

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 28th October, 2013
Judgment pronounced on: 18th December, 2013

+ **CEAR 7/2000**

COMMISSIONER OF CENTRAL EXCISE. Petitioner

Through Mr. Rahul Kaushik with
Mrs. Bhuvneshwari Pathak,
Advocates.

Versus

M/S GRAND CARD INDUSTRIES & ORS. Respondent
Through

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJEEV SACHDEVA, J.

1. Reference under section 35 – G(1) of the Central Excise Act, 1944 has been received from the Custom, Excise & Gold (Control) Appellate Tribunal on the following question of law:

"Whether the option is available to the Assessee either to avail the exemption or to pay duty on the

final product by taking modvat credit on inputs in terms of Rule 57A of the Central Excise Rules, 1944.

2. The Respondent Assesseees were small scale industrial units (hereinafter called the SSI Units) and at the relevant point of time eligible for benefit of the exemption on clearances upto aggregate value of Rs. 30 Lakhs in terms of Notification No.1/93 dated 28.02.1993.
3. The Respondent Assesseees instead of claiming benefit under the exemption notification sought to take benefit of the Modvat Credit under section 57A of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) and paid full duty on the inputs used in the manufacture of final products to avail Modvat Credit. The credit was sought to be utilized for payment of duty on the final product.
4. The Department denied the said benefit on the premise that since the Respondent Assesseees were

eligible for exemption on clearances upto 30 lakhs under the notification and no duty was payable on the final products, they could not claim benefit of the Modvat credit in view of Rule 57C of the Rules.

5. The Commissioner of Central Excise (Appeals) vide his order dated 15.09.1995 denied Modvat credit to the tune of Rs. 3,16,095/- in the case of Grand Cord Industries and Rs. 9,01,754/- in the case of M/s Jhunsons Chemicals. The authorities held that an Assessee being covered under the said exemption notification had no option and the Modvat credit was not admissible under Rule 57C.
6. The Assessee/Respondents filed appeals before the Customs Excise and Gold (Control) Appellate Tribunal. The Tribunal vide order dated 03.03.1998 following their earlier decisions in the case of Everest Convertors Vs Collector 1995 (80) ELT 91 and other earlier decisions allowed the appeals and held that the

Assessee cannot be denied the benefit of Modvat credit of duty paid on inputs used in the manufacture of final products on which duty was paid, though the final product would be exempt from duty under an exemption notification issued under section 5A(1), since it was for the Assessee to claim the concession. It was further held that if the Assessee does not claim the benefit of the notification its benefit will not automatically extend to him. Nor can the benefit be forced on him. Where the Assessee had chosen not to avail of the concession available under Notification No. 1/93–CE, there could be no legal bar to his availing the benefit of the Modvat Scheme.

7. Aggrieved by the decision of the Tribunal the Revenue filed the reference petitions and accordingly vide order dated 16.02.2000 the matter has been referred to the High Court on the question of law referred to above.

8. For the purposes of clarity and to understand the real controversy it would be appropriate to examine the scope and ambit of the relevant Rule and the notification.
9. The relevant Rule 57 of the Central Excise Rules 1944 lays down as under:

RULE 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 Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter referred to as the 'specified duty') paid on the goods used in or in relation to the manufacture of the said final products whether directly or indirectly and whether contained in the final product or not (hereinafter referred to as the

'inputs') and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, 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:

Provided that

Rule 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 manufacture 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 exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty.

10. Rules 57A of the Rules allows for credit of any duty of excise paid on the goods used in or in relation to the

manufacture of a final products and for utilising the credit so allowed towards payment of duty of excise leviable on the final products subject to certain conditions.

11. Rule 57C of the rules however stipulates that no credit of the specified duty paid on the inputs used in the manufacture of a final product shall be allowed if the final product was exempt from the whole of the duty of excise leviable thereon or was chargeable to nil rate of duty.
12. The Supreme Court of India in **ICHALKARANJI MACHINE CENTRE (P) LTD. V. CCE, (2005) 1 SCC 465, AT PAGE 468** has laid down as under:

"9. MODVAT is basically a duty-collecting procedure, which aims at allowing relief to a manufacturer on the duty element borne by him in respect of the inputs used by him. It was introduced w.e.f. 1-3-1986. The said Scheme was regulated under Rules 57-A to 57-J of the Central Excise Rules, 1944. Rule 57-A entitled a

manufacturer to take instant credit of the Central excise duty paid on the inputs used by him in the manufacture of the finished product, provided that the input and the finished product were excisable commodities and fell under any of the specified chapters in the Tariff Schedule. Under Rule 57-G, every manufacturer was required to file a declaration before the jurisdictional Assistant Collector, declaring his intention to take MODVAT credit after paying duty on the inputs. The object behind Rule 57-A read with Rule 57-G and Rule 57-I was utilisation of credit allowed towards payment of duty on any of the final products in relation to manufacture of which such inputs were intended to be used in accordance with the declaration under Rule 57-G. Rule 57-I referred to consequences of taking credit wrongly.

