SUPREME COURT OF INDIA

Tungabhadra Indus. Ltd.

Vs.

Union of India

C.A.No.4668 of 1999

(G. B. Pattanaik, Doraiswamy Raju and S. N. Variava, JJ.)

05.05.2000

JUDGEMENT

PATTANAIK, J.:-

1. This appeal is directed against the Division Bench judgment of Andhra Pradesh High Court in Writ Petition No. 4059 of 1994, wherein, following the earlier judgment of the said Court in Writ Petition No. 11311 of 1991, the High Court dismissed the writ petition.

2. The appellant is the manufacturer of hydrogenated oil. The appellant filed a Reference before the Assistant Collector, Central Excise, Kurnool, claiming that they would be entitled to utilise the accumulated credit, available to them under the Money Credit Scheme, as per Rule 57-K of the Central Excise Rules, 1944 (hereinafter referred to as 'the rules), at the time of rescinding of the Notification No. 27/87 as well as the credit available to them under Notification dated 11th October, 1989, issued by the Central Government under Rule 57-K of the Rules. The Assistant Collector disposed of the said Reference by his order dated 9-10-1991, holding that the assessee-appellant is entitled to appropriate the credit available to him on the date of recession of the Notification of

1987, which stood rescinded on 25th of August, 1989 as well as the credit which gets accumulated, pursuant to Notification dated 11th of October, 1989, but not entitled to utilise the credit available under both the Notifications simultaneously and, therefore, the credit would be utilised for payment of duty on the manufactured product, which should not exceed Rupees one thousand per M.T. It is because of this order, the appellant filed the writ petition in the High Court of Andhra Pradesh to stay the recovery of excise duty contemplated under Notice dated 14-10-1998 issued by the Superintendent of Central Excise, Kurnool. The identical question raised by the appellant in the writ petition filed before the Andhra Pradesh (High Court) having been answered against the assessee in another writ petition, which stood disposed of on 28-4-1998, the present writ petition by the appellant also stood dismissed.

Be it be stated that in disposing of Writ Petition No. 11311 of 1991 on 28-4-1998, the High Court also came to the conclusion that the assessee is not entitled to adjust the available credits under Notification of the year 1987 as well as the Notification of the year 1989, simultaneously, and therefore, there has been no illegality committed by the Excise Authorities. The question for consideration, therefore is whether an assessee like the appellant, who accumulated credits to his accounts on account of the incentive Notification issued by the Central Government in exercise of powers conferred under Rule 57-K of the Rules by the date of the recession of the said notification on 25th August, 1989 can make adjustment towards payment of duty in addition to the credits earned, pursuant to Notification dated 11th of October, 1989 simultaneously.

3. Under the Rules, more particularly Rule 57-K the Central Government is empowered by Notification in the Official Gazette to allow credit of money in respect of certain raw materials used in the manufacture of certain excisable goods. The notification require to be issued under sub-Rule (1) of Rule 57-K must specify the finished excisable goods to which the provisions of the sections would apply as well as the rates at which the credit of money is to be given for the use of such inputs in the manufacture of final products. Under Rule 57-N the credit of money allowed in respect of any inputs pursuant to notification issued under Rule 57-K would be utilised towards the payment of duty of excise on the final products in relation to manufacture of which such inputs are intended to be used in accordance with the declaration filed under Rule 57-O. Rule 57-O provides the procedure to be observed by the manufacturer. In accordance with the provisions contained in Rule 57-K the Central Government issued the notification dated 20-3-1987, which is extracted herein in extenso for better appreciation of the point in issue in this case.

"Notification No. 27/87-CE., dated 1-3-1987 as amended by Notification No. 99/87-C.E. dated 20-3-1987; No. 17/88-CE dated 1-3-1998 and No. 295/88-CE dated 16-12-1988.

Set-off of duty on use of specified minor oils in the manufacture of vegetable products. In exercise of the power conferred by Rule 57-K of the Central Excise Rules, 1944, the Central Government hereby specifies:-

(i) the inputs, namely, fixed vegetable oils of the description in Column (2) of the Table hereto annexed and used in the manufacture of the final products, namely vegetable products falling under sub-heading No. 1504.000 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(ii) the rates in the corresponding entry in Column (3) of the said Table as the rate at which credit may be granted for use of such inputs in the manufacture of the said final products, for the purpose of Section AAA of Chapter V of the said rules and stipulates that the grant of credit and utilisation thereof shall in addition to the provisions of the said section be subject to the following conditions, namely:-

(i) the credit shall be taken only in respect of the quantity of oil subjected to hydrogenation on or after the 1st day of March, 1987 for the manufacture of the said final products and the credit shall be taken only on the date on which the oils has been so hydrogenated;

(ii) the credit taken during any calendar month shall be utilised for payment of duty on the said final products only after the commencement of the succeeding month;

(iii) the amount of credit utilised for payment of duty on any individual clearance of the said final products shall not exceed rupees one thousand per tonne of vegetable products cleared and the excess credit, if any, available in the credit account shall not be refunded to the manufacturer or adjusted against or utilised for payment of duty on any other excisable goods under any circumstances;

(iv) where the description in column (2) of the Table specifies solvent extracted variety of the oil, the manufacturer shall within 5 months from the date of taking credit, or such extended period as the Assistant Collector of Central Excise may allow in this behalf, produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati Vegetable, Vegetable oils and Fats in Ministry of Food and Civil Supplies of the Government of India to the effect that the said Oil has been manufactured by the solvent extraction method; and

(v) the credit shall be taken only in respect of indigenous inputs and the manufacturer shall produce such documents as may be required by the Assistant Collector of Central Excise in this regard.

Provided that in the case of palm oil used as input the manufacturer shall within 5 months from the date of taking credit or within such extended period as the Assistant Collector of Central Excise will allow in this behalf, produce a certificate from an officer not below the rank of Deputy Director in

the Directorate of Vanaspati, Vegetable Oils and Fats in the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been of indigenous origin.

TABLE

S. No	Fixed Vegetable Oils	Rate of credit per tonne of the fixed vegetable oil
1	2	3
01.	Rice Bran Oil	Rs. 6000
02.	Mehuwe Oil	Rs. 6500
03.	Water Melon Seed Oil	Rs. 6500
04.	Solvent extracted Cotton Seed oil	Rs. 4000
05.	Solvent extracted Mustard Oil	Rs. 3250
06.	Solvent extracted Rape Seed Oil	Rs. 3250
07.	Solvent extracted Sunflower Oil	Rs. 3250
08.	Solvent extracted Safflower Oil	Rs. 3250
09.	Palm Oil	Rs. 3250

Explanation - In this notification, "Vegetable products" means any vegetable oils or for which, whether by itself or in admixture with any other substance, has by hydrogenation or by any other process, been hardened for human consumption."

This notification stood rescinded by the subsequent Notification dated 25th of August, 1989. Shortly, thereafter, a fresh notification was issued on 11th of October, 1989 by the Central Government in exercise of the same power conferred under Rule 57-K of the Rules, providing the credit in respect of the quantity of oil subjected to hydrogenation on or after 11 of October, 1989 for the manufacture of the same final product and it was stipulated that the credit could be taken only on the date on which the oil has been so hydrogenated. The aforesaid Notification dated 11th October, 1989 is quoted herein below in extenso:

Government of India

Ministry of Finance

(Department of Revenue)

New Delhi, dated the 11th October, 1989.

NOTIFICATION

No. 45/89 - Central Excise (N.T.)

GSR (E):- In exercise of the powers conferred by Rule 57-K of the Central Excise Rules, 1944 the Central Government hereby specifies:

(i) the input; namely, fixed vegetable oils of the description in Column (2) of the table hereto annexed and used in the manufacture of the final products, namely, vegetable products falling under sub-heading No. 1504.00 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and (ii) the rates in the corresponding entry in Column (3) of the said Table as the rate at which credit may be granted for use of such inputs in the manufacture of the said final products.

