SUPREME COURT OF INDIA

Commissioner of Central Excise, Bhavnagar

Vs

Messrs Saurashtra Chemicals Limited

(S. B. Sinha and Markandeya Katju, JJ)

09.05.2007

JUDGMENT

S. B. SINHA, J.

1. Leave granted.

2. Interpretation of Rule 57AC of the Central Excise Rules, 1944 (for short "the Rules") is in question in this appeal which arises out of the judgment and order dated 12.01.2006 passed by the High Court of Gujarat at Ahmedabad in Tax Appeal No. 862 of 2005.

3. Respondent is engaged in manufacture of excisable goods, viz., Soda Ash, Sodium Bicarbonate and Caustic Soda. It is registered under the Central Excise Tariff Act, 1985. Its products are governed by the provisions of the Chapter VIIA of the Rules. It has been availing the benefit of credit of duty paid on inputs as well as capital goods under the provisions of the Rules.

4. On or about 24.09.1996, the respondent imported two generator sets. We are herein concerned with the second one. Although it was received by the respondent on 24.10.1998, the same admittedly was not installed prior to 1.04.2000. In the relevant financial year, the rule which was in operation was Rule 57Q(3) of the Rules was as under:

"57Q(3). Notwithstanding anything contained in sub-rule (1), the manufacturer of the final products

shall be allowed credit of additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) on goods falling under Chapter Heading No. 98.01 of the first schedule to the Customs Tariff Act, to the extent of 75% of the said additional duty paid on such goods."

Indisputably, the said Rule was replaced by Rule 57AC of the Rules, which came into force with effect from 1.04.2000. It reads as under:

"57AC. Conditions for allowing CENVAT credit.- (1) The CENVAT credit in respect of inputs may be taken immediately on receipt of the inputs in the factory of the manufacture.

(2) (a) The CENVAT credit in respect of capital goods received in a factory at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year.

(b) The balance of CENVAT credit may be taken in any financial year subsequent to the financial year in which the capital goods were received in the factory of the manufacturer, provided that the capital goods (other than components, spares and accessories, refractories and refractory materials and goods falling under heading No. 68.02 and sub- heading 6801.10 of the First Schedule to the Central Excise Tariff Act) are still in the possession and use of the manufacturer of final products in such subsequent years.

(c) CENVAT credit may also be taken in respect of such capital goods as have been received in the factory, but have not been installed, before the Ist day of April, 2000 subject to the condition that during the financial year 2000-2001, the credit shall be taken for an amount not exceeding fifty per cent of the duty paid on such capital goods. Illustration.- A manufacturer received machinery on April 16, 2000 in his factory. CENVAT of two lakh rupees is paid on this machinery. The manufacturer can take credit up to a maximum of one lakh rupees in the financial year 2000-2001, and the balance in subsequent years.

(3) The CENVAT credit in respect of duty paid on the capital goods shall be allowed to a manufacturer even if the capital goods are acquired by the manufacturer on lease, hire purchase or loan agreement, from a financing company.

(4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer claims as depreciation under Section 32 of the Income Tax Act, 1961 (43 of 1961).

(5)(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning or any other purpose, and it is established from the records, challans or memos or any other document produced by the assessee availing the CENVAT credit that the goods are received

back in the factory within 180 days of their being sent to a job worker. If the inputs or the capital goods are not received back within 180 days, the manufacturer shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise. However, the manufacturer can take the CENVAT credit again when the inputs or capital goods are received back in his factory.

(b) CENVAT credit shall also be allowed in respect of jigs, fixtures, moulds and dies sent by a manufacturer of final products to a job worker for the production of goods on his behalf and according to his specifications.

(6) The Commissioner of Central Excise having jurisdiction over the factory of the manufacturer of the final products who has sent the inputs or partially processed inputs outside his factory to a job worker may, by an order which shall be valid for a financial year in respect of removal of such inputs or partially processed inputs, and subject to such conditions as he may impose in the interest of revenue including the manner in which duty, if leviable, is to be paid, allow finished goods to be cleared from the premises of the job worker.

(7) Where any inputs are used in the final products which are cleared for export under bond or used in the intermediate products cleared for export, the CENVAT credit in respect of the inputs so used shall be allowed to be utilized by the manufacturer towards payment of duty of excise on any final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, the manufacturer shall be allowed refund of such amount subject to such safeguards, conditions and limitations as may be specified by the Central Government by notification in the Official Gazette. No refund of credit shall, however, be allowed if the manufacturer avails of drawback allowed under the customs and Central Excise Duties Drawback Rules, 1995, or claims a rebate of duty under Rule 12, in respect of such duty."

5. For the purpose of grant of MODVAT credit, the law which was operating in the field at the relevant point of time was a decision of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai in Grasim Industries Ltd. v. Commissioner of Central Excise, Trichy Â 2004 Indlaw CESTAT 2303 (Tri-Chennai)] in terms whereof the quantum of credit permissible was held to be 75% when the goods were received in the factory. It was held that only with effect from 1.03.2000, 100% credit was to be given and the said Rule was not retrospective. A Civil Appeal preferred thereagainst by Grasim Industries Ltd. before this Court being Civil Appeal No. 3477 of 2004 was dismissed by an order dated 19.07.2004 stating:

"We see no reason to interfere. The Civil Appeal is dismissed. There shall be no order as to costs."

Interpretation of Rule 57AC of the Rules, as inserted on 3.05.2000 is, in question before us.

