CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86609 of 2013

(Arising out of Order-in-Original No. 09/SJB/Commr/M-II/12-13 dated 16.01.2013 passed by the Commissioner of Central Excise, Mumbai-II)

Commissioner of Central Excise, Mumbai-II .... Appellant
9th Floor, Piramal Chambers, Jijibhoy Lane,
Lalbaug, Mumbai – 400 012

Versus

M/s KEC International Ltd. .... Respondent
LBS Marg, Kurla (W), Mumbai – 400 070

Appearance:
Shri P.K. Acharya, Authorized Representative for the Appellant

Shri S.S. Gupta, C.A. for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85585/2024

Date of Hearing: 10.06.2024
Date of Decision: 10.06.2024

PER: S.K. MOHANTY

Briefly stated the facts of the case are that the respondents herein, during the relevant period, were engaged in the manufacture of excisable goods, falling under Chapter sub-heading 7308.90 of Central Excise Tariff Act, 1985. As a manufacturer of excisable goods, the appellants were registered with the Central Excise Department. Due to labour unrest in the factory, the respondents had temporarily suspended the manufacturing activity since September, 1997. However, considering the facts that the manufacturing activity will again commence, the respondents had purchased the mild steel high tensile angles on payment of central excise duty @ 12% *ad valorem* levied under Section 3A of the Central Excise Act, 1944 on deemed annual production capacity basis read with Notification No. 58/1997-C.E. dated 30.08.1997. Central excise duties paid on such goods were availed as MODVAT credit of deemed duty under Rule 57A(6) of the Central Excise Rules, 1944 by the respondents. Since the manufacturing activities were suspended, there was no scope for utilization of the MODVAT credit availed by the respondents on such inputs and accordingly, the same were exported on payment of central excise duty at the tariff rate of 15% *ad valorem.* Consequent upon exportation of such inputs, the respondents had filed the rebate claim applications before the jurisdictional Central Excise authorities, which was favourably considered and the claimed amount was sanctioned in favour of the respondents. The Department. in this case, had issued a show-cause notice on 25.07.2002, seeking for denial of MODVAT credit amounting to Rs.42,96,953/- availed by the respondents and also proposed for demand of 3% of the rebate claim amounting to Rs.11,00,263/-. The said show-cause notice was issued on the ground that the inputs were not utilized in the manufacture of the final products and that the deemed credit taken by the respondents was restricted to 12%, however, an extra rebate benefit was sanctioned by the Department inadvertently @3%. The proceedings were initiated by the Department on the ground that the objections were raised by the Central Excise Receipt Audit (CERA), which were contested by the Department on the grounds that although the assessee had stopped manufacturing activity due to labour unrest, the fact was that they did not surrender the Central Excise Registration Certificate and hence, continued to hold the status of a “manufacturer”, and thus cannot be debarred from availing credit. On the basis of above, CERA subsequently dropped the objection vide their letter dated 29.11.2011. The matter arising out of the show-cause notice dated 25.07.2002 was adjudicated by the original authority vide order dated 16.01.2013, wherein the proposals made in the show-cause notice were dropped. Feeling aggrieved with the adjudication order dated 16.01.2013 (in short, referred to as 'the impugned order'), Revenue has preferred this appeal before the Tribunal.

2. Revenue has *inter alia,* contended that since the respondents had suspended the manufacturing activities, taking of MODVAT credit on the inputs is not proper and justified. It has further been contended that the extra amount of Rs.11,00,263/- i.e. the difference between duty paid at the tariff rate of 15% less deemed MODVAT credit @12%, is not permissible inasmuch as the MODVAT credit availed by the respondents was to the tune of Rs.42,96,953/-; whereas, the rebate claim was filed for an amount of Rs.53,97,216/-.

3. Learned AR appearing for the Revenue submitted that taking of MODVAT credit under Rule 57A ibid is not permissible, in view of the fact that the respondents had stopped manufacturing activities and since there was no scope for use/utilization of such inputs in the manufacture of final products, denial of such credit in terms of Rule 57I ibid is proper and justified. Taking of extra 3% MODVAT credit, for which, the rebate claim was sanctioned by the Department is not proper and justified inasmuch as the respondents' claim should be restricted to 12% *ad valorem* and not 15% duty paid at the time of exportation of inputs, if any.

4. On the contrary, learned C.A. appearing for the respondents submitted that the inputs received in the factory and the MODVAT credit availed of the central excise duty paid on such inputs were intended for use/utilization in the manufacture of final products. He further submitted that since the respondents had not surrendered the registration certificate and continued to be recognized as a manufacturer of excisable goods, taking of MODVAT credit on the disputed inputs is in conformity with the Rule 57A ibid and the same cannot be denied by the Department by taking recourse of Rule 57I ibid inasmuch as taking of credit at the material time was not irregular. He further submitted that consequent upon exportation of the goods, the respondent had filed rebate application and the same was sanctioned as rebate to the respondent upon subjective analysis that the duty paid inputs were cleared for export. Thus, he submitted that since the rebate claim sanctioned by the Department was not challenged by way of filing of appeal before the appellate forum, the order sanctioning such rebate claim has attained finality and cannot be re-opened to the detriment of the respondents. Therefore, the present show-cause proceedings initiated by the Department for recovery of such amount is erroneous and as such, the appeal filed by the Revenue is liable to be set aside.

5. Heard both sides and perused the case records.

6. It is an admitted fact on record that the respondents were manufacturer of excisable goods and the Department had issued the Central Excise Registration Certificate, recognizing the respondent as a manufacturer. Both at the time of taking MODVAT credit on the disputed inputs as well as on exportation of the same, the registration

certificate issued by the Department was in force, being not cancelled. Since the respondents continued to be recognized as a manufacturer of excisable goods, taking of MODVAT credit in terms of Rule 57A ibid is proper and justified and the same cannot be denied under Rule 57I ibid, considering the same as irregular credit availed by the respondents. Further, the rebate claim filed by the respondents @ 15% was sanctioned by the Department and no appeal was preferred by Revenue against such sanction of the rebate claim amount. Thus, the order sanctioning the rebate claim had attained finality and the same cannot be agitated by way of issuance of show-cause notice alleging that sanction of rebate of excess amount is contrary to the statutory provisions. Thus, we are of the view that the MODVAT credit availed by the respondents on both counts is proper and in consonance with the statutory provisions.

7. In view of the foregoing discussions, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha