SUPREME COURT OF INDIA

Sangam Spinners Ltd.

Vs.

Union of India & Ors.

C.A.No.476 of 2003

(Mukundakam Sharma and Anil R.Dave,JJ.,)

18.03.2011

JUDGMENT

Dr.Mukundakam Sharma,J.,

1. The issue that falls for consideration in these appeals is whether the appellants are entitled to credit of duty paid on High Speed Diesel oil at any time during the period commencing on and from 16th March, 1995 and ending with the day of Finance Act, 2000 which received assent of the President on 1st April, 2000. The appellants are engaged in the business of manufacturing and selling Man Made PV Blended Yarn and have installed a diesel generating set for generation of electricity for captive consumption in their factory premises. It is the case of the appellants that they purchased High Speed Diesel oil for generation of electricity from Indian Oil Corporation Ltd. / Hindustan Petroleum Corporation Ltd. through their sales office/depots in Rajasthan, which was cleared under heading 27.10 (sub heading 2710.90) on payment of central excise duty. The appellants are engaged in the business of manufacturing and selling Portland cement and have installed a diesel generating set for generation of electricity for captive consumption in their factory premises. It is the case of the appellants that they purchased High Speed Diesel oil for generation of electricity from Indian Oil Corporation Ltd. / Hindustan Petroleum Corporation Ltd. through their sales office/depots in Rajasthan, which was cleared under heading 27.10 (sub heading 2710.90) on payment of central excise duty. The appellants are engaged in the business of manufacturing and selling Cotton Yarn and Yarn of Synthetic/Artificial Staple Fiber and have installed a diesel generating set for generation of electricity for captive consumption in their factory premises. It is the case of the appellants that they purchased High Speed Diesel oil for generation of electricity from Indian Oil Corporation Ltd. / Hindustan Petroleum Corporation Ltd. through their sales office/depots in Rajasthan, which was cleared under heading 27.10 (sub heading 2710.90) on payment of central excise duty.

2. In all these Appeals, identical issues are involved and therefore, we propose to dispose of all these appeals by this common judgment and order.

3. The case of the appellants is that the said diesel oil is used as input/goods in the said diesel generation set for generation of electricity which is used in the manufacture of final goods or for other purposes in the factory of the appellants. They submitted a declaration in respect of the diesel as well as oil and lubricants as required under Rule 57G read with Rule 57B of the Central Excise Rules 1944, [for short "the Rules"] intending to avail the credit of duty on the said goods/inputs on 17/18.3.1997 with the Assistant Commissioner, Central Excise, Ajmer. But the Assistant Commissioner informed the appellants that after 1.3.1997, MODVAT credit was not available on high speed diesel oil and therefore no action could be taken on the declaration submitted by the company. The appellant company submitted declaration under Rule 57(H) of the Rules declaring the stock position of HSD oil as on 17.3.1997. They also prayed for condonation of delay in submitting the declaration. The Superintendent, Central Excise Range Beawar vide letter dated 25.6.1997 informed the appellant company that the MODVAT credit was not admissible on high speed diesel oil under Rule 57(A) of the Rules.

4. After denial of MODVAT credit, the appellant company was given a show cause notice by Superintendent Central Excise Range, Beawar to project as to why the credit given should not be disallowed to the appellant.

5. The appellant filed a writ petition in the year 1997 seeking direction to quash the Trade Notice No. 26/27, the entry regarding the explanation of the HSD Oil in the Notification No. 5/94 and also the order dated 2.9.1997.

6. The said writ petition came up for consideration before the Rajasthan High Court and by the impugned judgment and order dated 3.4.2002, the writ petition was dismissed.

7. Aggrieved by the aforesaid judgment and order, the present appeals were filed on which we heard the learned counsel appearing for the parties.

8. Counsel appearing for the parties drew our attention to Chapter V of the Rules which deals with levy of excise duty on manufactured goods other than salt. Rule 43 to Rule 57 under Section A of Chapter V provides the general provisions. Rule 57 speaks of finances and penalties. Rule 57A provides for availment of MODVAT credit in respect of inputs used in manufacture of the finished product. The rule empowers the Central Government to specify the final product by issuing notifications in the official gazette for the purpose of allowing MODVAT credit of any duty of excise paid on the goods i.e. inputs used in the manufacture of the said final products.

9. Learned counsel appearing for the parties also drew our attention to various notifications issued by the Government of India which are relevant for the purpose of deciding the present case and also to various decisions to which reference shall be made during the course of our discussion.