Before embarking on the said question, we may notice that a show cause notice was issued to the respondent on or about 5.05.2001 by the Superintendent Central Excise, AR-II, Porbander directing

it to show cause as to why:

"(i) The amount of credit amounting to Rs. 8, 51, 490/- (656481/- plus 195009/-) should not be recovered from them under 57AH of the rules read with Section 11 of the Act;

(ii) interest @ 24% should not be levied upon them as per the provisions of Section 11AB of the Act.
(iii) Penalty should not be imposed upon the Noticee under rule 173Q(1) of the Rules;"

Cause was shown. The matter was determined by the Assistant Commissioner of Central Excise, Junagadh in terms of an order dated 13.09.2001 holding that the respondent was entitled to CENVAT credit only to the extent of 50%. An appeal preferred thereagainst by the respondent aggrieved by and dissatisfied therewith before the Commissioner (Appeals), Customs and Central Excise, Rajkot was allowed by an order dated 31.12.2001. An appeal preferred by the Revenue thereagainst was dismissed by the Tribunal. An appeal by the Revenue under Section 35-G of the Central Excise Act, 1944 has been dismissed by the High Court by reason of the impugned judgment dated 12.01.2006.

6. The High Court in its judgment opined that as the previous notification did not contain any restrictive clause in regard to the availability of 50% of entitlement, the Commissioner as also the Tribunal did not commit any error in applying the notification effective as on 1.03.2000. The Revenue is, thus, before us.

7. Sub-rule (1) of Rule 57AC of the Rules refers to 'inputs'. It is not relevant for our purpose. Clauses (a) and (b) of Sub-Rule (2) of Rule 57AC of the Rules governs the receipt of the capital goods in a factory. It does not restrict grant of credit in a given financial year. Whereas 50% of the credit can be taken in one financial year, the balance may be availed in the subsequent years, subject to the condition that the capital goods are still in possession and use of manufacturer of the final products in subsequent years. Clauses (a) and (b) of Sub-Rule (2) of Rule 57AC of the Rules, therefore, provide for a composite scheme. We are not concerned even therewith in this appeal.

Clause (c) of Sub-Rule (2) of Rule 57AC of the Rules is relevant for our purpose inasmuch as in this case, we have noticed hereinbefore, that the second generator set was received on 24.10.1998, but was not installed prior to 1.04.2000.

Applicability of Grasim Industries Ltd (supra) vis-a-vis Rule 57Q(3) of the Rules has now become irrelevant. Clause (c) of Sub-Rule (2) of Rule 57AC of the Rules deals with a situation with which we are concerned. By reason of the said provision, the credit sought to be given by reason of Rule 57Q(3) has not been taken away in its entirety, but merely postulates that if the credit had not already been availed, the same merely be obtained but limited only to the extent of 50% thereof.

8. A beneficient statute may have to be considered liberally but where a statute does not admit of

more than one interpretation, literal interpretation must be resorted to. The provision allows taking of credit but the same is circumscribed by the condition as is apparent from the use of the words "subject to" which is limited to an amount not exceeding 50% of the duty paid on such capital goods. The term "subject to" in the context assumes some importance.

In Ashok Leyland Ltd. v. State of Tamil Nadu & Anr. Â his Court held:

""Subject to" is an expression whereby limitation is expressed. The order is conclusive for all purposes."

This Court further noticed the dictionary meaning of "subject to" stating:

"Furthermore, the expression 'subject to' must be given effect to.

In Black's Law Dictionary, Fifth Edition at page 1278 the expression "Subject to" has been defined as under :

"Liable, subordinate, subservient, inferior,obedient to; governed or affected by; provided that; provided, answerable for. Homan v. Employers Reinsurance Corp, ., 345 Mo. 650, 136 S.W. 2d 289, 302"

[See also S.N. Chandrashekar and another v. State of Karnataka and Others, Â

9. Illustration appended to Sub-rule (2) of Rule 57AC of the Rules on its plain reading governs Sub-rules 2(a) and 2(b) of Rule 57AC and not Sub-rule 2(c) thereof as it refers to a situation where 'the machinery' has been received on April 16, 2000 and not prior thereto. Capital goods received after 1.04.2000 are governed by Clauses (a) and (b) of Sub-rule (2) of Rule 57AC whereas if received prior thereto, the same would be governed by Clause (c) thereof.

10. We, therefore, are of the opinion that the High Court was not correct in opining that CENVAT credit to the extent of 100% could be allowed in terms of Rule 57AC of the Rules.

11. Mr. Ramesh Singh, learned counsel appearing on behalf of the respondent, however, submitted that credit had been given only to 50% of the total amount of duty paid, as would appear from the order of the Commissioner dated 31.12.2001 which is in the following terms:

"On going through the sub rule 2(c) of Rule 57AC it is very much patent that the items of capital goods which have not been installed (emphasis supplied) before 1st day of April, 2000 would be

entitled to the credit for an amount not exceeding fifty per cent of the duty paid on such capital goods. I find that in the instant case also, it is uncontrovertible fact that the said Generator was not installed in the appellants factory prior to 01.04.2000, and therefore, they rightly availed of the credit of Rs. 7, 80, 036/- (50% of Rs. 15, 60, 072.28)"

But, what was done was that while granting relief to the extent of 50% in the relevant year, it purports to hold that the credit of balance 50% can be availed in subsequent years. The Commissioner in arriving at the said finding did not notice the distinction between Clauses (a) and (b) of Sub-rule (2) of Rule 57AC, on the one hand, and Clause (c) thereof, on the other. It also failed to notice that the illustration will have no application in the instant case. It is furthermore now a well-settled principle of law that an illustration cannot control the main provision.

12. For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.