

Hyderabad Asbestos Cement Products and Another

Vs

Union of India and Others

Civil Appeals No. 6990 of 1999

(S. P. Bharucha, R. C. Lahoti, N. Santosh Hegde JJ)

07.12.1999

JUDGMENT

R. C. LAHOTI, J.:-

1. Leave granted.

2. The appellants manufacture and sell asbestos cement products such as sheets (corrugated or plain), pressure pipers, couplings etc. These products require cement and asbestos fiber as raw materials. Both the items consumed as raw materials as also the finished products manufactured by the appellants are all excisable commodities under different tariff items. Asbestos fiber is covered by tariff Item 22-F. Cement is covered by Tariff Item 23. The finished products manufactured by the appellants are excisable under Tariff Item 23-C. In respect of cement and asbestos fiber obtained from outside India duties were duly paid under the relevant Tariff Items 23 and 22-F. In respect of imported asbestos additional duty, i.e., countervailing duty equivalent to nil rate of duty. The appellants claimed the benefit of pro forma credit procedure by seeking credit for the payment of duty paid on the inputs as against the duty payable on the finished products and sought for permission of the Assistant Collector of Central Excise, Hyderabad under Rule 56-A of the Central Excise Rules, 1944 (hereinafter referred to as "the rules") framed under the provisions of the Central Excise and Salt Act, 1944. The Assistant collector refused to grant such permission. An appeal preferred before the collector of Central Excise, Hyderabad failed. The appellants challenged both the orders before the High court of Andhra Pradesh by filing writ petition under Article 226 of the constitution which also has been dismissed. The decision of the High court under appeal is reported as Hyderabad Asbestos Cement Products Ltd. v. Union of India [(1987) 32 ELT 28 (AP)]. The High court has also cited in its support a division Bench decision of the High Court of Gujarat in Digvijay Cement Co. Ltd v. Union of India². The aggrieved appellants have filed this special leave petition.

3. The sole question arising for decision is whether the benefit of pro forma credit procedure specified in rule 56-A (1) is available to the appellants though the raw materials consumed by the appellants in their manufacture of the final products are excisable under tariff items different from the one under which their final products are excisable.

4. Rule 56-A was introduced on 8-12-1962. It has undergone several changes from time to time which have been extensively noticed by the High Court of Gujarat in the case of Digvijay Cement Co. Ltd. [(1986) 25 ELT 879 (Guj)] The rule as it stood at the relevant time reads as under:

"56-A Special procedure for movement of duty-paid materials or component parts for

use in the manufacture of finished excisable goods. – (1) Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the excisable goods in respect of which the procedure laid sowing sub-rule (2) shall apply.

(2) the collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may, from time to time, be prescribed buy the Central Governments, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive material or component parts or finished products (like asbestos cement), on which the duty of excise or the additional duty under section 2-A of the Indian Tariff Act, 1934 (32 of 1934), (hereinafter referred to as the countervailing duty), has been paid, in his factory for the manufacture of these goods or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished product, as the case may be:

Provided that no credit or duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods-

(i) If such finished excisable goods produced by the manufacturer are exempt from the whole of the duty of excise livable thereon or

(ii) unless-

(a) duty has been paid for such material or component parts under the same item or sub-item as the finished excisable goods; or

(b) remission or adjustment or duty paid for such material or component parts has been specifically sanctioned by the Central Government:

Provided further that if the duty paid on such material or component parts (of which credit has been allowed under this sub-rule) be varies subsequently due to any reason, resulting in payment of refund to, or recovery of more duty from, the manufacturer or importer, as the case may be of such material or component parts, the credit allowed shall be varied accordingly by adjustment in the credit account maintained under sub-rule (3) or rule 9 or Rule 178 (1) or, if such adjustment be not possible for any resin, by cash recovery from or, as the case may be, of such material or component parts, the credit allowed shall be varied accordingly by adjustment in the credit account maintained under sub-rule (3) or in the account-current maintained under sub-rule (3) or Rule 9 or Rule 178(1) or, if such adjustment be not possible for any reason, by cash recovery from or, as the case my be refund to the manufacturer availing of the procedure contained in this rule."

5. Subsequently with effect from 1-8-1983 the rule has undergone further changes which are not relevant for our purpose.

6. A bare reading of the rule shows that the Central Government has been empowered by sub-rule

(1) to specify by notification in the Official Gazette such excisable goods in respect of which the benefit of pro forma credit as provided by sub-rule (2) can be taken. The excisable goods referred to in sub-rule (1) are finished products. In order to claim the benefit of the rule the conditions to be satisfied are: (I) the finished product should be specified by the Central Government by notification in the Official Gazette as the excisable goods in respect of which the procedure laid down in sub-rule (2) shall apply: (ii) an application must be made by the assessee to the collector in this behalf; (ii) the material, component parts or finished products, the taking of credit, must not be used in the manufacture of such finished excisable goods as are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty; and (iv)(a) the duty as has been paid for such material or component parts must have been so paid under the same item or sub-item as the finished excisable goods, or (b) if the raw material or component parts are not excisable under the same item or sub-item as the finished excisable goods, or in other words if such material or component parts are excisable under an item or sub-item other than the one under which the finished goods are excisable then the central Government should have specifically sanctioned remission or adjustment of duty paid for such material or component parts.

7. The controversy centres around the interpretation and scope of proviso (ii)(b) of Rule 56-A. The appellants' plea is that once the Central Government has notified the excisable goods under sub-rule (1) the benefit of pro forma credit shall be available to the appellants without regard to the fact whether or not the raw material or the component parts are excisable under the same item or sub-item of the Tariff. The effect of benefit extended by the main part of the rule cannot be nullified or taken away by a proviso, submitted the learned counsel for the appellants. The plea so raised has not appealed to the High Court. We also find no merit in the plea though it has been forcefully reiterated before us.

8. The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Provisos (I) and (ii) are separated by the use of the conjunction "and". They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an "or" and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos finished excisable goods are liable to duty under different tariff items, the benefit of pro forma credit extended by Rule 56-A cannot be availed of by the appellants and has been rightly denied by the authorities of the Department.

9. We are in no doubt that to avail the benefit of pro forma credit under Rule 56-A the inputs which go to manufacture the specified finished excisable goods must be eligible to payment of duty under the same tariff item or sub-items then they must be covered by the specific sanction of the Central government granting remission or adjustment of duty on those inputs as provided by proviso (ii)(b). Admittedly there is no such specific sanction. The raw materials consumed being excisable under tariff items different from the one under which the finished products are excisable the appellants have been rightly denied the benefit of pro forma credit.

10. We find ourselves in agreement with the view taken by the High Court. The appeal is devoid of any merit. It is dismissed though without any order as to the costs.

CA No. 9159, CAs Nos. 2779-80 of 1997 and SLP (C) No. 13520 of 1987

11. For the same reasons these appeals and special leave petition are also dismissed though without any order as to the costs.