10. The object of the MODVAT Scheme was to reduce cost of final product by taking credit for the duty paid on the inputs."

13. The Supreme Court has held that the Modvat scheme is a duty-collecting procedure, which aims at allowing relief to a manufacturer on the duty element borne by him in respect of the inputs used by him. The said Scheme entitles a manufacturer to take instant credit of the Central excise duty paid on the inputs used by him in the manufacture of the finished product, provided that the input and the finished product were excisable commodities and fell under any of the specified chapters in the Tariff Schedule. The object of the MODVAT Scheme is to reduce the cost of the final product by taking credit for the duty paid on the inputs.
14. The Government in exercise of powers under section 5A of the Act has issued the Notification: 1/93-CE dated 28- Feb- 1993. The relevant portion of the Notification is as under:

1.3 (a) - Exemption to first clearances of specified goods upto the value of Rs. 30 lakhs and concessional duty thereafter in case of SSI units

having clearances not exceeding Rs. Two crores in preceding year.

In exercise of the powers conferred by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred to as the said Act), the Central Government being satisfied that it is necessary in the public interest so to do hereby exempts the excisable goods of the description specified in the Annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), (hereinafter referred to as the "specified goods"), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from, -

(1) a factory which is an undertaking registered with the Director of Industries in any state or the Development Commissioner (small scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulation) Act, 1951 (65 of 1951),-

(a) in the case of first clearances of the specified goods up to an aggregate value not exceeding rupees thirty lakhs -

- (i) in a case where a manufacturer avails of the credit of the duty paid on the inputs used in the manufacture of the specified goods cleared for home consumption under rule 57A of the Central Excise Rules, 1994 (hereinafter referred to as the said Rules), from so much of the duty of excise leviable thereon which is specified in the said Schedule (read with any relevant notification issued under sub-rule (1) of Rule 8 of the said Rules of sub-section (1) of Section 5A of the said Act, and in force for the time being] as is equivalent to an amount calculated at the rate of 10 per cent ad valorem
- (ii) in any other case from the whole of the duty of excise leviable thereon.

15. The Notification has been issued for the benefit of the registered SSI Units enabling them to clear goods upto a certain value without payment of excise duty. The notification granting limited exemption is available to SSI Units. The rationale behind the notification is apparently to promote Small Scale Industries and encourage and make the products manufactured

attractive, competitive and eventually saleable due to price advantage. It is in nature of beneficial and benevolent provision.

16. Exemption notifications have to be strictly and liberally construed. Liberal and strict construction of an exemption provision is to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction, while keeping the object and purpose as the guiding factor.
17. The Supreme Court referring to various judgments has laid down in the case of **CCE v. FAVOURITE INDUSTRIES, (2012) 7 SCC 153** as under:

21. Furthermore, this Court in Associated Cement Companies Ltd. v. State of Bihar {2004 (7) SCC 642}, while explaining the nature of the exemption notification and also the manner in which it should be interpreted has held: (SCC p. 648, para 12)

“12. Literally ‘exemption’ is freedom from liability, tax or duty. Fiscally it may assume varying shapes, specially, in a growing economy. In fact, an exemption provision is like an exception and on normal principle of construction or interpretation of statutes it is construed strictly either because of legislative intention or on economic justification of inequitable burden of progressive approach of fiscal provisions intended to augment State revenue. But once exception or exemption becomes applicable no rule or principle requires it to be construed strictly. Truly speaking, liberal and strict construction of an exemption provision is to be invoked at

different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in the nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction. (See Union of India v. Wood Papers Ltd. {1990 (4) SCC 256} and Mangalore Chemicals and Fertilisers Ltd. v. CCT {1992 Supp (1) 21} to which reference has been made earlier.)”

