HIGH COURT OF KARNATAKA

Commissioner of Central Excise
v.
Tata Advanced Materials Ltd.

N. KUMAR AND RAVI MALIMATH, JJ.
CEA NO. 83 OF 2009

APRIL 11, 2011

Jeevan J. Neeralgi for the Appellant.
Raghuraman and **Chythanya** for the Respondent.

JUDGMENT

1. This appeal is by the revenue challenging the order passed by the Tribunal holding that the assessee is not liable to reverse the availment of cenvat credit in support of the goods destroyed for which he claimed compensation from the Insurance Company.

2. The assessee purchased the capital goods in the year 1998 and paid the excise duty. The said capital goods were used in manufacturing of excisable goods. Therefore, the assessee availed the cenvat credit and utilised the same at the time of clearing the excisable goods manufactured in his factory. The said capital goods were destroyed in a fire accident on 20.05.2003. Thereafter, the assessee purchased new capital goods vide Invoice No.393 dated 27.11.2003, On that basis, he put-forth a claim before the Insurance Company for reimbursement in terms of the insurance policy taken. The Insurance Company reimbursed the amount to the assessee, which included the excise duty, which the assessee had paid on the capital goods. On coming to know of the same, the Excise Department called upon the assessee to reverse the cenvat credit. When the same was not done, they raised a demand for payment of the said amount. The assessee preferred an appeal challenging the said demand, which came to be dismissed by the Commissioner of Appeals. Against the said order, they preferred an appeal to the Tribunal. The Tribunal held that the assessee had legally availed the cenvat credit and further used the same for payment of duty on the final products. When the goods were destroyed, they were compensated by the Insurance Company including the excise duty. There is no legal provision under the Excise Act, 1944 empowering the Excise Authorities to reverse the cenvat credit or to put forth their demand. The contention of the revenue that the assessee had a double benefit has no substance as the claim by the Excise Authorities is without any basis and therefore, he set aside the order passed by the Original Authority as well as the Appellate Authority and granted the relief to the assessee. Aggrieved by the same, the revenue is in appeal.

3. We have heard the learned Counsel for the parties.

4. The appeal was admitted to consider the following substantial questions of law:

1. Whether an assessee can claim Cenvat credit in respect of an input which otherwise go into the manufacturing of the output of an assessee on which he is liable to pay the duty as in the present case the goods in respect of which the

assessee was claiming Cenvat credit, had in fact, been destroyed in fire accident and the assessee, on the other hand', had received equivalent value of the goods destroyed in fire accident from the insurance company?
2. Whether the impugned order of the Tribunal amounts to encouraging unjust enrichment in the hands of an assessee who claims Cenvat credit in respect of goods which has not in fact gone into the manufacturing activity of the assessee?

5. The Supreme Court in the case of the Collector of Central Excise v. Dai Ichi Karnataka Ltd. 1999 (112) ELT 353 at para 17 held as under:-

"17. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product.

There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."

6. Therefore, it is dear that there is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been irregularly taken in which event it stands cancelled or if utilised has to be paid for. This is not the case of the revenue. In the instant case, when the assessee purchased the capital goods and when he has paid the excise duty on them, in law, he is entitled to get the credit on the duty paid while clearing the finished products from his factory. Accordingly, he utilised the cenvat credit and cleared the finished products. It is about three years after such payment, the capital goods were destroyed in fire. As the assessee had insured the said capital goods, he put forth a claim for payment of the loss sustained by him, which includes the payment of excise duty. The Insurance Company in terms of the policy has compensated the assessee. Merely because the Insurance Company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the cenvat credit wrong or irregular. At the same time, it does not confer any right on the Excise Department to demand reversal of credit or default to pay the said amount. The assessee has paid the premium and covered the risk of this capital goods and when the goods were destroyed in terms of the insurance policy, the Insurance Company has compensated the assessee. It is not a case of double payment as contended by the department. At any rate, the Excise Department has no say in the instant case as held by the Apex Court. In that view of the matter, the substantial questions of law framed in this appeal are answered in favour of the assessee and against the revenue. Accordingly, the appeal is dismissed.