M/S. Osram Surya P. Ltd vs Commissioner Of Central Excise, Indore on 2 May, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2194, 2002 (9) SCC 20, 2002 AIR SCW 2292, 2002 (3) SLT 563, 2002 (4) SCALE 334, (2002) 122 TAXMAN 583, 2002 (6) SRJ 382, (2002) 4 JT 644 (SC), (2002) 142 ELT 5, (2002) 102 ECR 515, (2002) 4 SUPREME 156, (2002) 4 SCALE 334

Bench: N. Santosh Hegde, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 2359 of 1999

PETITIONER:
M/S. OSRAM SURYA P. LTD.

Vs.

RESPONDENT:
COMMISSIONER OF CENTRAL EXCISE, INDORE

DATE OF JUDGMENT: 02/05/2002

BENCH:
N. Santosh Hegde & Shivaraj V. Patil

JUDGMENT:

(With CA Nos.6199-6201 of 2000) J U D G M E N T SANTOSH HEGDE, J.

In regard to the interpretation of the second proviso to Rule 57G of the Central Excise Rules, 1944 (for short 'the Rules'), two different Benches of the Customs, Excise & Gold (Control) Appellate Tribunal (for short 'the tribunal') have taken conflicting views consequent to which the issue came to be referred to a larger Bench of the tribunal which by its order dated 11.7.2000 made in Appeal No.E/273/99-NB and other connected matters took the view that after the introduction of the said proviso, a manufacturer cannot take the Modvat credit after six months from the date of the documents specified in the first proviso to Rule 57G of the Rules.

Being aggrieved by the said order of the tribunal, the appellants have preferred these appeals questioning the correctness of that order.

Prior to the introduction of the second proviso to Rule 57G i.e. prior to 29.6.1995, a manufacturer was entitled to withdraw the said credit at any time without there being a limitation on such withdrawal. On 29.6.1995, second proviso to Rule 57G was introduced by substituting the then existing proviso and the newly introduced proviso read thus : "Provided further that the manufacturer shall not take credit after six months of the date of issue of any of the documents specified in first proviso to this sub-rule:"

The appellants who had received their inputs for the manufacture of their respective products, had taken credit under the Modvat Scheme, admittedly, six months after the date of issue of the documents specified in the said proviso to Rule 57G. Therefore, the said credit was disallowed by the authorities. This action of the authorities was questioned by the appellants before the tribunal, contending that the benefit of the credit which had accrued to them prior to the introduction of the second proviso to the said Rule, cannot be taken away by introduction of a limitation because it was a vested right accrued to them prior to the coming into force of the said proviso to the Rule. They also contend that the said proviso is not retrospective in its operation and is only applicable to the inputs received by a manufacturer after the introduction of the said proviso. They also contend that since the said proviso did not specifically state that it is taking away the vested right of a manufacturer, the proviso should be read to mean that the same is not applicable in regard to the credit accrued to a manufacturer prior to the introduction of the said Rule. For all the above reasons, they contend that the credit cannot be denied in regard to those which have accrued prior to 29.6.1995. In the case of M/s. Kusum Ingots & Alloys Ltd. V. Commissioner of Central Excise, Indore, which is one of the appellants hereinabove, a further contention was advanced that the six months' period contemplated under the newly introduced proviso expired in its case on 30.6.1995 i.e. a day after the introduction of the new proviso, therefore, it had no opportunity of availing the credit which was otherwise due to it. Consequently, the introduction of the proviso amounted to canceling the credit itself.

On behalf of the Revenue, it is contended that the language of the newly introduced proviso is very clear and admits of no ambiguity, therefore, the question of interpretation of the Rule contrary to the said language does not arise at all, and on a plain reading of the Rule, the tribunal was justified in coming to the conclusion that after the introduction of the said proviso to the Rule, no manufacturer could avail of credit subsequent to a period of six months, as stipulated in the said proviso.

At the outset, we must note that none of the appellants has challenged the validity of the said proviso, therefore, we will have to proceed on the basis that the proviso in question is a valid one. In that background, the sole question that we will have to consider will be : whether the proviso to the Rule in question is applicable to the cases of manufacturers who had received their inputs prior to the introduction of the said proviso and are seeking to take credit in regard to the said inputs beyond the period of six months.

