CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI

PRINCIPAL BENCH,COURT NO.I
Appeal No.E/55702/2013-Ex [DB]

(Arising out of Order-in-Appeal No.186/(RDN)CE/JPR-1/2012 dated 05.11.2012 passed by the Commissioner of Central Excise-Appeals, Jaipur-I)

M/s Welcure Drugs & Pharmaceuticals Ltd …Appellant
Vs
CCE Jaipur …Respondent

Appearance:
Shri Anuj Sharma, Advocate for the Appellant
Shri RK Manjhi, DR for the Respondent

COARM
Hon'ble Mr Justice (Dr) Satish Chandra, President
Hon'ble Mr Ashok K. Arya, Member (Technical)

Date of hearing: 27.03.2017
Dt. of pronouncement:20.04.2017

FINAL ORDER NO. 52941/2017

Per Ashok K. Arya:

The appellant M/s Welcure Drugs & Pharmecauticals Ltd is in appeal against Order-in-Appeal No.186/2012 whereunder their refund claim of Rs.1,34,45,987/- has been rejected.

2. The brief facts are that:

(i) Appellant was manufacturing medicine, namely, Odoxin, which was governed by direct price control order.

(ii) A duty of 4% was paid on Odoxin whereas input credit utilized in manufacture of Odoxin suffered a duty of 10 per cent on local inputs and 14% on imported inputs. As a result, there was wide gap between CENVAT credit availed and duty paid on the final product.

(iii) The appellant was unable to utilize the CENVAT credit by paying the duty on final product resulting into a credit balance of Rs.1,34,45,987/- lying in CENVAT credit.

(iv) The appellant closed their factory on 31.03.2011 and applied for cash refund of the CENVAT amount of Rs.1,34,45,987/- lying in their CENVAT credit account.

(v) The appellant's application for cash refund has been rejected by the Asstt. Commissioner and Commissioner (Appeals). Hence this appeal before the Tribunal.

3. With the above background, we have heard ld Counsels, Sh Anuj Sharma for the Appellant and Sh RK Manjhi for the Revenue.

4. After having heard both the parties and perusal of the case record, it appears that law of Central Excise which includes Central Excise Rules and CENVAT Credit Rules does not permit cash refund of CENVAT credit amount except for in case of the exports. The appellant has cited in support Hon'ble Karnataka High Court decision in case of *Union of India Vs Slovak India Trading Co. (P) Ltd*, 2006 (201) E.L.T. 559 (Kar.).

5. However, the subject matter has been discussed in detail by the larger bench of the Tribunal in case of *M/s Steel Strips Vs CCE Ludhiana,* 2011 TIOL-656-CESTAT-DFL-LB, whereunder Hon'ble Karnataka High Court decision (supra) was also referred to but was distinguished mainly on the premise that in absence of statutory mandate for refund, pleas of injustice, hardship or equity and good conscience cannot influence fiscal courts without the same being embedded in statutory provisions; absence of express grant is an implied bar for refund. The larger bench of the Tribunal in the said case *inter alia* observes as under:

POLICY OF REFUND OF INPUT CREDIT IS REGULATED BY STATUTORY PROVISIONS

5.7 A distinction between provisions of status which are of substantive character and are built in with certain specific objectives of policy, on the one hand, and those which are merely procedural and technical in their nature, on the other, must be kept clearly distinguished. An eligibility criteria to get refund calls for a strict construction, although construction of a condition thereof may be given a liberal meaning if the same is directory in nature. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can be reasonably expected of it, but failed or faulted in some minor or inconsequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of "substantial compliance" depends upon the facts and circumstances of each case and the purpose and object to be achieved and the context of the prerequisites which are essential to achieve the object and purpose of the rule or the regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuates the object and the purpose of the statute has not been met. Certainly, it means that the Court should determine whether the statute has been followed sufficiently so as to carry out the intend for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential every reasonable objective of the statute and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.

REFUNDS AND EXEMPTION ARE GOVERNED BY RULE OF STRICT COMPLIANCE

5.8 Fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefit of an exemption clause that are important. Substantial compliance of an enactment is insisted, where mandatory and directory requirements are lumped tog ether, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithsta nding the non-compliance of directory requirement. In cases where substantial compliance has been found there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important top invoked a tax or duty exemption and to forgive non-compliance for either unimportant and tangential requirement or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.

SUBSTANCE AND ESSENCE OF STATUTE ARE PARAMOUND CONSIDERATIONS

5.9 The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute/ if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance of those factors which are considered as essential, in the cases of refund substantial compliance to the law granting refund is sine qua non.

5.10 ….

5.11 ….

