M/S. ESCORTS LTD. A

v.

COMMISSIONER OF CENTRAL EXCISE, DELHI

AUGUST 25, 2004

[S.N. VARIAVA AND G.P. MATHUR, JJ.] B

Central Excise Rules, 1944:

Rule 57C—Excise duty—Final product—Inputs used in the manufacture of MODVAT credit on inputs—Entitlement to—Assessee C *manufactured tractors and paid duty on the inputs used in the manufacture of parts—These parts were cleared to another factory of the assessee without payment of duty by virtue of Notification No. 217/86-CE dt. 2-4-1986—These parts were used to manufacture tractors on which duty was paid—The Excise department denied MODVAT credit on the duty paid* D *on the inputs—Validity of—Held: The final product is the tractor whereas the parts are intermediate products—The parts are, therefore, not final products—Hence, Rule 57C has no application in such cases—The mere fact that parts were cleared from one factory to another factory, the assessee would not be disentitled from claiming MODVAT credit under the* E *said notification—However, in respect of parts which are sold in the open market and/or used for manufacture of tractors on which no duty is paid, the benefit of the said notification may not be available.*

The appellant-assessee was a manufacturer of tractors and paid F **duty on the inputs used in the manufacture of parts. These parts were then cleared to another factory of the appellant, without payment of duty by virtue of Notification No. 217/86-CE dated 2-4-1986. The parts were then used to manufacture tractors on which duty was paid.**

The respondent issued a show-cause notice on the ground that G **MODVAT credit was not admissible as the final goods i.e., the parts were cleared without payment of duty. The appellant claimed that the final products were not the parts but the tractors. The appellant further claimed that duty was being paid on the tractor and, therefore, MODVAT credit was available under the said notification. The Central** H

A Excise and Gold (Control) Appellate Tribunal rejected the appellant's claim. Hence the appeals.

Allowing the appeals, the Court

B HELD: 1. Notification No. 217/86-CE dated 2-4-1986 shows that the inputs may be used within the factory of production or in any other factory of the same manufacturer. Thus merely because parts are cleared from one factory of the appellant to another factory does not make the parts the final product. [890-B; 891-G]

C 2. Rule 57D(2) of the Central Excise Rules, 1944 shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where an intermediate product comes into existence, even though no duty has been paid on the intermediate product as it is exempted from whole of the duty or is chargeable to D Nil rate of duty, credit would still be allowed so long as duty is paid on the final product. [892-C-D]

3.1. In cases of manufacturers like the appellant the final product is the tractor. The intermediate product would be parts which are E manufactured for being used in the tractor. In such a case the parts would not be final products. Thus Rule 57C would have no application. The mere fact that the parts are cleared from one factory of the appellant to another factory of the appellant would not disentitle the appellant from claiming benefit of Notification No. 217/86-CE dated F 2-4-1986. [892-D-E]

Collector of Central Excise v. *Hindustan Sanitaryware & Industries,* (2002) 145 ELT 3 SC, relied on.

3.2. The appellant will be entitled to MODVAT credit on duties G paid for the inputs used for manufacture of parts, so long as the parts are used in the manufacture of tractors on which duty is paid. However, in respect of parts which are sold in the open market and/ or used for manufacture of tractors on which no duty is paid, the benefit of Notification No. 217/86-CE dated 2-4-1986 may not be H available. [893-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6909-6912 of 2003. A

From the Judgment and Order dated 17.3.2003 of the Central Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/206, 1648-49/95-NB and E/244/96-NB in F.O. No. A/142-145 of 2003-NB(C). B

V. Lakshmikumaran, Alok Yadav and Rajesh Kumar for the Appellant.

T.L.V. Iyer, Sanjiv Sen, P. Parmeswaran and B. Krishna Prasad for the Respondent. C

The Judgment of the Court was delivered by

S.N. VARIAVA, J. : These Appeals are against the Judgment dated 17th March, 2003 passed by the Customs Excise and Gold (Control) Appellate Tribunal (for short CEGAT). D

Briefly stated the facts are as follows:

The Appellants are manufacturer of tractors. They MODVAT credit in respect of duties paid on inputs used in the manufacture of parts. Those E parts were then cleared to another factory of the Appellants, without payment of duty, by virtue of Notification No. 217/86-CE dated 2nd April, 1986. The parts were then used to manufacture tractors on which duty was paid.

