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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 05.07.2011
Judgment delivered on: 12.07.2011

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CEAR No. 5/2001

M/s PURE DRINKS LTD.

..... APPELLANT

Vs

UOI & ORS.

..... RESPONDENTS

Advocates who appeared in this case:

For the Appellant: Mr P.C. Jain, Advocate
For the Respondents: Mr. Satish Kumar, Sr. Standing Counsel

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment ? | Yes |
| 2. | To be referred to Reporters or not ? | Yes |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

RAJIV SHAKDHER, J

1. By an order dated 23.07.2001 passed by this court the Central Excise Gold Tribunal, now referred to as Central Excise and Service Tax Appellate Tribunal (hereinafter referred to as 'Tribunal') had directed a reference in respect of the following question of law:

"Whether the Tribunal was justified in its view regarding applicability of Rule 57F(1)-(5) of the Central Excise Rules, 1944."

2. It appears that pursuant to the order of this court dated 23.07.2001 a statement of case dated 03.10.2006 was submitted by the

Tribunal. Since this court was not satisfied with the facts articulated in the said statement of case; vide order dated 07.12.2007 it had directed the Tribunal to submit an appropriate statement of case. However, curiously, order dated 07.12.2007 was not complied with. Consequently, by yet another order dated 09.11.2009, this court directed the Tribunal to submit a statement of case within four weeks of receipt of its order. Accordingly, a fresh statement of case has been received by us.

3. The facts gleaned from the statement of case indicate that the appellant before us at the relevant point in time manufactured aerated water which fell under chapter 22 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'said Act') at the relevant point in time. For the purposes of its business, the appellant, it appears procured duty paid glass bottles, on lease basis, from various suppliers which were used for the purposes of manufacturing its final products, i.e., aerated water.

3.1 In this context the dispute of the appellant with the revenue thus pertains to the following two kinds of transactions:

3.2 The first set of transactions being sale of glass bottles, which evidently, either broke or were rendered unusable due to constant use during the course of bottling of aerated water. These bottles were treated as waste and / or scrap by the appellant. These damaged glass bottles were apparently cleared by the appellant over a period commencing on 25.07.1991 and ending on 19.10.1995. The total value of the clearance during this period was in the sum of ₹.57,20,390/-. The

value of such damaged goods cleared are further sub divided by the revenue, into two periods. The first period being: 25.07.1991 to 28.02.1994. The damaged goods cleared during this period were valued by the revenue, at ₹ 24,25,810/-. Since the rate of duty prevalent during this period was nil; we are not required to deal with clearance made between this period, i.e., 25.07.1991 and 28.02.1994. The latter period, with which we are concerned, begins from 01.03.1994 and ends on 19.10.1995. The value of waste and/or scrap cleared is pegged at ₹ 32,94,580/-. The duty payable, according to the revenue, in respect of these clearances is a sum of ₹ 6,58,917/- calculated at the rate of 20% ad valorem under the said Act. This is in so far as the first transaction is concerned.

3.3 The second set of transactions in respect of which there is a dispute between the appellant and the revenue pertain to sale of glass bottles during the period 1992 to 1995 valued at ₹ 1,04,85,610/-. The central excise duty payable by appellant, according to the revenue, on these transactions is a sum of ₹ 36,19,247/-.

4. In view of the above, a show cause notice dated 04.03.1997 was issued to the appellant, whereby the appellant was called upon to respond as to why excise duty in the sum of ₹ 42,78,164/- ought not to be levied in respect of sale of waste and/or scrap of glass bottles and on the value of sale of glass bottles. Furthermore, on account of the above clearances having been made without payment of excise duty, penalty was also sought to be levied.

4.1 Upon receipt of the reply of the appellant, the Commissioner of Central Excise, Delhi – I (in short ‘the Commissioner’) passed an order-in-original dated 01.05.1998. The Commissioner confirmed the demand raised in the aforementioned show cause notice.

5. Being aggrieved by the order of the Commissioner, the appellant carried the matter in appeal to the Tribunal. The Tribunal by an order dated 31.07.2000, rejected the appeal preferred against the order of the Commissioner.

6. As indicated above, on a reference sought by the appellant, a question of law was framed to seek an opinion of this court.

