A THE UNION OF INDIA & ORS.

v.

M/S. ASAHI INDIA SAFETY GLASS LTD.

(Civil Appeal No. 2381 of 2005)

B MAY 07, 2015

[A. K. SIKRI AND R. F. NARIMAN, JJ.]

Central Excise Rules, 1944 – r. 57A – Modvat credit C *on inputs – Denial of, when defect in input-raw material found – Assessee, manufacturer of glass for Automobiles, used floating glass as raw material – Assessee availing claim of modvat credit of duty paid on raw material – Denial by Department since inputs inherently defective and not used* D *for manufacture of the final product – Demand of duty back by the Department – Settlement Commission holding that apart from float glasses found to be broken/defective, parts of the glass also found to be defective and not used for final production – Issuance of direction to assessee to pay back* E *the modvat credit availed to the Authorities – However, High Court remanded back the matter to Settlement Commission to consider the matter afresh – On appeal, held: High Court did not interfere with the factual aspects recorded by Settlement Commission – High Court held that the* F *Commission erred in applying wrong principle in law, by treating even the float glass used for manufacture, that is, after the manufacturing process had commenced, to be a wasted input and came to an erroneous conclusion that the modvat could not be claimed in respect of that part of a* G *particular float glass sheet – High Court stated the correct legal position where the Settlement Commission had gone wrong in law – High Court acted within its jurisdiction u/Art.226 of the Constitution and remanded the matter – Settlement* H *Commission to decide the application of assessee, in terms*

of the judgment passed by High Court. A

Union of India and other vs. IND. Swift Laboratories Ltd. **2011 (2) SCR 1087: 2011 (4) SCC 635**; *Collector of Central Excise vs. Rajasthan State Chemical Works* **1991 (55) E.L.T. 444 S.C.**; *J.K. Cotton Mills vs. S.T. Officer* **1965 (1) SCR 900**; *Standard Fireworks Industries vs. Collector* **1987 (28) E.L.T. 56 (S.C.)**; *Jyotendrasinghji vs. S.I. Tripathi and Others* **(201 ITR 611) – referred to.** B C

Case Law Reference

2011 (2) SCR 1087	**Referred to.**	**Para 7**
1991 (55) E.L.T. 444 S.C.	**Referred to.**	**Para 10**
1965 (1) SCR 900	**Referred to.**	**Para 11** D
1987 (28) E.L.T. 56 (S.C.)	**Referred to.**	**Para 11**
(201 ITR 611)	**Referred to.**	**Para 13**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2381 of 2005. E

From the Judgment and Order dated 10.09.2004 of the Division Bench of the High Court of Delhi, in C.W.P. No. 6692 of 2002. F

Yashank Adhyaru, B. Sunita Rani, Ritesh Kumar, Shweta Garg , B. Krishna Prasad for the Appellants.

V. Lakshmi Kumaran, M.P. Devanath, Vivek Sharma, L. Charanaya, Aditya Bhattacharya, R. Ramachandran, Kemant Bajaj, Anandh K. for the Respondent. G

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. The respondent herein is engaged in H

A the manufacture of Toughened (Tempered) and Laminated Safety Glass for Automobiles falling under Chapter Heading 7004.10 and 7004.20 respectively of the First Schedule to the Central excise Tariff Act, 1985. For the manufacture of the glass of aforesaid nature, the respondent has been supplying float B glass which is the main raw material of the respondent's product. On this the respondent has also been availing claim of modvat credit of duty paid on the aforesaid raw material, under Rule 57A of the Central Excise Rules, 1944 (hereinafter referred to as 'Rules').

C

2. Show cause notices dated 1.9.2002, 14.12.2000 and 29.6.2001 were issued by the Department to the respondent alleging therein that the respondent had availed Modvat credit of inputs that were inherently defective and were neither used D nor usable 'in or in relation to the manufacture of the final products'. In these show cause notices, on the aforesaid basis the Department demanded back the duty in a sum of Rs.3,63,79,483, Rs.2257353 and Rs.28,53,875/- respectively. The respondent gave reply to the said show cause notices.

E

3. At the same time the respondent also approached the Settlement Commission under Section 32E of the Act for settlement of the case in respect of the show cause notices. In the application for settlement filed by the respondent, the F respondent made an admission to the extent that it had received the float glass in packaged form and on the opening of the wooden boxes, certain float glasses were found to be broken and they were not used as inputs while undertaking the manufacturing process. On that basis it was admitted by G the respondent that the modvat credit availed on the aforesaid defective float glasses had to be reversed. Accordingly, the respondent agreed to pay back a sum of Rs.56,39,370/-.