10. Learned counsel appearing for the appellants submitted that the High Court in the impugned judgment failed to draw a distinction between an accrued and vested right because

of the operation of the Rules and the power to tax which in certain circumstances could be used retrospectively by issuing a validating Act to cure the defect in the statute. It was also contended that MODVAT credit is an accrued and vested right and therefore it would be governed by the Rules prevailing on that date and such vested and accrued right cannot be taken away by an Act of Parliament giving retrospective effect. It was also contended that the explanation added to Rule 57B with notification dated 2.3.1998 was retrospective in nature and the explanation can only clarify a legal position already existing but it cannot restrict or enlarge the scope of the substantive provisions of law so as to nullify the substantive provisions itself. Another submission of the counsel appearing for the appellants was that the Finance Act of 2000 intends to take away the rights accrued retrospectively which is burdensome and oppressive as the appellants were unable to pass on the burden on the customer and that in view of the law enacted, the appellants would have to bear the entire burden and that too retrospectively and therefore such provision is in violation of Article 14 of the Constitution of India.

11. Counsel appearing for the respondent, however, refuted all the aforesaid allegations and submitted that the Act sought to be named as a validating Act by the appellant is not a validating Act, but in fact explanatory in nature in order to clarify and put in proper perspective the legal position as existing on the issue. It was also submitted that the courts have held that the power of the legislature to validate the acts done in respect of a particular provision is permissible particularly in respect of fiscal matter. Reference was also made to the decision of this Court in Central Excise, Meerut Vs. Rama Vision Ltd. reported in 2005 (181) ELT 201 (SC), wherein it was held by this Court that no such MODVAT credit is available on the duty paid on HSD Oil as fuel in the generation of electricity for the period 16.3.1995 to 1.4.2000.

12. Reference was also made to the decision of this Court in M/s. Gujarat Ambuja Cement Vs. UOI reported in 2005 (182) ELT 33 (SC), wherein this Court held that because of the inherent complexity of fiscal adjustments of diverse elements in the field of tax, the legislature has large discretion in classifying as to what should be taxed in which manner. It was also the submission of the learned counsel appearing for the respondents that the respondents never intended to allow any such credit which is being claimed by the appellants and a Finance Bill was introduced justifying the action taken to deny the credit of any duty paid on the HSD oil from 16.3.1995. In fact the explanatory note is not issued to signify any legislative change but the same was issued in order to explain the real position as existing by issuing an Act by way of Finance Bill 2000 and thereafter the Finance Act, 2000 which was passed by the Parliament and received the assent of the Parliament on 12.5.2000.

13. In the context of the aforesaid submissions of the counsel appearing for the parties, we proceed to deal with the issues raised before us more elaborately. However, in order to effectively deal with and understand the implications and ambit of the issues raised it may be necessary to set out the various relevant provisions of the Central Excise Act, 1944 [for short "the Act"], and the Rules framed thereunder and also the various notifications issued which are relevant for the purpose of deciding the present issues.

14. In order to appreciate the contentions raised and also to answer the issue that falls for our consideration it would be necessary to extract herein relevant part of the notifications in question as also relevant part of Section 112 of the Finance Act, 2000 and such other related provisions.

15. The Finance Act, 2000 received the assent of the President on 1st April, 2000 and the said Act was enacted for validation of the denial of duty paid on High Speed Diesel oil. Sub-section (1) of Section 112 of the Finance Act, 2000, which is material, reads as follows:

> "112(1) Notwithstanding anything contained in any rule of the Central Excise Rules, 1944, no credit of any duty paid on high speed diesel oil at any time during the period commencing on and from the 16th March, 1995 and ending with the day, the Finance Act, 2000 received the assent of the President shall be deemed to be admissible."

16. In order to understand and appreciate the true import of the aforesaid provision it is also necessary to read clause 108 of the Finance Act, 2000, the same reads as follows:

> "Clause 108 - seeks to deny credit of the duty paid on high speed diesel oil when used in the manufacture of excisable goods with retrospective effect from the 16th day of March, 1995. It was never the legislative intention to permit credit of duty paid on high speed diesel oil. The clause also seeks to validate the action taken in the past on this basis. This amendment has become necessary to overcome certain judicial pronouncements."