7. Mr Jain, who appeared for the appellant has argued that in so far as the first transaction is concerned, which pertains to sale of waste and/or scrap comprising of broken bottles and / or unusable bottles, the provisions of Section 57F(5) of the Central Excise Rules, 1944 (hereinafter referred to as ‘Rules’) has been applied. It is argued that the said Rule, i.e., Rule 57F(5) would have no applicability as the appellant is not in the business of manufacturing glass bottles; the only use to which the glass bottles supplied to it are put to IS to fill aerated water; which is, the final product manufactured by the appellant. It is submitted that the question of payment of duty on waste and/or scrap comprising of broken and/or unusable glass bottles, would arise only if the appellant was the manufacturer of the glass bottles.

7.1 It was also argued by Mr Jain that the chapter sub-heading under which duty was sought to be levied (i.e., sub-heading no. 7001.10) pertained to “*cullets and other waste and scrap of glass*” and not broken

and unusable glass bottles. It was sought to be argued that glass bottles were not cullets and therefore, the waste and scrap of glass had to be read in the context of the meaning attributable to the word cullets. The argument being that the scope of the sub-heading could not be expanded to include the waste and/or scrap of glass bottles. The imposition of excise duty under the said sub-heading was, therefore, clearly erroneous.

7.2 As regards the second transaction which involved the invocation of the provisions of Rule 57F(1)(ii) of the said Rules, it was submitted that it could only be triggered if there was a physical removal of the glass bottles for the purposes of home consumption. In order to drive home the point, Mr Jain relied upon the latter part of the said Rule, i.e., Rule 57F(1) (ii), wherein there is a reference to '*export under bond*'. Mr Jain thus contended that export would invariably involve a physical removal of goods, and thus on a parity of reasoning the first limb of the rule which dealt with removal for home consumption should also mean physical removal in order to trigger the provisions of Rule 57F(1)(ii). Since, such was not the situation obtaining in the instant case, as there was only a leasing arrangement between the appellant and the leasing companies qua the glass bottles used for filling up the final product, i.e., aerated water; Rule 57F(1)(ii) was not appropriately invoked.

7.3 It was submitted that the physical possession of the bottles remained with the appellant, and that the entry in the balance sheet suggesting sale of glass bottles was only a 'paper transaction' not amounting to actual sale.

8. As against the above, Mr Satish Kumar, who appeared for the revenue submitted that if the appellant were to raise an argument pertaining to the applicability of a particular sub-heading and thereby in sum and substance impugning the rate of duty imposed or the value of goods, the present appeal would not be maintainable in view of the provisions of section 35L(b) of the Central Excise Act, 1994. Mr Satish Kumar submitted that in such an eventuality, appeal would lie to the Supreme Court and not with the High Court.

8.1 In so far as the first set of transactions was concerned, Mr Satish Kumar submitted that the finding returned by the authorities below ought to be sustained. It was submitted that it was not disputed that the appellant had availed of MODVAT credit on glass bottles which were used by it to fill and market thereafter aerated water; being the final product. It is during the course of the handling of such glass bottles that they either broke or become unusable due to constant re-use. This breakage and /or re-use generated waste and/or scrap of such like glass bottles. It was further contended that admittedly such glass bottles which were dealt as waste and/or scrap were sold by the appellant admittedly, at least, twice or three times a week. Therefore, the revenue has correctly invoked the provisions of sub-rule (5) of Rule 57F, as it was waste which arose on processing of inputs in respect of which MODVAT credit had been availed of and therefore, could be removed only on payment of duty. The argument that the appellant was not the manufacturer of glass bottles did not arise since, the appellant had availed of MODVAT credit by treating the glass bottles as inputs.

The expression used in rule 57F(5) was 'processing of inputs', which covered the fact situation obtaining in the instant case and, therefore, any waste as a consequence of the same could be removed only on payment of duty.

8.2 As regards the second set of transactions which involved sale of glass bottles, the learned counsel for the revenue submitted that the appellant having availed of MODVAT credit, it could have sold the glass bottles to a third party only on payment of excise duty equivalent to the MODVAT credit availed of by it. The fact that physical possession of the bottles in issue, remained with the appellant was not relevant since the property in the goods in issue, stood transferred to a third party.