F

The Respondent issued a show-cause notice on the ground that MODVAT credit was not admissible as the final goods, i.e. the parts were cleared without payment of duty. The Appellants claimed that the final products were not the parts but the tractors. The Appellants claimed that duty was being paid on the tractor and, therefore, G MODVAT credit was available under Notification No. 217/86-CE dated 2nd April, 1986.

The explanation given by the Appellants was not accepted. The Appellants therefore filed an Appeal before CEGAT. By the impugned H

A Judgment, CEGAT has held that, as the parts are cleared from the factory where they are manufactured to another factory of the Appellants which is located in a different premises and is separately registered under the Central Excise Law, the finished products are the parts. CEGAT has held that as no duty was paid on the parts MODVAT credit was not available.

B

At this stage, the concerned Rules of the Central Excise Rules, 1944 and the relevant portion of Notification No. 217/86-CE dated 2nd April, 1986 may be noticed. Rules 57A, 57C and 57D read as follows:

C

"*57A. Applicability.*- (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products", as the Central Government may, by notification in the Official Gazette, specify in this behalf, for the purpose of allowing credit of any duty of excise or the additional duty under

D

Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter referred to as the "special duty") paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the "inputs") and for utilizing the credit so allowed towards payment of duty of excise leviable on the final products,

E

whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification:

F

Provided that the Central Government may specify the goods or classes of goods in respect of which the credit of specified duty may be restricted.

Explanation.- For the purposes of this rule, "inputs" includes-

G

(a) inputs which are manufactured and used within the factory of production, in or in relation to, the manufacture of final products,

H

(b) paints and packaging materials, and

(c) inputs used as fuel, A

but does not include

.....

..... B

57C. Credit of duty not to be allowed if final products are exempt.— No credit of the specified duty paid on the inputs used in the manufacturer of a final product (other than those cleared either to a unit in a Free Trade Zone or to a hundred per cent Export-Oriented Unit) shall be allowed if the final product is C exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

57D. Credit of duty not to be denied or varied in certain circumstances. — (1) Credit of specified duty allowed in respect D of any inputs shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse, or by-product arising during the manufacture of the final product, or that the inputs have become waste in or in relation to the manufacture of the final product, whether or not such waste, refuse or by-product E is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty or is not specified as a final product under rule 57A.

(2) Credit of specified duty allowed in respect of any inputs F shall not be denied or varied on the ground that any intermediate products have come into existence during the course of manufacture of the final product and that such intermediate products are for the time being exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty:

G

Provided that such intermediate products are

(a) used within the factory of production in the manufacture of a final product (other than those cleared either to a unit in a Free Trade Zone or to a hundred per cent H

A Export-Oriented Unit) on which the duty of excise is leviable whether in whole or in part; and

(b) specified as inputs or as final product under a notification issued under rule 57A."

B The relevant portion of the Notification No. 217/86-CE dated 2nd April, 1986 reads as follows:

"*Inputs: Captive consumption exempt.*

C *217/86-CE, dt. 2.4.1986,* as amended by 12/87-CE, dt. 23.1.1987 (w.e.f. 10.2.1987), 82/87-CE, dt. 1.3.1987, 204/87-CE, dt. 9.9.1987 (w.e.f. 1.10.1987), 97/89-CE, dt. 1.3.1989, 146/90-CE, dt. 17.9.1990, 79/91-CE, dt. 25.7.1991, 33/92-CE, dt. 1.3.1992: In exercise of the powers conferred by sub-rule (I) of rule 8 of
D the Central Excise Rules, 1944, the Central Government hereby exempts goods specified in column (2) of the Table hereto annexed (hereinafter referred to as "inputs") *manufactured in a factory and used within the factory of production or in any other factory of the same manufacturer, in or in relation to the*
E *manufacture of final products specified in column (3) of the said Table, from the whole of the duty of excise leviable thereon, which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986):*

F Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export Oriented Unit), which are exempt from the whole of the duty of excise leviable thereon or are chargeable to "Nil" rate of duty:

G

Provided further that where such use of inputs is in a factory of a manufacturer, different from his factory where the goods have been produced, the exemption contained in this notification shall be allowable subject to the observance of the procedure set out
H in Chapter X of the Central Excise Rules, 1944.

THE TABLE

S. No.	Description of inputs	Description of final products
(1)	(2)	(3)
1.	Goods classifiable under any headings of chapters 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 59, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 or 96 [other than those falling under Heading Nos. 36.05 or 37.06 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)	Goods classifiable under any headings of chapters 2, 3, 4, 5, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 54, 55, 59, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95 or 96 [other than those falling under Heading Nos. 36.05, 37.06, 54.08, 54.09, 54.10, 54.11, 54.12, 55.04, 55.05, 55.06, 55.07, 55.08, 55.09, 55.10, 55.11 or 55.12 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)

(Emphasis supplied)

It is the contention of the Respondent, which has been accepted by CEGAT, that Rule 57C would become applicable as the parts are cleared from one factory to another without payment of duty. In our view, this reasoning cannot be accepted. The underlined portion of the Notification, set out hereinabove, shows that the inputs may be used within the factory of production or in any other factory of the same manufacturer. Thus merely because parts are cleared from one factory of the Appellants to another factory does not make the parts the final product. It is not denied

A that the parts, which are manufactured from the duty paid inputs, are used in the manufacture of tractors and that the duty is being paid on the tractors.

Mr. Lakshmikumaran very fairly conceded that in cases where the parts are cleared for sale in the open market or in cases where the parts B are used for manufacture of small tractors, on which no duty is paid, the Appellants do not and have not claimed any MODVAT credit. He states and it is not denied that in respect of such parts separate registers have been maintained.

C It is to be seen that the whole purpose of the Notification and the Rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. Rule 57D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where intermediate product comes into existence, D even though no duty has been paid on the intermediate product as it is exempted from whole of the duty or is chargeable to Nil rate of duty, credit would still be allowed so long as duty is paid on the final product.

In cases of manufacturers like the Appellants the final product is the E tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus Rule 57C would have no application. The mere fact that the parts are cleared from one factory of the Appellants to another factory of the Appellants would not disentitle the Appellants from F claiming benefit of Notification No. 217/86-CE dated 2nd April, 1986. As stated above, the Notification itself clarifies that the inputs can be used within the factory of production or in any other factory of the same manufacturer.

G Mr. Lakshmikumaran relied upon the decision of this Court in the case of *Collector of Central Excise, New Delhi* v. *Hindustan Sanitaryware & Industries* reported in (2002) 145 E.L.T. 3 S.C., wherein, in respect of this very Notification, this Court has held that so long as duty is paid on the final product, the mere fact that duty was not paid on the intermediate product would not disentitle the manufacturer from the benefit of Notification H No. 217/86-CE dated 2nd April, 1986. In that case, the input was plaster

of paris, the intermediate product was moulds made out of the plaster of paris, the final product was sanitary ware. In our view, the facts of that case are identical to the facts of the present case. The ratio laid down therein fully applies to this case. In this view of the matter, we set aside the impugned Judgment and the Order of the Commissioner of Central Excise. It is held that the Appellants will be entitled to MODVAT credit on duties paid for the inputs used for manufacture of parts, so long as the parts are used in the manufacture of tractors on which duty is paid. We clarify that in respect of parts which are sold in the open market and/or used for manufacture of tractors on which no duty is paid, the benefit of the Notification No. 217/86-CE dated 2nd April, 1986 may not be available.

A B C

The Appeals are thus allowed. There will be no order as to costs.

V.S.S. Appeals allowed.