For the purpose of Section AAA of Chapter V of the said Rules and stipulates that the grant of credit and utilisation thereof shall, in addition to the provisions of the said section be subject to the following conditions namely:

(i) the credit shall be taken only in respect of the quantity of oil subjected to hydrogenation on or after the eleventh day of October, 1989 for the manufacture of the said final products and the credit shall be taken only on the date on which the oil has been so hydrogenated;

(ii) the credit taken during any calendar month shall be utilised for payment of duty on the said final products only after the commencement of the succeeding month;

(iii) the quantity of credit utilised for payment of duty on any individual clearance of the said final products shall not exceed rupees one thousand per tonne of vegetable products cleared and the excess credit, if any, available in the credit account shall not be refunded to the manufacturer or adjusted against or utilised for payment of duty on any excisable goods under any other circumstances;

(iv) where the description in Column(s) of the table specifies solvent extracted variety of the oil, the manufacturer shall within five months from the date of taking credit or such extended period as the Assistant Collector of Central Excise many allow in this behalf, produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable Oils and Fats in

the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been manufactured by the solvent extraction method; and

(v) the credit shall be taken only in respect of indigenous inputs and the manufacturer shall produce such documents as may be required by the Assistant Collector of Central Excise in this regard;

Provided that in the case of Palm Oil used as input the manufacturer shall within five months from the date of taking credit, or within such extended period as the Assistant Collector of Central Excise will allow in this behalf, produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable Oils and Fats in the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been of indigenous origin,

TABLE

S. No	Fixed Vegetable Oils	Rate of credit per tonne of the fixed vegetable oil
1	2	3
01.	Rice bran Oil	Rs. 5000
02.	Mehuwe Oil	Rs. 6500
03.	Water Melon Seed Oil	Rs. 6500
04.	Solvent extracted Cotton Seed oil	Rs. 4000
05.	Solvent extracted Mustard Oil	Rs. 3250
06.	Solvent extracted Rape Seed Oil	Rs. 3250
07.	Solvent extracted Sunflower Oil	Rs. 3250
08.	Solvent extracted Safflower Oil	Rs. 3250
09.	Palm Oil	Rs. 3250

Explanation - In this notification "Vegetable Product" means any vegetable oil or which, whether by itself or in admixture with any other substance, has by hydrogenation or by any other process, been hardened for human consumption."

4. Mr. Dushyant A. Dave, the learned senior counsel, appearing for the appellant contended before us that an assessee, who has earned the credit pursuant to notification, is entitled to get the same adjusted towards the payment of duty of excise on the final products notwithstanding the recession of the notification under which the credits stood accumulated in favour of an assessee. According to the learned counsel, this being the position, when the same assessee earns further credits pursuant to a fresh notification, issued by the Government under Rule 57-K he will be entitled to utilise, both, the credits accumulated in favour of the assessee towards payment of duty of excise on the final products and as such the excise authorities committed error in allowing adjustment only to the extent of Rs. 1000/- per M.T. and refusing the adjustment of both the credits accumulated simultaneously. In support of this contention, reliance was placed on the decision of the Gujarat High Court in the case of Dipak Vegetable Oil Industries Ltd. v. Union of India, 1991 (52) ELT 222 (Guj) as well as the decision of Andhra Pradesh High Court in the case of Agarwal Industries Ltd. v. Union of India, 1992 (57) ELT 561 (AP). The learned counsel also contended that against the decision of the Gujarat High Court an SLP has been filed in this Court, which SLP stood dismissed and such dismissal tantamounts to confirmation of the view taken by the Gujarat High Court by this Court. The said order of dismissal has been reported in 1998 (100) ELT Page A-175. Mr. Dave also contended that under the Modvat Scheme, a rule had been introduced to Rule 57-F, which is read as Rule 57-F (4-A) which rule stipulated that any credit of specified duty lying unutilised on 16th of March, 1995 with a manufacturer of tractor, would lapse and shall not be allowed to be utilised for payment of duty of any excisable goods and this Court in the case of Eicher Motors Ltd. v. Union of India, 1999 (106) ELT 3 : (1999 AIR SCW 563 : AIR 1999 SC 892) came to the conclusion that a right which had been accrued to a party under any available scheme cannot be affected by any subsequent Rule or Notification and the assessee would be entitled to avail of the credit which had not been utilised on the date, Rule 4-A came into existence. Mr. Dave contends that though this decision is not of direct application but the principle enunciated therein should be made applicable and the appellant should be permitted to utilise the credit of money already accrued in respec of the inputs prior to the rescinding of the notification in paying of the duty of excise leviable on the final product. Mr. Dave also referred to the speech of the Finance Minister and pressed the same in support of his contention.