4. The Settlement Commission went into the issue. It H found that apart from the aforesaid glasses which were found

to be broken/defective on the opening of the wooden boxes, there were some other float glasses which were used in the manufacturing process. During that process, parts of the said glass were also found to be defective and not used for the final production. In the opinion of the Settlement Commission, the modvat credit availed by the respondent had to be reversed/ paid back by the respondent to the authorities. In this manner, the Settlement Commission arrived at a figure of Rs.4,03,77,695/- and directed the respondent to pay the balance amount of Rs.3,47,38,325/- towards the settlement of the said show cause notice.

5. It may be significant to note here that the respondent had objected to the aforesaid approach adopted by the Settlement Commission during the hearings before the said Commission by pleading that once the float glass was used for manufacture and manufacturing process had started thereby, thereafter, if some latent defect was found on a portion of the long sheet of glass and the said portion thereof had to be discarded it was not a case where the entire sheet of glass was not used as input as remaining part of the glass was in fact used. This contention of the respondent, however, was not accepted by the Settlement Commission resulting into passing of the orders in the manner stated above.

6. Aggrieved by the aforesaid approach of the Settlement Commission, the respondent filed WP (C)No. 669/2002 in the High Court of Delhi, questioning the said approach as legally erroneous and challenging the order of the Settlement Commission on that ground. The High Court has accepted the plea of the respondent herein and after straightening the legal position the case is remanded back to the Settlement Commission to consider the matter afresh in the light of the legal principle mentioned by the High Court in the impugned judgment.

A 7. In the instant appeal preferred by the Department against the aforesaid order, the main argument of the Department is that once the Settlement Commission had passed the orders under Section 32E of the Act, the High Court had no jurisdiction to tinker with the same, in exercise of B its extraordinary jurisdiction under Art. 226 of the Constitution. It is the submission of the Department, as advanced by Mr. Yashank Adhyaru that the High Court has exceeded its limits of jurisdiction by examining the matter afresh as if it was sitting in appeal over the order of the Settlement Commission, which C was clearly impermissible.

8. In support of this contention the learned counsel has referred the judgment of this Court in Union of India and other vs. IND. Swift Laboratories Ltd. 2011 (4) SCC 635 where the D powers of the Settlement Commission are delineated in the following manner:

"An order passed by the Settlement Commission could be interfered with only if the said order is found to E be contrary to any provisions of the Act. So far as the findings of fact recorded by the Commission or question of facts are concerned, the same is not open for examination either by the High Court or by the Supreme Court. In the present case the order of the Settlement F Commission clearly indicates that the said order, particularly, with regard to the imposition of simple interest @ 10% per annum was passed in accordance with the provisions of Rule 14 but the High Court wrongly interpreted the said Rule and thereby arrived at an G erroneous finding. So far as the second issue with respect to interest on Rs.50 lakhs is concerned, the same being a factual issue should not have been gone into by the High Court exercising the writ jurisdiction and the High Court should not have substituted its own opinion against H

the opinion of the Settlement Commission when the same was not challenged on merits." A

9. After going through the record and perusing the order of the High Court, we are of the opinion that the eloquent submission of the learned senior counsel lacks substance as it is utterly misconceived. The High Court has not meddled with the factual aspects which were recorded by the Settlement Commission in its judgment. On the contrary, reading of the impugned judgment amply demonstrates that the High Court has taken the facts as recorded by the Settlement Commission itself on their face value and have not tinkered with the same. In para 15 of the impugned judgment those undisputed facts as mentioned by the Settlement Commission itself, are reproduced. This para reads as under: B C D

"Undisputed facts, according to the Commission in paras 11 and 12 are as under:

(i) The main raw material for the manufacture of the tempered and laminated glass in the applicant's factory is float glass which is an eligible input under Rule 57A of the Rules in this case. E

(ii) The defects noticed in the float glass (input) at the stage of inspection thereof after subjecting it to the process of cutting, marking, breaking off, grinding and washing are defects arising at the end of the suppliers of the said float glass and such defects have not been brought about during any of the processes to which the float glass is subjected to in the applicant's factory. F G

(iii) The applicant filed a claim for such defective glass on the respective suppliers and the suppliers reimbursed the applicant for the cost of such H

A defective glass. The cost reimbursed does not include the element of duty suffered on such float glass.

(iv) The demand of duty made by Revenue is confined
B to the credit taken defective float glass for which the applicant has been reimbursed by the suppliers of such defective glass. The demand of duty does not include breakages or defects notice during the process of toughening,
C tempering on lamination.