9. We have heard the learned counsel for the parties. As indicated in the very beginning of our judgment, there are two sets of transactions in respect of which duty is sought to be levied by the revenue. The first set of transactions relate to duty levied on account of removal of scrap and/or waste (generated on breakage of glass bottles and/or their constant re-use) without payment of duty by the appellant between 01.03.1994 to 19.10.1995. Undoubtedly the appellant has availed of MODVAT credit in respect of scrap cleared in the aforesaid period. The issue, therefore, which arises for consideration is, as to whether such clearances of waste and/or scrap could be made without payment of duty. The revenue has invoked provisions of Rule 57F(5) to contend that such clearances could have been made only on payment of duty. This is contested by the appellant on the ground that it is not the manufacturer

of glass bottles, and hence the said provision has no applicability. For the sake of convenience Rule 57F(5) is culled out hereinbelow:

“(5). Any waste arising from the processing of inputs, in respect of which credit has been taken may-

(a) Be removed on payment of duty as if such waste is manufactured in the factory; or

(b) Be removed without payment of duty, where it belongs to such class or category of waste as the Central Government may from time to time by order specify for the purpose for being used in the manufacture of the class or categories of goods as may be specified in the said order, subject to the procedure under Chapter X being followed; or

(c) Be destroyed in the presence of proper officer on the application by the manufacturer, and if found unfit for further use, or not worth the duty payable thereon, the duty payable thereon being remitted.

Provided that such waste may be destroyed by the manufacturer governed by Chapter VIIA after informing the proper officer in writing regarding the quantity of such waste and the date on which he proposes to destroy at least seven days in advance and after observing all such conditions as may be prescribed by the Collector of Central Excise by a general or special order with regard to the manner of disposal of such waste.”

10. It is quite evident that sub-clause (a) of clause (5) of Rule 57F would require removal of waste which arises from processing of inputs (in respect of which MODVAT credit has been availed of) only on payment of duty. In contradistinction clause (b) provides for removal of waste *without payment of duty*, only where it belongs to such class or

category of waste as the Central Government may from time to time specify in its order, for the purpose of being used in the manufacture of the class or categories of goods as indicated therein. The question, therefore, which arises for consideration is whether waste and/or scrap which has arisen in the instant case by virtue of breakage of glass bottles or their constant re-use, in respect of which undoubtedly MODVAT credit has been claimed, can be removed without the payment of duty notwithstanding the fact that the appellant is not the manufacturer of the glass bottles. In our view no such leeway is given. The provision of clause (5) when read with sub-clause (a) of Rule 57F, make it clear that '*any waste*' which arises from '*processing of inputs*' can only be removed only on payment of duty as if such waste is manufactured in the factory. Therefore, the expression *any waste* arising from *processing of inputs*, would include that waste which would arise on account of inputs, in this case glass bottles, being used at various stages of manufacture. Sub-clause (a) of clause (5) introduces a fiction by clearly stating in so many words that such waste is deemed as having been manufactured in the factory. Therefore, merely because the appellant was not manufacturer of the glass bottles which generated the waste could not be a reason which would enable the appellant to remove the said waste without payment of duty contrary to the provisions of Rule 57 F (5)(a). The appellant having done exactly the same, has correctly been found to have evaded the payment of duty to that extent.

11. This brings us to the another aspect of the matter argued before

us, which was, that the sub-heading 7001.10, under which, waste and/or scrap of glass bottles was sought to be subjected to excise duty would not fall under the said sub-heading. In our view this was not the case set up by the appellant before the Tribunal. However, if such a plea is raised then the argument of Mr Satish Kumar would have decidedly much force, which is, that if the appellant were to persist on this line the present appeal would not be maintainable. Mr Jain when confronted with this position had submitted during the course of the arguments that he was more on the scope of the sub-heading and not on its applicability. According to us even this submission is misconceived. The heading 70.01 and sub-heading 7001.10 read as follows:

“70.10: Cullet and other waste and scrap of glass; glass in the mass; glass in balls (other than microspheres of heading NO. 70.13); rods or tubes, unworked.
7001.10 Cullet and other waste and scrap of glass.....”

12. A perusal of the heading and the sub-heading would show that it is far wider in scope than what is sought to be contended. The submission of Mr Jain that the waste and/or scrap of glass-bottles should be confined to the waste of the nature of cullets is misconceived. Cullet, according to the plain dictionary meaning, is nothing but recycled waste material or broken glass used in glass making. The heading 7001 when read with the sub-heading clearly indicates that the sub-heading takes within its ambit every kind of waste generated from glass. If the intention of the legislature was to confine to waste of the nature of cullets then it need not have inserted in the sub-heading the word '*cullet*' and '*other waste*'.

