In the High Court of Judicature at Madras

Dated : 13.8.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Ms.Justice K.B.K.VASUKI

Civil Miscellaneous Appeal No.2350 of 2006 & M.P.No.1 of 2006

M/s.Rupa & Co. Limited, Tirupur. ...Appellant

Vs

1.The Customs, Excise and Service Tax
Appellate Tribunal, Chennai-6.

2.The Commissioner of Central Excise,
Coimbatore-18. ...Respondents

APPEAL under Section 130 of the Customs Act against the Final Order No.80/2006 dated 6.2.2006 in Appeal No.E/000234/2005 on the file of the first respondent.

For Appellant : Mr.S.Jaikumar
For Respondent-2 : Mr.A.P.Srinivas, SPC

Judgment was delivered by V.RAMASUBRAMANIAN,J

This appeal is filed by the assessee under Section 130 of the Customs Act, 1985 questioning the correctness of the order of the first respondent.

2. Heard Mr.S.Jaikumar, learned counsel for the appellant and Mr.A.P. Srinivas, learned Senior Panel Counsel appearing for the second respondent.

3. The appellant is a manufacturer of cotton knitted garments and cotton knitted fabrics, falling under Sub-Heading Nos.6101.00 and 6002.92 respectively under the First Schedule to the Tariff Act, 1985.

4. On the ground that the appellant had wrongly availed CENVAT credit on the stock declared on 1.4.2003 and utilized the same for payment of duty towards clearance of knitted garments manufactured by them, a show cause notice dated 8.7.2004 was issued. The appellant gave a reply on 29.7.2004. Thereafter, a personal hearing was conducted and the Commissioner of Central Excise passed an Order in Original dated 3.11.2004, disallowing a claim for CENVAT credit and ordering the recovery of credit amount of Rs.7,06,433/-, apart from directing the appellant to pay interest under Section 11AB of the Central Excise Act, 1944 and a penalty under Rule 13 of the CENVAT Credit Rules, 2002.

5. The appellant filed a statutory appeal before the Commissioner (Appeals). But, the Commissioner disposed of the appeals by an order dated 13.1.2005, holding the appellant guilty of claiming CENVAT credit, to which, they were not entitled. However, the amount of penalty was reduced from Rs.7,06,433/- to Rs.70,643/-. The appellant then filed an appeal before the first respondent. The appeal was disposed of by the Tribunal by an order dated 6.2.2006 sustaining the orders in principle, but setting aside the quantum of duty and penalty and remitting the matter back to the Original Authority for re-quantifying the duty and penalty. On the question, in relation

to which, the first respondent remanded the matter back to the Original Authority, the appellant has no difficulties. But, on the point that was sustained by the Tribunal in principle, the appellant has come up with the above appeal.

6. On 10.8.2006, this Court framed the following substantial questions of law :

> *"(a) Whether the Hon'ble Tribunal is right in holding that the appellant is entitled to avail CENVAT credit only in respect of the physical content of the inputs in process, in terms of the provisions of Rule 9A and 2(g) of the CENVAT Credit Rules, 2002 ?*
>
> *(b) Whether the Hon'ble Tribunal is right in holding that the date of filing of the return under Rule 12 of the Central Excise Rules, 2002 is 'relevant date' for the purpose of Section 11A of the Central Excise Act, 1944 and not the last date on which the return envisaged under Rule 7(5) of the CENVAT Credit Rules, 2002 ought to have been filed ?*
>
> *(c) Whether the relevant date as defined in Section 11A(3)(ii)(a)(A) or 11A(3)(ii)(a)(B) of the Central Excise Act, 1944 is applicable for the given case ? and*
>
> *(4) Whether the return prescribed under Rule 12 of the Central Excise Rules, 2002 or the return prescribed under Rule*

7(5) of the CENVAT Credit Rules, 2002 is relevant for the purposes of any demand under Rule 12 of the CENVAT Credit Rules, 2002 ?"