Having heard the arguments of the parties and after considering the Rule in question, we think that by introducing the limitation in the said proviso to the Rule, the statute has not taken away any of the vested rights which had accrued to the manufacturers under the Scheme of Modvat. That vested right continues to be in existence and what is restricted is the time within which the manufacturer has to enforce that right. The appellants, however, contended that imposition of a limitation is as good as taking away the vested right. In support of their argument, they have placed reliance on a judgment of this Court in Eicher Motors Ltd. V. Union of India (1999 [106] ELT 3 SC) wherein this Court had held that a right accrued to an assessee on the date when it paid the tax on the raw-materials or the inputs would continue until the facility available thereto gets worked out or until those goods existed. In that background, this Court held that by Section 37 of the Act, the authorities concerned cannot make a Rule which could take away the said right on goods manufactured prior to the date specified in the concerned Rule. In the facts of Eicher's case (supra), it is seen that by introduction of Rule 57F(4A) to the Rules, a credit which was lying unutilized on 16.3.1995 with the manufacturer was held to have lapsed. Therefore, that was a case wherein by introduction of the Rule a credit which was in the account of the manufacturer was held not to be available on the coming into force of that Rule, by that the right to credit itself was taken away, whereas in the instant case by the introduction of the second proviso to Rule 57G, the credit in the account of a manufacturer was not taken away but only the manner and the time within which the said credit was to be taken or utilized alone was stipulated. It is to be noted at this juncture that the substantive right has not been taken away by the introduction of the proviso to the Rule in question but a procedural restriction was introduced which, in our opinion, is permissible in law. Therefore, in our opinion, the law laid down by this Court in Eicher's case (supra) does not apply to the facts of these cases. This is also the position with regard to the judgment of this Court in Collector of Central Excise, Pune & Ors. V. Dai Ichi Karkaria Ltd. & Ors. [1997 (7) SCC 448].

It is vehemently argued on behalf of the appellants that in effect by introduction of this Rule, a manufacturer in whose account certain credit existed, would be denied of the right to take such credit consequently, as in the case of Eicher (supra), a manufacturer's vested right is taken away, therefore, the Rule in question should be interpreted in such a manner that it did not apply to cases where credit in question had accrued prior to the date of introduction of this proviso. In our opinion, this argument is not available to the appellants because none has questioned the legality or the validity of the Rule in question, therefore, any argument which in effect questions the validity of the Rule, cannot be permitted to be raised. The argument of the appellants that there was no time whatsoever given to some of the manufacturers to avail the credit after the introduction of the Rule also is based on arbitrariness of the Rule, and the same also will have to be rejected on the ground that there is no challenge to the validity of the Rule.

Without such a challenge, the appellants want us to interpret the Rule to mean that the Rule in question is not applicable in regard to credits acquired by a manufacturer prior to the coming into force of the Rule. This we find it difficult because in our opinion the language of the proviso concerned is unambiguous. It specifically states that a manufacturer cannot take credit after six months from the date of issue of any of the documents specified in the first proviso to the said sub-rule. A plain reading of this sub-rule clearly shows that it applies to those cases where a manufacturer is seeking to take the credit after the introduction of the Rule and to cases where the manufacturer is seeking to do so after a period of six months from the date when the manufacturer received the inputs. This sub-rule does not operate retrospectively in the sense it does not cancel the credits nor does it in any manner affect the rights of those persons who have already taken the credit before coming into force of the Rule in question. It operates prospectively in regard to those manufacturers who seek to take credit after the coming into force of this Rule. Therefore, in our opinion, the tribunal was justified in holding that the Rule in question only restricts a right of a manufacturer to take the credit beyond the stipulated period of six months under the Rule. Therefore, this appeal will have to fail.

However, in C.A. Nos.6199-6201/2000, learned senior counsel appearing for the appellants, pointed out that it had specifically questioned the imposition of penalty but the tribunal has failed to consider, may be because it was considering only the question of law which was posed before it. It is pointed out to us that in the connected appeals, a similar prayer by the manufacturer for setting aside the penalty was entertained and the penalty as against those appellants was set aside. We are satisfied that this is a just complaint and on facts and circumstances of these cases also, we are of the opinion that the penalty imposed against the said appellant should be set aside. To that extent these appeals should succeed.

There is a further plea addressed on behalf of the appellants in C.A. Nos.6199-6201 of 2000 that their Company in question is before the Board for Industrial & Financial Reconstruction (the BIFR) which has framed a scheme, therefore, there could be no recovery of amount from the said Company except in accordance with the said scheme. In support of that proposition the appellant has relied upon a judgment of this Court in Tata Davy Ltd. V. State of Orissa & Ors. (1997 6 SCC 669). In our opinion, this is a question which should be dealt with by the concerned authorities in the recovery proceedings. It is open to the appellant to raise this question when recovery proceedings are taken against it, we leave this question open and express no opinion thereon.

For the reasons stated above, C.A. No.2359/1999 is dismissed. No costs.

C.A. Nos.6199-6201/2000 are allowed to the extent of setting aside the penalty only, as stated above. Ordered accordingly.

J. (N. Santosh Hegde) ..J. May 2, 2002. (Shivaraj V. Patil)