**BOMBAY HIGH COURT**

I.V.P. Ltd

Vs

Union of India

(R Khandeparkar,C.J. J.P Devadhar, J.)

02.12.2003

**JUDGMENT**

**J.P, Devadhar, J.**

1. The petitioners have challenged the letter dated 6-9-1989 wherein the respondents had informed the petitioners that the money credit accumulated to the extent of Rs. 35,52,578.50 ps. as per the Notification No. 27/87, dated 1-3-1987 cannot be utilised by the petitioners in view of the fact that the said Notification No. 27/87 has been rescinded with effect from 25-8-1989. By the said letter, the petitioners were called upon to reverse the credit to the extent of Rs. 1,59/245/- taken during the period 25-8-1989 to 28-8-1989. The petitioners have also challenged the validity of Notification dated 25-8-1989.

2. While admitting the petition and granting interim relief, this Court on 18-10-1989 stayed the operation of Notification dated 25-8-1989 and directed that pending the hearing and final disposal of the petition, the petitioners will be entitled to utilise the credit already accrued to them up to 25-8-1989 as per Notification No. 27/87, dated 1-3-1987. In the said order the undertaking of the petitioners that if the petitioners ultimately fail then they would abide by the orders of the Court regarding credit taken pursuant to the interim order of this Court, was accepted.

3. The Apex Court, in the case of *Tungabhadra Indus, Ltd. v. Union of India*[1], held that the accumulated credit under Notification No. 27/87 does not lapse after the said Notification is rescinded on 25-8-1989. The Apex Court however clarified that where the assessee is entitled to take money credit under subsequent Notification No. 45/89, dated 11-10-1989, then the assessee cannot utilise accumulated credit under Notification No. 27/87 and under Notification No. 45/89 simultaneously. In other words, the Apex Court held that even after the Notification No. 27/87 was rescinded on 25-8-1989, the accumulated credit could be utilised by the petitioners. As per the above decision of the Apex Court, the petitioners are entitled to succeed and the impugned

letter dated 6-9-1989 denying utilisation of the accumulated credit is liable to be quashed and set aside.

4. The respondents in their affidavit in reply have stated that taking undue advantage of the interim relief granted by this Court, the petitioners have taken credit both under Notification Nos. 27/87 and 45/89. As per the Apex Court decision, in the case of Tungabhadra Industries (supra) the petitioners could not simultaneously utilise credit under both the Notifications. According to the respondents, the excess credit utilised by the petitioners under the Notification works out to Rs. 16,43,710.50 ps. It is the case of the respondents that during September, 1989 to March, 1990 the petitioners have utilised credit simultaneously under both the Notifications which is contrary to the law laid down by the Apex Court and therefore the petitioners must be directed to refund the excess credit of Rs. 16,43,710.50 wrongly availed by them.

5. The issue raised in this petition was whether the accumulated credit under Notification No. 27/87 could be availed of even after Notification No. 27/87 was rescinded on 25-8-1989. From the judgment of the Apex Court in the case of Tungabhadra Industries Ltd., (supra), it is clear that even after the Notification of 27/87 was rescinded on 25-8-1989 the accumulated credit could be utilised. Therefore the interim relief granted by this Court permitting utilisation of the accumulated credit under Notification No. 27/87 is in consonance with the law laid down by the Apex Court. Therefore, the contention of the respondents that on account of the interim order of this Court the petitioners have availed credit simultaneously under Notification Nos. 27/87 and 45/89 is incorrect. While availing the accumulated credit as per the interim order of this Court, if the petitioners had wrongly utilised credit available under Notification No. 45/89, it was open to the respondents to restrain the petitioners from utilising the credit simultaneously. However, it is not open for the respondents to contend that because of the interim order the petitioners have availed credit under both the Notifications simultaneously. As stated hereinabove, the issue raised in the petition and the interim relief granted by this Court pertained to the accumulated credit only. Therefore, any credit wrongly taken under Notification No. 45/89 is wholly beyond the purview of the present petition. If the petitioners have wrongly taken credit simultaneously under Notification No. 45/89, then it is open to the respondents to initiate action against the petitioners as is permissible in law.

6. In spite of the above position, at our instance, the petitioners without prejudice to their rights and contention were willing to deposit the excess credit on account of simultaneous utilisation of credit under Notification No. 45/89, provided the respondents were agreeable to allow the petitioners to utilise that credit hereafter. However, this offer was not acceptable to the Revenue because according to the Revenue under the present Cenvat Rules there is no provision for adjustment of the balance money credit accrued under Notification No. 45/89. In this view of the

matter, we had no option but to decide the petition on its own merits.

7. As stated hereinabove, the only issue raised in the petition is whether the accumulated credit under Notification No. 27/87 lapses from 25-8-1989. As held by the Apex Court in the case of Tungabhadra Industries (supra), the accumulated credit under Notification No. 27/87 though rescinded on 25-8-1989 is a vested right and does not lapse and it is open to the petitioners to avail the said credit even after the said Notification was rescinded on 25-8-1989. Accordingly we hold that the petitioners were entitled to utilise the credit accumulated under Notification No. 27/87 even after it was rescinded on 25-8-1989 and the petitioners have rightly utilised the said credit as per the interim order of this Court. As regards wrongful utilisation of credit under Notification No. 45/89, the same being not the subject-matter of the petition, no relief can be granted in favour of the respondents and the respondents will be at liberty to adopt such remedial measures as is permissible in law.

8. Accordingly, the petition succeeds. Rule is made absolute in terms of prayer Clause (a) with no order as to costs.

Cases Referred.

1reported in 2000 (118) E.L.T. 545 (S.C)