7. While question (a) relates to the scope of Rule 9A of the CENVAT Credit Rules, 2002, the other three questions revolve around the issue of limitation. We shall first take up the scope of interpretation to be given to Rule 9A.

8. Rule 9A of the CENVAT Credit Rules reads as follows :

"*Rule 9A. Transitional provisions for textile and textile articles - (1) A manufacturer, producer, first stage dealer or second stage dealer of goods falling under Chapter 50 to 63 of the First Schedule to the Tariff Act, shall be entitled to avail credit equal to the duty paid on inputs of such finished product, lying in stock or in process or contained in finished products lying in stock as on 31st day of March 2003 upon making a written declaration of the description, quantity and value of the stock of inputs (whether lying in stock or in process or contained in finished products lying in stock) and subject to availability of the document evidencing actual payment of duty thereon.*"

9. What the appellant did was to make a claim for CENVAT credit in respect of the total quantity and value of goods that had gone into the making of fabric. Under Rule 9A, the appellant is admittedly entitled to credit,

equivalent to the duty paid on inputs of finished product, lying in stock or in process or contained in finished products lying in stock as on 31.3.2003. Rule 9A deals with three items. They are (i) finished products lying in stock (ii) the products lying in process and (iii) those contained in finished products. The appellant has not made a claim in respect of the entire quantity and value of the inputs that had gone into the making of the finished products.

10. Incidentally, it should be pointed out that the appellant uses yarn, on which, excise duty is paid. This yarn is made into fabric and the fabric is made into garment. Their claim for credit was confined only to the duty paid on the yarn that had gone into the making of fabric. The claim of the appellant is that unless X quantity of yarn is used, 0.95 x quantity of fabric could not be produced. In other words, their claim is that about 5% of the quantity and value of yarn is lost while making it into a fabric and that therefore, they are entitled to take credit for the entire quantity and value of input that had actually produced the fabric that was lying in store.

11. To put it in simple terms, what the appellant claimed was that if X kg of fabric was lying in stock on the relevant date, the inputs that had gone into the making of the said quantity was X plus something. The only question that falls for our consideration is as to whether that something is actually entitled to CENVAT credit or not ?

12. Keeping the above in mind, if we get back to the scope of Rule 9A, it is seen that there are three expressions used. They are

(i) inputs of such finished product

(ii) lying in stock or in process and

(iii) contained in finished product.

13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product' contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.

14. If the purport of Rule 9A is not understood in this manner, every manufacturer will have to pay excise duty on the quantity and value of inputs, which go to the making of a finished product, whose weight will never be equivalent to the sum total of the weight of all the inputs. Therefore, this is not the way to understand Rule 9A.

15. Right from the stage of issue of show cause notice upto the stage of the order of the Tribunal, the claim of the appellant that they incur a manufacturing loss to the extent of 5% of the total quantity of the finished

product, has not been disputed by the Department. In cases where there is a dispute about the existence of a loss and in cases where there is a dispute with regard to the quantum of loss, the questions may have to be left open. But, in cases where the quantum of manufacturing loss claimed at 5% by the appellant is never disputed by the Department from the stage of issue of the show cause notice upto the stage of the order of the Tribunal, the interpretation given to Rule 9A cannot be accepted.

16. Therefore, our answer to question (a) would be that the appellant was right in making a claim for CENVAT credit, with reference to the total quantity and the value of the inputs that went into the making of the fabric.

17. As we have pointed out earlier, questions (b) to (d) relate to limitation. Since we find a substantial point of law in favour of the assessee, we do not answer questions (b) to (d).

18. The civil miscellaneous appeal is accordingly disposed of. No costs. Consequently, the above MP is closed.

13.8.2015

Internet : Yes

To
1.The Customs, Excise and Service Tax Appellate Tribunal, Chennai-6.
2.The Commissioner of Central Excise, Coimbatore-18.

RS

V.RAMASUBRAMANIAN,J
AND
K.B.K.VASUKI,J

RS

CMA.No.2350 of 2006
and M.P.No.1 of 2006

13.8.2015