5. Mr. T.L.V. Iyer, the learned senior counsel, appearing for the Union of India did not dispute the position that the credits already acquired could be utilised notwithstanding rescinding of the relevant notification, even though the stand taken by the Union of India in the counter-affidavit filed in this Court is to the contrary. But according to Mr. Iyer the accumulated credit in favour of the assessee under the old notification of the year 1987 can be utilised subject to the conditions mentioned in the notification itself and in that view of the matter, an assessee is not entitled to utilise the accumulated credit under the old notification as well as the credits earned under the new notification of the year 1989 simultaneously and accordingly, the authorities of the department have taken the correct view. In support of this contention, reliance has been placed on the decision of the Karnataka High Court in the case of Union of India v. Modern Mills Ltd., 1994 (72) ELT 246 (Kant).

6. In view of the rival submissions at the Bar, the only question that falls for consideration is whether the decisions of the Gujarat and Andhra Pradesh High Courts, on which reliance has been placed by Mr. Dave are susceptible of a construction that the Courts came to the conclusion that the accumulated credits under two different notifications one of the year 1987 and another of the year

1989 could be availed of by the assessee for the purpose of payment of duty on the manufactured goods simultaneously or the condition No. 3 of the notification issued in the year 1987, providing that the amount of credit utilised shall not exceed Rs. 1000/- per M.T. of available products, would operate. Answer to this question would depend upon an interpretation of the scheme itself and the notification issued as well as the ratio of the decisions of these High Courts on which the counsel for the appellant placed reliance.

7. Chapter (sic) AAA of the Rules contains provisions, providing for credit of money in respect of certain raw materials used in the manufacture of certain excisable goods. Rule 57-K(1) itself stipulates accumulation of credit of money for use of inputs in the manufacture of final products can be availed of only, when a notification is issued by the Central Government and that notification itself would provide the rates at which credit could be accumulated and also allowing such credit to be utilised for payment of duty on the final products and this must be subject to the conditions, if any, stipulated in the very notification itself. In the aforesaid scheme of the provision, the notification issued by the Central Government in exercise of powers conferred under Rule 57-K plays an important role. If the notification that had been issued in the year 1987 is examined, it would appear that paragraph (iii) unequivocally, provides that the amount of credit utilised for payment of duty shall not exceed Rs. 1000/- per tonne of vegetable products on any individual clearance. It is thus clear that credits may be accumulated in favour of a manufacturer of vegetable products, pursuant to the notification on the basis of rates provided in the notification on the inputs and that credit could be utilised for payment of duty while clearing the final product and the accumulated credit will not ipso facto get exhausted or lapsed on the rescinding of the notification issued under Rule 57-K of the Rules, and therefore, notwithstanding the rescinding of the notification issued in the year 1987 by the notification dated 25th of August, 1989, a manufacturer would continue to utilise the credit accumulated in his favour for payment of duty, even after the recession of the notification, but subject to the provisions, contained in Clause (iii) of the notification, which granted the accumulation of credit and utilisation of the same for payment of duty. When a fresh notification is issued as in this case, the notification dated 11th of October, 1989, certainly the manufacturer would be entitled to accumulate credits on the basis of the said notification and would also be entitled to utilise the same for payment of duty on the final products, but even under that notification, the similar provision as in the earlier one, namely Clause (iii) is there, indicating, that the quantity of credit utilised for payment of duty on any individual clearance of the final products shall not exceed rupees one thousand per tonne of vegetable products cleared. This being the position, we really fail to understand as to how a manufacturer can contend that he would be entitled to the advantages of both the notifications simultaneously in respect of one transaction for payment of duty, while clearing the transaction in question. Before the Gujarat High Court in Dipak Vegetable Oil Industries case (1991 (52) ELT 222) after the notification of the year 1987 was withdrawn by the Central Government under Notification No. 39/89 on 25-8-1989, the Excise Authorities being of the view that the manufacturer cannot avail of the accumulated credit for payment of excise duty, intimated the manufacturer that they should file fresh classification list. It is this intimation from the excise authorities which had been assailed before the High Court and the High Court on an analysis of the provisions of the Rules, more particularly, Rule 57-K, dealing with applicability and extent of credit and Rule 57-N dealing with the manner of utilisation of credit, came to the conclusion that the credits already accrued and acquired on the basis of the notification issued by the Central Government in the year 1987 in exercise of powers under Rule 57-K the same cannot be taken away by rescinding the notification in question and the effect of the rescinding notification is from the date of the said notification, the manufacturer would cease to