In this connection, memorandum to legislative changes, which is a part of the document is also required to be noted, which reads as under:

> "Modvat Credit on high speed diesel oil was not intended to be allowed at any stage. Suitable retrospective provision made to give effect to confirm this."

17. We are also concerned for the purpose of deciding the issues with the contents and scope of with Notification No. 5/94-CE(NT) dated 01.03.1994, Notification No. 8/95-CE(NT) dated 16.03.1995 and Notification No. 11/95-CE(NT) dated 16.03.1995.

18. Notification No. 5/94-CE(NT) dated 01.03.1994 was issued by the Central Government specifying therein the final products described in column (3) of the Table in respect of which credit of duty under MODVAT was made available. However, in the said table it was provided that high speed diesel oil which fell under tariff entry 2710.31 of the Central Excise Tariff Act, 1985, would not be considered as eligible input and it was specifically excluded from the list of eligible inputs. In the same notification, it was mentioned that the final product, Man Made PV Blended Yarn falling under Chapter 55 of the Central Excise Tariff Act, 1985 was also specifically excluded.

19. The aforesaid notification was issued in exercise of the powers conferred by Rule 57A of the Central Excise Rules, 1944. By issuing the said notification the Central Government identified the inputs in respect of which duty paid was allowed as credit if they were used in relation to the manufacture of the final products which were also specified in the notification as indicated hereinbefore. The high speed diesel oil and the final product of the Man Made PV Blended Yarn falling under Chapter 55 of the Central Excise Tariff Act, 1985 were specifically excluded from the list of eligible inputs.

20. The aforesaid notification came to be amended specifically by issuing Notification No. 8/95-CE(NT) dated 16.03.1995, where also high speed diesel oil classifiable under heading 27.10 was specifically excluded from the list of eligible inputs. Woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 were also specifically excluded from the list of final products. Thus, the input and the final product of the appellants were specifically excluded in the Notification No. 8/95-CE(NT) dated 16.03.1995.

21. Reliance was also placed on the 2nd proviso in Rule 57D by Notification No. 11/95-CE (NT) dated 16th March, 1995.

The aforesaid amendment was to the following effect:

> "4. In the said Rules, in Rule 57D, for the proviso, the following provisos shall be substituted, namely:-
>
> Provided that such intermediate products are –
>
> (a) .....
>
> (b) Specified as inputs or as final products under a notification issued under rule 57A: Provided that the credit of specified duty shall be allowed in respect of inputs which are used for generation of electricity, used within the factory of production for manufacture of final products or for any other purpose."

22. It is to be remembered at this stage that although the aforesaid 2nd proviso in Rule 57D was brought in, but inputs like high speed diesel oil used for the purpose of generation of electricity was specifically excluded by another Notification issued on the same date i.e. on 16.03.1995 to which we have already made a reference.

23. The contention of the appellants in this regard was that by the insertion of the 2nd proviso in Rule 57D by Notification No. 11/95-CE (NT) dated 16th March, 1995 they became entitled for the credit of duty paid on high speed diesel oil which was used for generation of electricity.

24. But in our observation, high speed diesel oil for the purpose of generation of electricity was specifically excluded from the list of eligible inputs in the Notification No. 5/94-

CE(NT) dated 1st March, 1994 issued under Rule 57A also under Notification No. 8/95-CE(NT) dated 16.3.1995 from the list of eligible inputs. Therefore on a conjoint reading of the aforesaid Notifications dated 1st March, 1994 and 16.3.1995 as also the amendment to Rule 57D, it is sufficiently indicated that the appellants are not entitled to credit of duty paid in respect of high speed diesel oil which was used for the purpose of generation of electricity.

25. Our attention was also drawn to the Notification dated 1.3.1997 whereby the Central Government amended Central Excise Rules and the provisos of Rule 57D were deleted, but the appellants, however, claim that they became entitled to such benefit as per Rule 57B. Relevant part of which reads as follows:

> "57B. Eligibility of credit of duty on certain goods:-
>
> (1) Notwithstanding anything contained in Rule 57A, the manufacturer of final products shall be allowed to take credit of the specified duty paid on the following goods, used in or in relation to the manufacture of the final products, whether directly or indirectly and whether contained in the final products or not, namely,:-
>
> (i) goods which are manufactured and used within the factory of production;
> (ii) paints;
>
> (iii) goods used as fuel;
>
> (iv) goods used for generation of electricity or steam, used for manufacture of final products or for any other purpose, within the factory of production.
> xxxxxxxxxxxxxxxxxxxxxxxxxxx"

26. On 10.03.1997, a Notification No. B42/1/97 was issued in the nature of corrigendum whereby in Rule 57B in sub-rule (1) for "goods" wherever it occurs it was provided that it should be read as "Inputs". The relevant part of the same read as under:

> "Explanation: For the purposes of this sub-rule, it is hereby clarified that the term "inputs" refers only to such inputs as may be specified in a notification issued under rule 57A."