The expression of '*other waste*' would then be a surplusage. Thus we are not inclined to accept this contention made on behalf of the appellant. We find no infirmity with the conclusion arrived at by the authorities below, on this aspect of the transaction.

13. This brings us to the second set of transactions which involves sale of glass bottles. In this case the value of glass bottles removed/cleared amount to ₹ 1,04,85,610/-. As indicated above, the period during which clearance/removal of glass bottles took place spanned between 1992 to 1995. The revenue has sought to impose excise duty in the sum of ₹ 36,19,247/-. It is not in dispute that in this case as well, MODVAT credit has been claimed by the appellant. The appellant, however, claims that even though in the books of accounts and its balance sheet sale has been recorded, there is in fact no sale since, the physical possession of the goods remained with the appellant. In other words as contended by Mr Jain, it was merely a paper transaction. The argument thus put forth on behalf of the appellant was that in order to bring the transaction within the provisions of Rule 57(1)(ii) there ought to be a physical removal of the glass bottles from the factory of the appellant; since the glass bottles were covered under a leasing arrangement the said provision was not attracted. Before we proceed further it may be relevant at this stage to extract provisions of rule 57F(1)(i) and (ii). The said is extracted as under:

“The inputs in respect of which a credit of duty has been allowed under rule 57A may –

(i). Be used in or in relation to, the manufacture of final products for which such inputs have been brought into the factory; or

(ii). Shall be removed after intimating the Assistant Collector of Central Excise having jurisdiction over factory and obtaining a dated acknowledgement of the same from the factory for home consumption or for export under bond, as if such inputs have been manufactured in the said factory.

Provided that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty of excise shall in no case be less than the amount of credit that has been allowed in respect of such inputs under Rule 57A."

14. In our view the averments made by the appellant with regard to the manner in which the said transactions got reflected in its account being relevant, are extracted hereinafter from order of the Commissioner :

"...As regards the sales of bottles, the factual position is that no sale actually takes place. It is only leasing arrangement between the party and the leasing companies as a measure of financial management. To illustrate the point, supposing, 100 bottles are taken on lease from a leasing company called X, a periodical (usually monthly) payment is made to the leasing company which is inclusive of their interest and other servicing charges. After the full payment of these 100 bottles has been made, the user company (in this case the party) technically sells (only on papers) bottles to the leasing company and the repayment arrangement to the leasing company is repeated as in the previous cycle. Therefore, the entry in the balance sheet towards profit, on account of sale of bottles is only on account of transactions entered into

between the leasing company and the party on account of leasing tie-up and not on account of actual sale of bottles.
The physical possession of the bottles is not parted with remains only with the party for use.” (emphasis is ours)

15. The question which arises for our consideration is as to whether the word ‘removal’ would require a physical removal of goods in the case of the transaction at hand. Rule 57F deals with the manner of utilization of inputs and the credit allowed in respect of the duty paid on such inputs. Sub-rule (i) of rule 57F(1) clearly provides that inputs in respect of which credit of duty has been allowed under Rule 57A may be used in or in relation to manufacture of the final products for which inputs had been brought into the factory of the appellant. Sub-clause (ii) of Rule 57F(1) permits removal from the factory of inputs for home consumption or for export only on payment of excise duty which, in no case can be less than the credit allowed in respect of such inputs under Rule 57FA; after information in that regard is given to the Assistant Collector of Central Excise having jurisdiction over the factory and on obtaining acknowledgement in regard to the same. On the appellant’s own showing the glass bottles were sold under a leasing arrangement albeit on paper. The arrangement is so devised that although the appellant paid money on a monthly basis to a third party in respect of which profit has been recorded in its books of accounts, the bottles remained in possession of the appellant. The fact remains that notwithstanding this contrivance MODVAT credit was claimed by the appellant. Therefore, could it be said that in the instant circumstances, the invocation of provisions of Rule 57F(1)(ii) by the revenue to claim

excise duty to the extent of MODVAT credit claimed by the appellant is bad in law as there was no physical removal of the goods in issue.

