

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-37-2014

Date of decision: 02.02.2023

Commissioner of Central Excise, ChandigarhAppellant

V/s.

M/s. Hansa Tube Pvt. Ltd.Respondent

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

Present: Mr. Tejinder K. Joshi, Senior Standing Counsel
for the appellant.

Mr. Surjeet Bhadu, Advocate and
Mr. Veer Singh, Advocate
for the respondent.

Ritu Bahri, J.

The revenue has come up in appeal against the judgment dated 20.03.2013 (Annexure A-3) passed by the learned Customs, Excise and Service Tax Appellate, Tribunal, Principal Bench, New Delhi whereby the appeal filed by the respondent-M/s. Hansa Tube Pvt. Ltd. against the order dated 09.09.2005 (Annexure A-2) passed by the Commissioner & Central Excise Chandigarh, had been allowed.

The respondent-company is engaged in manufacturing of Galvanized Plain Coils (G P Coils), Galvanized Plain Sheets (G P Sheets) and Galvanized Corrugated Sheets (G C Sheets) falling under Chapter subheading 7210.19 and 7210.11 of the First Schedule to the Central Excise Tariff Act, 1935. During the audit of 2002-03 and 2003-04, the Central Excise Officer observed that the company had wrongly availed Cenvat credit to the tune of Rs.1,21,86,295/- on C.R. Coils and Zinc inasmuch as the said goods were used in the process of galvanization of C.R. Coils for

conversion into G.P. Coils and the process of conversion of C.R. Coil into G.P.Coil involves only process of galvanization which does not amount to 'manufacture' as per Section 2(f) of the Central Excise Act, 1944 (hereinafter referred to as the 'Act'). The noticee had cleared the G.P. Coils for export on payment of duty under claim for rebate amounting to Rs.88,71,269/- by debiting the duty amount from the wrongly availed amount of Cenvat Credit. In this backdrop, show cause notice dated 04.05.2005 (Annexure A-1) was issued for disallowing Cenvat Credit amounting to Rs.1,21,86,295/- and also out of the said amount, an amount of Rs.88,71,269/- was to be recovered in cash as per Section 11 A of the Act alongwith interest and penalty as well.

Vide order dated 09.09.2005 (Annexure A-2), the Commissioner passed the following order:-

“14. In view of the discussions and findings in the foregoing paras, I pass the following order:

(i) I confirm the demand of Cenvat credit amounting to Rs.1,17,45,077/- (Rupees one crore seventeen lacs forty five thousand seventy seven only) against M/s Hansa Tubes Pvt. Ltd.-Unit-II, Lalru, Derabassi under Rule 12 of the Cenvat Credit Rules read with Section 11A of the Act. Out of the said amount, an amount of Rs.88,71,269/- (Rupees eighty eight lacs seventy one thousand two hundred sixty nine only) is ordered to be paid through PLA. On the above confirmed demand, the Noticee would also pay interest under Section 11AB of the Act,

(ii) I impose penalty of Rs.1,17,45,077/- (Rupees one crore seventeen lacs forty five thousand seventy seven only) upon Hansa Tubes Pvt. Ltd., Unit-II, Lalru (Derabassi) under Rule 13 of the Cenvat Credit Rules read with Section 11AC of the Act.”

The stand taken by the respondent before the Customs Excise & Service Tax Appellate Tribunal (in short 'Tribunal') was that C.R. Coils are basic raw material for G.P.Sheets as well as G.C.Sheets. Even if the process of conversion does not amount to manufacture in the Central Excise Act, the inputs can be cleared as such or after being partially processed on reversal of amount equivalent to credit availed on such inputs. With respect to demand of rebate claim amounting to Rs.88,71,269/- the stand was that as per Rule 18 of the Central Excise Rules, the exporter is entitled to claim rebate of duty paid on inputs as well as duty paid on final products.

The Tribunal, while referring to the judgment passed by the High Court of Gujarat in the case of *Commissioner of Central Excise vs. Delta Corporation reported in 2013 (287) ELT 15 (Guj.)* held that credit could not be denied on the ground that no manufacturing activity was carried on by the assessee and hence the demand for disallowing Cenvat Credit was held to be unsustainable as the rules allowed the clearance of inputs as such or after partially proceeding on reversal of the Cenvat Credit availed on these inputs. Since the duty paid on the G.P. Coils etc. was more than Cenvat Credit taken, it had to be adjusted against the demand of the Cenvat Credit and in this backdrop, the appeal was disposed of.

Learned counsel for the revenue has argued that as per Rule 3 of the CENVAT Credit Rules, 2002, a manufacturer or producer of final

products shall be allowed to take credit. Since in the present case, no manufacturing process had been initiated as after purchasing the C.R. coils, sale of G.P. Sheets and G.C. Sheets had been made only by way of galvanization. Hence, respondent was not entitled for the benefit of Cenvat credit taken at the time of purchase of these coils. Rule 3 of the CENVAT Credit Rules, 2002 is reproduced as under:-

Rule 3. CENVAT credit:- (1) A manufacturer or producer of final products shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of

(i) the duty of excise specified in the First Schedule to the Tariff Act, leviable under the Act;

(ii) the duty of excise specified in the Second Schedule to the Tariff Act, leviable under the Act;

(iii) the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957);

(v) the National Calamity Contingent duty leviable under section 136 of the Finance Act, 2001 (14 of 2001); and

(vi) the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv) and (v) above

paid on any inputs or capital goods received in the factory on or after the first day of March, 2002, including the said duties paid

on any inputs used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published vide number G.S.R. 547 (E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final products, on or after the first day of March, 2002.

Explanation:- For the removal of doubts it is clarified that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under Section 3 of the Customs Tariff Act on goods falling under heading 98.01 of the First Schedule to the Customs Tariff Act.