earn the benefit of credit of money, but not deprived of the right to utilise the credit of money which they have already earned validly and could be used for payment of excise duty and the excise authorities were in error. In the penultimate paragraph of the said judgment, the court has observed that the benefits in question will be in addition to the benefits which have again been made available to them under Notification No. 45/89 and 46/89 dated 11th October, 1989 and it is this observation on which Mr. Dave, the learned counsel for the appellant strongly relied upon for his contention that it tantamounts to a conclusion that the benefit earned under both the notifications can be availed of simultaneously. We are unable to accept this submission of Mr. Dave.

8. The question whether the benefits of both the notifications can be availed of simultaneously was not a subject matter of consideration before the Gujarat High Court and in fact the credit accumulated under the subsequent notification of 11th of October, 1989 was not a matter for consideration at all. That apart, Clause (iii) of both the notifications, clearly provides that the amount of credit utilised for payment of duty shall not exceed rupees one thousand per tonne of vegetable products on any individual clearance. When the credits get accumulated in accordance with the rates indicated in the notification itself then the same can be utilised also in accordance with the terms and conditions contained in that notification and, therefore, it is not permissible to construe the judgment of Gujarat High Court that it has been held therein that the manufacturer could avail of the credits accumulated under both the notifications simultaneously. To the said effect also is the judgment of the Andhra Pradesh High Court on which Mr. Dave placed reliance. The only thing what both the High Courts have held is that the rights acquired or money credit accumulated, is not taken away by rescinding of the notification in question. In fact the decision of the Karnataka High Court in the case of Union of India v. Modern Mills Ltd., 1994 (72) ELT 246 (Kant) considers and approves the aforesaid decision of the Gujarat High Court and Andha Pradesh High Court and holds that the accumulated credit would not be ceased with the rescinding of the notification and on the other hand, could be utilised by the assessee towards excise duty payable on its final products thereafter. But it has been further held that the said accumulated credit could be utilised only subject to the conditions of the notification and consequently, it is not open to the manufacturer to insist on clearing his finished products, without paying any amount of excise duty by merely effecting two debit entries of the accumulated credits. In other words, what has been held by the Karnataka High Court in the aforesaid decision is that though the manufacturer would be entitled to utilise the accumulated credits under the rescinded notification and can also accumulate further credits on the basis of the fresh notification of the year 1989, but is not entitled to claim adjustment on the basis of both the accumulated credits simultaneously. We approve the views taken by the Karnataka High Court and we further hold that neither in the decision of the Gujarat High Court nor in the decision of the Andhra Pradesh High Court, anything contrary has been said, so far as the question of utilisation of the credit for payment of duty on the manufactured goods are concerned. In this view of the matter, the Excise Authorities have rightly dealt with the matter of utilisation of the accumulated credit in favour of the appellant-manufacturer and we see no infirmity in the same.

9. This appeal accordingly fails and is dismissed, but in the circumstances, there will be no order as to costs.

Appeal dismissed.