27. We may also refer to another Notification No. 5/98- CE(NT) dated 2.3.1998 wherein an explanation was added in Rule 57B in sub-rule (1), which reads as follows:

> "(I) in rule 57B, in sub-rule (1), for "goods" wherever it occurs read "inputs"."

28. A careful reading of the above said provision would make it explicitly clear that by adding the aforesaid explanation by Notification No. 5/98-CE(NT) dated 2.3.1998 the inputs mentioned in Rule 57B refers only to such inputs as specified in the notification issued under Rule 57A. Accordingly, the appellants are not entitled to get the benefit of, credit of duty

paid on High Speed Diesel oil as high speed diesel oil is excluded from the list of eligible inputs as per notification issued under Rule 57A of the Central Excise Rules, 1944.

29. It is the contention of the respondents that despite the aforesaid clear position the Central Excise Gold (Control) Appellate Tribunal (in short "the Tribunal") delivered three judgments, namely,

> "(a) India Cements Ltd. vs. Commissioner of Customs & C.Ex., Hyderabad reported in 1997 (95) .E.L.T. 520.
>
> (b) Jindal Polymers vs. Commissioner of C. Ex., Indore reported in 1999 (114) E.L.T. 322; and
>
> (c) Commissioner of Central Excise, Shillong vs. Vinay Cement Ltd. reported in 1999 (114) E.L.T. 753. wherein it was held that high speed diesel oil would be considered as eligible input to get the benefit."

30. The intention regarding availment of the credit under MODVAT would be guided and governed by the aforesaid notifications which specifically excluded the benefit of availment of such credit as high speed diesel oil is specifically excluded from the list of eligible inputs as per notification under Rule 57A of the Central Excise Rules, 1944. Since it was specifically excluded from the list of eligible inputs such credit though may otherwise be available would not have credited a vested right.

31. In the light of the aforesaid factual as also legal position, this Court in the case of Commissioner of Central Excise, Hyderabad Vs. Associated Cement Companies Ltd. reported in 2005 180 ELT 3 (S.C.) and Commissioner of Central Excise, Meerut Vs. Rama Vision reported in 2005 181 ELT 201 clearly laid down the proposition that no credit is admissible on any duty paid on high speed diesel oil for the period commencing from 16.3.1995 and ending with the day of Finance Act, 2000 which received the assent of the President on 1st April, 2000.

32. Despite the aforesaid factual position, since the Tribunal held otherwise, therefore, there was a necessity for the Finance Act to be brought in whereby a clarificatory explanation to the legal position was laid down.

33. Despite the aforesaid two decisions of this court laying down the proposition, it must be clarified that in those decisions validity of Section 112 of the Finance Act was not challenged and therefore this Court did not have the opportunity to examine all the aspects of Section 112.

34. In the case of Tata Motors Ltd. Vs. State of Maharashtra reported in (2004) 5 SCC 783, this Court observed that retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground when challenged

on the ground of unconstitutionality. However, in the present case the ratio of the Tata Motors case [supra] would not be applicable as the appellants in this case never had a right with regard to availment of MODVAT credit. Hence, the contentions of the appellants that their vested and accrued right cannot be taken away with retrospective effect cannot be held as just and proper.

35. We have already discussed the applicability of the provisions of the Central Excise Act and the Rules made there under, which are also read in context of the various notifications issued by the Government of India. When read collectively in the aforesaid context the only conclusion that can be drawn is that the appellants are not entitled to the credit of duty as high speed diesel oil is specifically excluded from the list of eligible inputs as per the notification issued under Rule 57A of the Central Excise Rules 1944. Therefore, the contention of the counsel appearing for the appellants that explanation to Section 57-B not being clarificatory, and to whittle down the width of non-obstante clause of Section 57-B, cannot be accepted. The contention that the provisions of Rule 57B prevails over Rule 57A and consequently the inputs enumerated under Rule 57B would be inputs for the availment of MODVAT credit in spite of any provision to the contrary which may be contained in Rule 57A, is misreading of the provisions, for in our considered opinion, the aforesaid explanation added to the Notification No. 5/98 dated 2.3.1998, clearly intends that the inputs mentioned in Rule 57B refers only to such inputs as specified in a notification issued under Rule 57A.