5.12 The question before the Larger Bench in *Gauri Plasticulture (P) Ltd – 2006 (202) ELT 199 (Tri.–LB)* = ***(2006-TIOL-1121-CESTAT-MUM-I.B)*** was whether duty debited in RG 23 A part II can be refunded in cash when the refund becomes otherwise due. The larger Bench without recording the submissions of either side merely discussed outcome of various decisions beginning from para 3 to 7 of the order and came to the conclusion in Para 10 of the reported order that if denial of credit has compelled an assessee to pay duty out of PLA, the refund of the same would be in cash to the extent of payment of duty in cash during that period. It was further held that if no cash payment towards duty were made through PLSA and credit would have remained unutilized in the account books, such credit cannot be allowed by way of cash.

5.13 While arriving at the aforesaid conclusion, the Larger Bench in para 11 of the order recorded the fact that in the case before them debt entry in credit account was made by the Appellants on 23.12.2000 while central excise registration was surrendered bys the assessee in Sept ember, 2000 i.e. before making the debt entry in RG – 23 account. Further observation of the Bench was even if the amounts towards duty would not have been debited by them in the said account, the same would have been remained unutilized. As such, on the success of their appeal before the Commissioner (Appeals), they cannot claim the refund of the same in cash, inasmuch as on account of such debit entry, they have not discharged any duty out of PLA. If the said refund is granted to the appellants by way of cash, t he same would amount to enrich him unjustifiably. It is well settled principles of law that what cannot be done directly should not be allowed to be done indirectly. On surrendering of their licence, the appellants were not allowed to claim the refund of the unutilized credit in the Modvat account and the same would have lapsed. As such, utilization of the same towards payment of disputed demand of duty, after surrendering of their registration, has not led to a situation where the assessee was compelled not to use the credit for regular clearances and had to make payment from PLA. As such, in this case we find that the refund in cash is not to be allowed.

5.14 **….**

5.15 **….**

5.16 Modvat law has codified procedure for adjustment of duty liability against Modvat Account. This is required to be carried out in accordance with law and unadjusted amount s not expressly remitted to be refunded. In absence of express provision to grant refund, that is difficult to entertain except in the case of export. There cannot be presumption that in the absence of department to make refund in other cases that is permissible. Refund results in outflow from treasury, which needs sanction of law and an order of refund for such purpose is sine qua non. Law has only recognized the event of export of goods for refund of Modvat credit a has been rightly pleaded by Revenue and present reference is neither the case of "otherwise" due of the refund nor the case of exported goods. Similarly absence of express grant in statute does not imply ipso facto entitlement to refund. So also absence of express grant is an implied bar for refund. When right to refund does not accrue under law, claim thereof is inconceivable. Therefore, present reference is to be answered negatively and goods and for no other reason whatsoever that may be. As has been stated earlier that equity, justice and good conscience are the guiding factors for Civil Courts, no fiscal Courts are governed by these concepts, the present refere3nce is bound to be answered in favour of Revenue and it is answered accordingly.

6. The Tribunal in the case of *Scan Synthetics Ltd Vs Co mmissioner of Central Excise, Jaipur-I*, 2016-TIOL-1915-CESTAT-DEL also held there is no provision in Central Excise Act or in that CENVAT credit rules to give cash refund of accumulated credit. CESTAT in this decision observes as under:

> **"7.** While there can be no dispute that the decision of the Hon'ble High Court would prevail, in case of dispute with the Tribunal's decision but we find that Larger Bench decision of the Tribunal, which has resolved the disputed issue in favour of the Revenue, was duly aware of the Hon'ble Karnataka High Court decision, as confirmed by the Hon'ble Supreme Court. As such, the Larger Bench decision stands given by considering the Hon'ble Karnataka High Court, and subsequent confirmation of the same by the Hon'ble Supreme Court. Further, Tribunal being a creature of the Statute cannot go beyond the provisions of the Act and can't exercise power which are not available to it like writ jurisdiction powers. Judicial discipline requires us to follow the law declared by the Larger Bench's of the Tribunal. We also note that the insistence of the learned Advocate on the fact that appeal filed by the Revenue before Hon'ble Supreme Court in the case of Union of India vs Slovak India Trading Co. Pvt Ltd (supra) stands dismissed by the Hon,ble Supreme Court and as such it is the declaration of law by the Hon'ble Supreme Court which should be followed, is not appropriate. Apart from the fact that the dismissal of the appeal by the Hon'ble Supreme Court already stands taken note of by the Larger Bench, we also note that dismissal of appeal by he Hon'ble Supreme Court was in view of the concession made by the learned ASG appearing for the Union of India. As such, it cannot be said that the Hon'ble Supreme Court interpreted and declared the law in favour of assessee."

7. In the light of decisions (supra) and observations of the CESTAT (supra) and the above discussions, the subject refund claim of the CENVAT amount lying in the appellant's account is not admissible. Consequently, the impugned order is sustained and the appeal is dismissed as without merits.

(Pronounced in the open court on 20.04.2017)

(Justice (Dr) Satish Chandra)
President

(Ashok Kr Arya)
Member(Tech)

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