Section 69 (2) of the Act, 2010 which was retrospective in nature and also paid interest thereon. The respondent was bonafidely prosecuting its remedy before the appropriate forums till the date of reversing the credit. No doubt, the application contemplated under Section 69 (2) of the Act, 2010 had not been moved by it before reversing the credit, but in our opinion, in the light of amended provisions of Rules, 1944, it was not necessary to consider this contention on merits since the amended provisions covered such situations like the present one. In this regard, we place reliance upon the observations made by the High Court of Gujarat at Ahmedabad in **Shree Rama Multi Tech Ltd. v. Union of India**, 2011 (267) E.L.T. 153 (Guj.) wherein also the inputs were used in dutiable and exempted goods. No separate accounts were maintained. There was proportionate reversal of credit in view of

retrospective amendment in the Act, 2010. It was held that the petitioners were not required to move any application as contemplated under Section 69 (2) of the Act, 2010 as they had been bonafidely prosecuting the remedy before the High Court. Reliance can also be placed upon **Commissioner of Central Excise, Salem-I v. Burn Standard Co. Ltd., 2013 (294) E.L.T. 389 (Mad.)** wherein the assessee used a common input namely, furnace oil in the manufacture of dutiable goods as well as non-dutiable goods, on which, cenvat credit had been taken. A show cause notice was issued against it by the revenue as no separate accounts in respect of exempted goods and dutiable goods were maintained. The assessee had reversed the duty amount on the inputs in the manufacture of exempted items and did not claim any cenvat credit on the inputs used in the manufacture of goods for the subsequent months. The conditions in Section 73 (2) of the Act, 2010 were not complied by the assessee. It was held that even in the absence of compliance of such conditions within a period of six months, the claim of assessee was not to fail.

10. Undoubtedly, the respondent herein had not moved any application while opting to reverse the proportionate credit within six months of enactment of Finance Bill, 2010 along with documentary evidence and certificate from Chartered Accountant as required under Rule 57 CCC of the Rules. However, since all this happened during the pendency of the proceedings while the respondent had been still prosecuting its remedies, therefore, it cannot be stated that the respondent had not complied with the requirement of scheme of retrospective amendment of Section 69 (2) of the Act, 2010. As such, the learned Tribunal had rightly set aside the demand of the appellant of tax of 8% of value of exempted goods and we

see no reason to allow the appeal. Accordingly, the same is dismissed. The substantial question of law as framed is decided accordingly.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

22.02.2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No