36. So far the contention with regard to concept of MODVAT is concerned, the intention regarding availment of the credit under MODVAT would be guided and governed by the aforesaid notifications which specifically excluded the benefit of availment of such credit, as high speed diesel is specifically excluded from the list of eligible inputs as per the notification under Section 57A of the Central Excise Rules. Since, it was specifically excluded, such credit though may be otherwise available, could not have created any vested right. In our considered opinion the intention of the legislature is clear from the beginning to exclude the benefit of such credit by excluding high speed diesel oil from the list of eligible inputs by making substantial exclusion thereof in the notifications referred to hereinbefore. The aforesaid position is also verified by the decision of this Court in the case of Commissioner of Central Excise, Hyderabad Vs. Associated Cement Companies Ltd. reported in 2005 180 ELT 3 (S.C.) and Commissioner of Central Excise, Meerut Vs. Rama Vision reported in 2005 181 ELT 201 (supra).

37.The aforesaid decisions of this Court have clearly laid down the proposition that no credit is admissible on any duty paid on high speed diesel oil for the period commencing from 16.3.1995 and ending with the day of Finance Act, 2000 which received the assent of the President on 1st April, 2000.

38.Despite the aforesaid fact, since the Tribunal held otherwise, therefore, there was a necessity for the Finance Act to be brought in giving a clarificatory explanation to the legal position which is being prevailing all alone and established by the long list of the notifications which were issued from time to time and referred to hereinbefore.

39. We may also appropriately refer to at this stage to the decision of this Court in Shri Prithvi Cotton Mills Ltd. and Another Vs. Broach Borough Municipality and Ors. reported in (1969) 2 SCC 283 wherein the Supreme Court in paragraph 4 has stated thus:-

> "4. Before we examine Section 3 to find out whether it is effective in its purpose or not we may say a few words about validating statutes in general. When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for, if it does not, the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of a tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a Validating Law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes adequate provisions in the Validating Law for a valid imposition of the tax."

40. There are similar decisions to that effect of this Court in D.G. Gose & Co. (Agents) Pvt. Ltd. Vs. State of Kerala & Anr. reported in (1980) 2 SCC 410. In paragraph 14 of the said judgment, this Court stated thus:-

"14. Craies on Statute Law, seventh Edn., has stated the meaning of "retrospective" at p. 367 as follows:

> "A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past. But a statute `is not properly called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing'."
>
> It has however, not been shown how it could be said that the Act has taken away or impaired any vested right of the assessees before us which they had acquired under any existing law, or what that vested right was. It may be that there was no liability to building tax until the promulgation of the Act (earlier the Ordinances) but mere absence of an earlier taxing statute cannot be said to create a "vested right", under any existing law, that it shall not be levied in future with effect from a date anterior to the passing of the Act. Nor can it be said that by imposing the building tax from an earlier date any new obligation or disability has been attached in respect of any earlier transaction or consideration. The Act is not therefore retrospective in the strictly technical sense."

41.In the light of the aforesaid decisions and legal position which emanates from reading of the provisions of the Act and the Rules framed there under and notifications which are issued from time to time, the contentions of the counsel appearing for the appellants are found to be without any merit. Since the product High Speed Diesel oil was excluded specifically from the list of eligible inputs in the notifications, there was no question of creation of any right in favour of the appellant to avail such benefit. Therefore, contention that a vested or accrued right is sought to be taken away by giving retrospective effect is without any merit. Consequently, in the facts of this case we are not required to answer whether a vested or accrued right could be taken away with retrospective effect. Further on a conjoint reading of all the notifications it is clearly established that the intention of the Government all along was to exclude the appellants from getting the benefit of the MODVAT credit, therefore, the contentions that the Finance Act violates the vested right is without any basis. The various decisions referred to and relied upon by the counsel appearing for the appellants in support of his contention that the vested right created in their favour could not have been divested by the respondent retrospectively is found to be based on misreading of the language of the aforesaid notifications which do not support, but in fact destroy the very basis of the case of the appellants.

42. In that view of the matter, we find no merit in these appeals which are dismissed but leaving the parties to bear their own costs.