22. In G.P. Ceramics (P) Ltd. v. CTT {2009 2 SCC 90}, this Court has held: (SCC pp. 101-02, para 29)

“29. It is now a well-established principle of law that whereas eligibility criteria laid down in an exemption notification are required to be construed strictly, once it is found that the applicant satisfies the

same, the exemption notification should be construed liberally. [See CTT v. DSM Group of Industries {2005 (1) SCC 657} (SCC para 26); TISCO Ltd. v. State of Jharkhand {2005 (4) SCC 272} (SCC paras 42-45); State Level Committee v. Morgardshammar India Ltd. {1996 (1) SCC 108}; Novopan India Ltd. v. CCE & Customs{1994 Supp (3) SCC 606}; A.P. Steel Re-Rolling Mill Ltd. v. State of Kerala {2007 (2) SCC 725} and Reiz Electrocontrols (P) Ltd. v. CCE. {2006 (6) SCC 213}}”

18. The stand of the Revenue that since the respondent was a SSI Unit and covered under the Notification No.1/93 and clearance of goods upto a value of Rs.30 lakhs was exempted from payment of duty, the benefit of MODVAT scheme could not be availed in terms of Rule 57C is counter-productive and not beneficial for the respondent Assessee. It works against them and

makes them in-competitive and places them at a disadvantage.

19. Thus, the stand of the Revenue is not sustainable. The object of the MODVAT Scheme is to reduce cost of final product by taking credit for the duty paid on the inputs {**ICHALKARANJI MACHINE CENTRE (P) LTD. (SUPRA)**}. The object of the Exemption notification is to grant benefit to the SSI Units for clearing goods without payment of duty upto a particular limit.
20. Both the MODVAT scheme and the exemption notifications are beneficial legislation. The beneficial notification have to be strictly initially but liberally interpreted.
21. If the interpretation of the Revenue is to be accepted that there was no choice to SSI Units to either avail the MODVAT Scheme or the benefit of the exemption notification, then the SSI units are prejudiced and may even become unviable.. The purpose of the MODVAT

Scheme is to prevent and neutralise cascading effect of the duty paid on inputs. If the interpretation of the revenue is accepted then a manufacturer not registered as a SSI unit would be entitled to benefit of the MODVAT scheme for unlimited value and pass on benefit to the purchaser. But an SSI unit covered by the exemption notification would not be entitled to the benefit of the MODVAT scheme but would be entitled to clear goods at nil duty or lesser duty only upto a limit. Because he cannot pass on the MODVAT credit, to the purchaser, he is denied a level playing field and suffers disadvantage. This clearly is not the purpose behind the MODVAT scheme and the exemption notification.

22. A manufacturer cannot simultaneously avail of double benefits one of the MODVAT Scheme and the other of the exemption notification unless expressly permitted to do so. In case a manufacturer is covered both under the MODVAT scheme and an exemption notification,

then the manufacturer should have the right to choose to avail the benefit of either of the two whichever is more attractive and beneficial. The choice once exercised is binding and final and interchange may not be permissible, unless allowed but this is different to arguing that choice is not available. The two provisions are in alternative but the right of choice is not curtailed.

23. The Supreme Court of India in the case of **COLLECTOR OF CENTRAL EXCISE VS INDIAN PETRO CHEMICALS 1997 (11) SCC 318** upheld the decision of the tribunal wherein it was held that where two exemption notifications were applicable, the Assessee had to take/avail of benefits of that notification which was more beneficial to it.
24. In the present case the manufacturers are admittedly covered both under the MODVAT Scheme and the exemption notification, if the right to chose is not granted then it would be disadvantageous for a

manufacturer to get itself registered as a SSI unit. This would thus be to the detriment of the manufacturer to register as a SSI unit. This consequence is clearly not intended by the legislature/Rule.

25. The Respondents admittedly have not claimed or availed of any benefit under the exemption notification but have sought to claim benefit of only the MODVAT Scheme as was available to other manufacturers.
26. The Respondents have only sought to forego the benefits of the exemption notification available to SSI units.
27. The Assessee in our view would have the option either to avail the exemption under the exemption notification or to pay duty on the final product by taking MODVAT credit on inputs in terms of Rule 57A of the Rules.
28. The reference is thus answered in favour of the Assessee and against the revenue.

29. There shall be no orders as to costs.

SANJEEV SACHDEVA, J.

DECEMBER 18, 2013
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SANJIV KHANNA, J.