(2) Notwithstanding anything contained in sub-rule (1), the manufacturer or producer of final products shall be allowed to take CENVAT credit of the duty paid on inputs lying in stock or in process or inputs contained in the final products lying in stock on the date on which any goods cease to be exempted goods of any goods become excisable.

A perusal of the Rule 3 of the CENVAT Credit Rules, 2002 shows that under sub rule (1) a manufacturer or producer of final products shall be allowed to take credit as referred above. It is further clarified in sub rule (1) that the manufacturer of the final products shall be allowed CENVAT credit of additional duty leviable under Section 3 of the Customs Tariff Act on goods falling under heading 98.01 of the First Schedule to the Customs Tariff Act. However, sub rule (3) is relevant, which is as under:-

(3) the CENVAT credit may be utilized for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed or such capital goods are removed as such:

Provided that while paying duty, the CENVAT credit shall be utilized only to the extent such credit is available on the fifteenth day of a month for payment of duty relating to the first fortnight of the month, and the last day of a month for payment of duty relating to the second fortnight of the month or in case of a manufacturer availing exemption by a notification based on value of clearances in a financial year, for payment of duty relating to the entire month.

Sub-rule 3 is very clear which lays down that **Cenvat Credit can be utilized for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed or such capital goods are removed as such.** Sub rules 4 and 5 make it further clear which reads as under:-

(4) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may

be, and such removal shall be made under the cover of an invoice referred to in rule 7.

(5) The amount paid under sub-rule (4) shall be eligible as CENVAT credit as if it was a duty paid by the person who removed such goods under sub rule (4).”

Hence, sub-rules 3, 4 and 5 are very clear as the word 'removed' does not mean the word 'manufacturing goods'. Hence, in the present case, once the respondent had paid duty at the time of purchase of C.R. Coils and had taken Cenvat credit after galvanizing the sheets and took rebate of Rs.88,71,269/-, he could claim the benefit of Cenvat Credit deposited by him and this aspect has been considered by the High Court of Gujarat in the case of *Commissioner of Central Excise vs. Delta Corporation 2013 (287) ELT 15 (Guj.)*. In that case, the High Court of Gujarat was examining the manufacturing activity of item called “P.D. Pumps” and after purchasing such pumps, the manufacturer availed Modvat credit under Rule 57A of the Central Excise Rules, 1944. The view of the revenue was that the assessee had purchased the P.D. Pumps from its sister concern before clearance and the assessee was to reverse such credit. The High Court of Gujarat referred to Rule 57 F(1) of the Rules, 1944 and held that inputs in respect of which credit is allowed under Rule 57A, may be used in or in relation to manufacture of a final product or could also be removed under intimation to the specified authority for home consumption in the said factory. In para Nos. 9 and 10, it was observed as under:-

9. It was in this context that the Tribunal in the impugned judgment referred to and relied upon the decision of the Tribunal in case of *Rico Auto Industries Ltd. v. CCE, New*

Delhi- I reported in 2003 (57) RLT 271-2003 (157) E.L.T. 170 (Tribunal), in which it was held that when inputs are subjected to certain process and the processed inputs are cleared on payment of duty which was more than credit taken, Modvat credit cannot be denied on the ground that the processes undertaken by the assessee did not amount to manufacture.

10. We are informed that such decision of the Tribunal in case of *Rico Auto Industries Ltd. (supra)* was carried in appeal before the Punjab and Haryana High Court. Appeal was disposed of remanding the proceedings for fresh consideration before the Tribunal. In the second round, the Tribunal once again ruled in favour of the assessee which decision is reported in *2007 (210) ELT 583 (Tri-Del.)* in case of *Rico Auto Industries Ltd. v. Commissioner of Central Excise, New Delhi*. The Tribunal observed as under:

“7. Apart from the fact that the assessee had satisfactorily established the nature of manufacturing processes to which these two items had undergone before they were removed on payment of excise duty on the value added basis, it is also not disputed that the total amount of excise duty paid was much higher than the Modvat credit availed in respect of these items.

7.1 Under the proviso to sub-rule (1) of Rule 57F, where the inputs were removed from the factory for home consumption on payment of duty of excise, such duty of

excise shall be the amount of credit that has been availed in respect of such inputs under Rule 57A.

Therefore, the rule contemplated removal of inputs in respect of which a credit of duty had been allowed where they are not used in relation to manufacture of final products with a condition that on their removal, the excise duty shall be paid to the tune of the credit availed under Rule 57A for such inputs. In the present case, admittedly by the excise duty paid on the ROFs/GSDe removed as finished goods was higher than the Modvat credit availed on these inputs. Therefore, there was no liability to pay additional duty when these goods were removed. Even if were to be held that no process was undertaken on these goods, then obviously there was no liability to petitioner to pay excise duty on the footing that these goods were manufactured by the appellant, because if they were already brought as inputs from other manufacturer and no further process was undertaken, they would obviously be not liable for payment of excise duty on the ground that manufacturing process was undertaken. Therefore, in either event, no duty liability arose on the part of the appellant."

Learned counsel for the revenue has not been able to cite any judgment reversing the view given by High Court of Gujarat in ***Delta Corporation's case (supra)***. Sub-rule 3 of Rule 3 of the CENVAT Credit Rules, 2002 makes it very clear that the Cenvat credit may be utilized for

payment of any duty of excise on any final products or for payment of duty on inputs of capital goods themselves if such inputs are removed as such or after being partially processed or such capital goods are removed as such.

Hence, appeal is dismissed being devoid of any merit.

**(RITU BAHRI)
JUDGE**

02.02.2023

Divyanshi

**(MANISHA BATRA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No