15.1 A somewhat similar situation arose in the case of *Commissioner of Central Excise, Belgaum vs Associated Cement Company Ltd 2009 (236) ELT 240* before the Karnataka High Court. The High Court of Karnataka rendered its decision in the said case on 13.12.2007 passed in CEA No. 3/2005. The facts obtaining in the said case were as follows: The assessee was engaged in the manufacture of cement. The assessee for the purpose of his business had installed a captive power unit for generating power for its cement factory. During the period 01.03.1994 to 14.01.1999 the assessee had availed MODVAT credit on capital goods in respect of the said captive power unit in terms of Rule 57Q as it then obtained. The assessee sold its power unit to TATA Electric Company Ltd. While doing so the assessee leased in favour of purchaser, i.e., Tata Electric Company Ltd. the land on which the captive power unit was installed for a period of 20 years from the date of the sale of the captive power unit. Since the assessee had sold the captive power unit on which it had availed MODVAT Credit, the excise authorities issued a show cause notice demanding payment of central excise duty in respect of the aforementioned capital goods under the provisions of Section 11A(2) and proviso to Section 11A(1) of the Central Excise Act, 1944 read with Rule 57AB(1)(b) and the explanation appended to the said Rules. Interest and penalty was also sought to be recovered from the assessee by virtue of the aforementioned show cause notice. The Commissioner while passing the adjudication order confirmed the

demand raised in the show cause notice.

15.2 The assessee being aggrieved preferred an appeal to the Tribunal contending that there was no violation of the MODVAT credit rules since the capital goods formed part of the captive power unit which had not been removed from the premises of the assessee where, the unit was installed. The Tribunal concurred with the stand taken by the assessee and hence proceeded to set aside the order of the Commissioner.

15.3 The revenue being aggrieved preferred an appeal to the High Court. The High Court was thus called upon to answer the following substantial question of law:

“Whether the Tribunal was justified in holding that the capital goods in respect whereof MODVAT credit was availed by the assessee company were not removed by it from the premises of its factory even though it sold the entire power unit to M.s Tata Electric Company for a consideration of Rs 90 crores and leased to the said purchaser for 20 years the premises wherein the unit was installed and thus it did not contravene any provisions of Central Excise Act, 1944/Central Excise Rules, 1944/Central Excise Rules, 1944?” (emphasis is ours)

15.4 The High Court while dealing with the rival contentions rejected the plea raised by the assessee and reversed the order of the Tribunal. The observations made by the High Court while coming to the said conclusion being relevant are extracted hereinafter:

“5. Having heard the learned counsel for the parties and on perusal of the agreement dated 14-3-1999 entered into between the assessee and m/s Tata Electric Company we have no hesitation to hold that the transaction thereunder

between them was an absolute sale of the power unit for a valid sale consideration of Rs 90 crores and that the entire unit came to be handed over to the purchaser and since then the purchaser has been running the power unit at the same premises of the assessee by taking the premises in which the power unit was installed as long term lease and generating the power. Therefore, it is clear that the said purchaser, after purchasing the power unit from the assessee, has been enjoying the same as its absolute owner and has been supplying to the assessee the power generated from the said power unit on payment basis. This being so it is quite evident that the assessee-company lost its ownership and also control over the said power unit by selling it to the said purchaser for valid consideration and by giving to the purchaser on long term lease the premises in which the said unit is installed so as to enable the purchaser to run the unit at the same premises of the assessee as its absolute owner, generate power and sell the power so generated to the assessee company itself.

6. Therefore, in our considered view though there had been no physical removal of power unit the above transactions between the assessee-company and M/s Tata Electric Company certainly amount to nothing short of physical removal of the power unit of the assessee in respect whereof MODVAT credit was availed by the assessee so as to attract the penal provisions of the said Act and the Rules. The said transactions of sale of power unit and simultaneous lease of premises are wisely resorted to by the assessee as a device to avoid the tax liability on it on the ground that the power unit was not physically removed from the premises of the assessee. Therefore, we are of the considered opinion that the Tribunal without application of mind and without proper appreciation of the said transactions in the light of the

relevant provisions of the Central Excise Act, 1944 and the Rules has allowed the appeal of the assessee-company and set aside the Order-in-Original passed by the Commissioner of Central Excise, Belgaum. In the circumstances, we answer the above question of law in the 'negative' and against the assessee." (Emphasis is ours)