(v) Revenue have confirmed the correctness of the amount of duty accepted by the applicant in their applications, the accepted amount of duty is
D confined to breakages of float glass (input) noticed when the wooden boxed containing it are opened in the factory of the applicant.

The Commission further observed in para 12 as under:-

E "12. The claim of the applicant is centered on the contention that the suitability for use of the float glass in the motor vehicles can only be detected after it has undergone the mandatory processes of cutting, marking,
F break off, grinding and washing, that the manufacturing process for manufacture of toughened and laminated glass starts as soon as the float glass is out on the float table and subjected to the aforesaid processes and that these processes are mandatory and integral to the
G process of manufacture of their final products. Revenue have disputed this claim of the applicant. The applicant rely on the production Manual of Ashai Glass Limited, Japan in support of their contention that world-over the process of manufacture adopted by their parent company
H is identical."

10. On the aforesaid facts the approach of the Commission is commented upon in para 16 of the impugned judgment which reads as under:

> 16. In para 13, the Commission considered the expression "used in the manufacture of final products" and "inputs used in or in relation to the manufacture of the final products" that these are to be widely construed as held by the Apex Court. Surprisingly, the Commission proceeded by saying "however, the main question to be decided in this case is whether the float glass (input) can be said to be an eligible input of the applicant when it was defective at the supplier's end itself and accordingly could not have been used in the manufacture of the finished goods. As observed by us earlier, it is not in dispute that the defects may be in the float glass at the suppliers' end and that is the reason why the suppliers agreed to reimburse the applicant for the value of such defective inputs. This being the case, in our view, the applicant identified such defect at the stage of inspection after subjecting the float glass to certain processes. Even if these pre-processes are considered an integral to manufacture of finished glass, the fact remains that input of float glass could not have been used in or in relation to the manufacture of the final product on account of inherent defect in it. It is also to be noted that these defects are identified through a naked eye against a light source at the stage of the inspection and this could have been done even after the receipt of the goods in the factory of the applicant and before subjecting them to the various process of cutting, marking, breaking off, grinding etc. it is also not in dispute that the input float glass does not get rejected on account of any defects developed during any of the pre-processes to which it is subjected to. In view of this position, the reliance placed by the applicant

A on the following judgments of the Tribunal does not appear to be relevant."

11. On that basis the High Court has concluded that the Commission committed an error by applying wrong principle B in law, by treating even the float glass used for manufacture, that is, after the manufacturing process had commenced, to be a wasted input and came to an erroneous conclusion that the modvat could not be claimed in respect of that part of a particular float glass sheet. In forming this opinion the High C Court relied upon the judgment of this Court in the case of Collector of Central excise vs. Rajasthan State Chemical works 1991 (55) E.L.T. 444 S.C. wherein this Court held as to when the manufacturing process starts. Final portion from the said judgment which is quoted by the High Court, is reproduced for D proper understanding of the matter:

"Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which E the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to, manufactured product emerges. Therefore, each step towards such production would be a process in relation F to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture or processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture."

G

12. The High Court has also relied upon two other judgments of this Court, viz., J.K. Cotton Mills vs. S.T. Officer [1965 (1) SCR 900] and Standard Fireworks Industries vs. Collector 1987 (28) E.L.T. 56 (S.C.) laying down the same H proposition as noted in the case of Rajasthan State Chemical

Works (Supra). A

13. In the process, the High Court has also interpreted Rule 57D and Rule 57A (4) of the Rules. It would be pertinent to mention here that the aforesaid legal position, as stated by the High Court, could not be dislodged by the learned senior B counsel for the appellant.

14. From the aforesaid it becomes clear that the High Court has not interfered with the facts which were recorded by the Settlement Commission. On the contrary, the facts noted C above remained undisputed. On those facts the High Court has simply stated the correct legal position where the Settlement Commission had gone wrong in law. Thus, the High Court has simply applied the correct principle of law on the admitted facts. This, according to us, was well within the D powers of the High Court while exercising its jurisdiction under Art.226 of the Constitution. Such remand of the High Court has been held permissible in Jyotendrasinghji vs. S.I. Tripathi and Others (201 ITR 611) which was also concerning the powers of the Settlement Commission , albeit under Section E 245(D)(4) of the Income Tax Act. The principle of law remains the same and can be applied in case of orders passed by the Settlement Commission under the Central Excise Act as well.

15. For the reasons stated above, we are of the opinion F that the present appeal is bereft of any merit and is accordingly dismissed.

16. We would now direct the Settlement Commission to take up the application of the respondent/assessee, in terms G of the judgment passed by the High Court and decide the same as early as possible and preferably within six months from today.

Nidhi Jain Appeal dismissed. H