15.5 A similar view appears to have been taken by the Northern Bench of the Tribunal, at New Delhi in the case of ***Majestic Auto Ltd. vs Commissioner of Central Excise, Ghaziabad 2004 (173) ELT 145 (Tri-Delhi)***. The Tribunal in the said case was construing the provisions of Rule 57S. the said Rule reads as follows:

"may be (i) used in the factory of the manufacturer of the final products; or (ii) removed, after intimating the Assistant Commissioner of Central Excise having jurisdiction over the factory and after obtaining dated acknowledgement of the same, from the factory for home consumption or for export for payment of appropriate duty of excise leviable thereon or for export under bond, as if the capital goods have been manufactured in the said factory."

15.6 The Tribunal made the following observations in regard to the construction of the Rule:

"As the premises in which the capital goods are installed has now been leased to the Appellants No. 2 who are now in possession of the said premises, it cannot be claimed by the Appellants No. 1 that the capital goods are used in their factory. The capital goods are no more installed in the factory of the Appellant No. 1 and as these are now in the factory premises of another manufacturer (i.e., Appellants No. 2), the same have been removed from the factory for home

consumption. In terms of provisions of clause (ii) of sub-rule (1) of Rule 57S, the same should have been removed –

(a)after intimating the Assistant Commissioner of Central Excise having jurisdiction over the factory;

(b)after obtaining dated acknowledgement of the same; and

(c)on payment of appropriate duty of excise leviable thereon as if such capital goods have been manufactured in their factory.

Thus the Appellants No. 1 is liable to pay the duty on the impugned capital goods. A penalty is also impossible on them as they have not complied with the conditions specified in Rule 57S for the utilization of the capital goods.

We do not find any substance in learned Advocate's submission that the appellants No. 1, being not manufacturer, is not liable to pay duty. The appellant No. 1 has availed of Modvat credit of the duty paid on goods and as such all the conditions of the Central Excise Rules in this regard would apply. The provisions of Rule 57S, as mentioned hereinbefore, are very clear and specific that duty has to be discharged by the manufacturer who has taken the Modvat credit "as if such capital goods have been manufactured" in his factory."

16. We are in respectful agreement with the view expressed and the line of reasoning adopted by the Karnataka High Court in the case of ***Associated Cement Ltd. (supra)***. The submission of the appellant, if accepted, would render the purpose of the rule nugatory. In built in the Rule 57F(1)(ii) is the deeming fiction that goods are manufactured. The physical removal of the goods from the place of manufacture cannot be the criteria for subjecting the goods to imposition of excise duty as in our view such an interpretation would render the MODVAT scheme unworkable as it would give premium to an obvious attempt at evading

tax. Even otherwise, the onus in these facts whether or not there had been physical removal would be on the assessee.

17. Before We conclude we may point out that in support of his submission pertaining to the second set of transaction Mr Jain had relied upon the judgment in the case of *Indorama Synthetics (I) Ltd. vs Commissioner of Central Excise, Nagpur 2005 (190) ELT 193*. The Western Zonal Bench of the Tribunal while deciding the issue involved had inter alia relied upon its own judgment in the case of *Associated Cement Ltd. (supra)* which was reversed by a Division Bench of the Karnataka High Court; a reference to which has been made by us hereinabove. Therefore, since we have applied the same line of reasoning, this judgment would have no applicability.

18. The other judgment relied upon by Mr Jain is also of the special Bench (New Delhi) of the Tribunal in the case of *Anand Polyrotex vs Collector of Central Excise 1991 (56) ELT 537 (Tribunal)*. The judgment being cryptic, the facts which we have been able to glean from the report evidently are as follows: The appellant before the Tribunal was using duty paid raw material covered under chapter 39. In this case, the issue which arose, was that whether waste could be removed on payment of duty if, it was otherwise not dutiable, due to it, being covered under an exemption notification. In our view this case would not help the cause of the appellant as, the issue that arises in the present case is whether the word removal appearing in rule 57F(1)(ii) had to be construed (in the context of facts obtaining in the instant case) as physical removal. There is no discussion on this aspect of the

matter in *Anand Polyrotex (supra)*.

19. In the aforesaid circumstances, the question of law is answered in the affirmative and against the assessee. Accordingly, the appeal stands disposed of.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL,J

JULY 12, 2011
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