



C.M.A.Nos. 2384 and 3070 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On : 02.09.2024
Pronounced On : 30.04.2025

CORAM :

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR.JUSTICE G. ARUL MURUGAN**

C.M.A.Nos. 2384 and 3070 of 2006
and
M.P.No.1 of 2006 and CMP No.2382 of 2018

C.M.A.No.2384 of 2006:

M/s. MRF Limited,
124, Greams Road,
Chennai – 600 006.

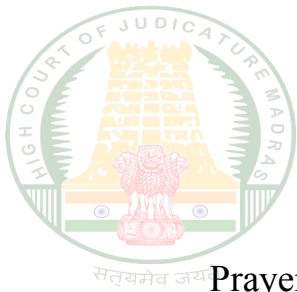
.. Appellant

Vs

1.The Commissioner of Customs,
Customs House,
Rajaji Salai,
Chennai – 600 001.

2.The Customs, Excise and Service Tax
Appellate Tribunal (CESTAT),
South Zonal Bench, Shastri Bhavan Annexe,
Haddows Road,
Chennai – 600 006.

.. Respondents



C.M.A.Nos. 2384 and 3070 of 2006

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Prayer in C.M.A.No.2384 of 2006 : Appeal filed under Section 130 of the Customs Act, 1962 against the final order No.212 of 2006 dated 29.03.2006 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

For Appellants : Mr.Arvind P.Datar, Senior Counsel
For Mr.Karthik Sundaram

For Respondents : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by
Mr.Sai Srujan Tayi,
Senior Panel Counsel
(for R1)
R2 – Tribunal

C.M.A.No.3070 of 2006:

The Commissioner of Customs,
Customs House,
Chennai – 600 001.

.. Appellant

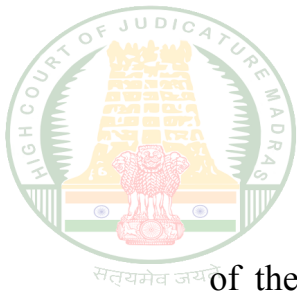
VS

1.M/s. MRF Ltd.,
No.124, Greaves Road,
Chennai – 600 001.

2.Customs, Excise and Service Tax
Appellate Tribunal (CESTAT),
South Zone Road, Shastri Bhavan Road,
Haddows Road, Chennai – 6.

.. Respondents

Prayer in C.M.A.No.3070 of 2006: Appeal filed under Section 130 of the Customs Act, 1962 against the final order No.212 of 2006 dated 29.03.2006



C.M.A.Nos. 2384 and 3070 of 2006

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of the Customs, Excise and Service Tax Appellate Tribunal South Zonal
Bench at Chennai.

For Appellants : Mr.AR.L.Sundaresan,
Additional Solicitor General
assisted by
Mr.Sai Srujan Tayi, Senior Panel Counsel
For Respondents : Mr.Arvind P.Datar, Senior Counsel
For Mr.Karthik Sundaram
For R1
R2 – Tribunal

COMMON JUDGMENT

(Delivered by Dr.ANITA SUMANTH..J)

C.M.A.No.2384 of 2006 has been filed by MRF Limited ('Assessee') and C.M.A.No.3070 of 2006 has been filed by the Customs Department, challenging an order of the Customs, Excise and Service Tax Appellate Tribunal ('CESTAT'/'Tribunal') dated 29.03.2006.

2. The substantial questions of law admitted for resolution in CMA 2384 of 2006 filed by the Assessee are as follows:

1. *Whether the Tribunal erred in law in holding that MRF had breached condition v(a) of the Notification No.203/92?*

2. *Whether, in law, the CBEC Circulars of January/June, 1997 ("Amnesty Scheme Circulars") could at all be said to have "retrospectively" amended the basis of quantification of Modvat credit to be reversed, which had been set out in the earlier CBEC Circulars of February/March 1995?*



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3) *Whether the demand in the Show Cause Notices of June and November 1995 for Customs Duty which was ex facie beyond the period of six months prescribed by Section 28, was barred in law?*

4) *Whether, in law, MRF could be considered to be guilty of “suppression” or “mis-declaration”, (for invoking the longer period of limitation) when admittedly, there was no requirement whatsoever of submitting any declaration regarding non-availment of input stage credit, either in the Exemption Notification No.203 of 1992 nor was it otherwise required by the Customs Authorities-until October 1994 – after which date the requisite declarations had been duly submitted by MRF?*

5) *Whether, in any event, the longer period of limitation could at all be invoked under the proviso to Section 28 despite the statutory provision of Rule 57F(3), which expressly permitted Modvat Credit relatable to duty free export to be appropriated by the manufacturer and utilised for payment of excise duty on clearances of manufactured products for domestic consumption?’*

3. The substantial question of law admitted for resolution in CMA

No.3070 of 2006 filed by the Revenue is as follows:

Whether the conclusion of the Tribunal in restricting the invocation of larger period of limitation upto 1.1.1995 is right in law?

Brief facts

4. The Assessee is engaged in the manufacture of tyres and tubes and had exported inputs against 12 Value Based Advance Licence Scheme (VABAL) availing benefit of the Duty Entitlement E C Scheme.



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The VABAL scheme were issued for import of raw materials duty free for the purpose of manufacture and export of the products manufactured in terms of Notification No.203/92-Cus dated 19.05.92 ('Notification').

5. The Notification set out some conditions to be satisfied for the grant of duty exemption including that, the assessee concerned cannot obtain input stage credit under Rule 56A/57A of the Central Excise Rules 1994 ('Rules'). Based on an inspection conducted, the Department was of the view that the assessee had claimed credit in respect of the inputs, thus breaching the condition under clause (v)(a) of the Notification.

6. Two show cause notices ('SCN') came to be issued, and upon consideration of the replies and explanations tendered, an order-in-original came to be passed on 31.01.2002. The order travelled through the stages of first and second appeal, and the present civil miscellaneous appeals have been filed at the instance of both the assessee as well as the department.

7. The assessee has factories in four locations, Arakonam, Medak, Goa and Tiruvottiyur. As far as Tiruvottiyur is concerned, a demand had been raised that was the subject matter of first appeal where the assessee



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was successful. Notwithstanding the same, the assessee settled the demand under the Kar Vivid Samadhan Scheme ('KVSS'), an amnesty scheme. The Departmental appeal challenging the favourable order passed by the Commissioner (Appeals) had come to be closed recording the factum of settlement.

8. The submissions of Mr.Arvind P.Datar, Senior Counsel for Mr.Karthik Sundaram on each question of law are summarised below:

Substantial question of law No.1:

9. The assessee relies on para 66 of the EXIM Policy for the period 1992-1997 which states that exports made from date of receipt by the licencing authority of an application for the VABAL could be applied towards discharge of export obligations under the licences.

10. Substantial quantum of exports had been made by the assessee prior to the issuance of VABAL licence but post submission of application for VABAL licence. Hence the benefit under para 66 of the EXIM Policy was available to the assessee.

11. Since the assessee was engaged in manufacture both in the domestic as well as in the export market, there were practical difficulties in segregating the inputs towards manufacture destined for domestic use



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and export. Hence, and since the exports preceded the import of inputs in many cases, the assessee reversed proportionate credit in respect of those inputs consumed in tyres exported under VABAL Scheme.

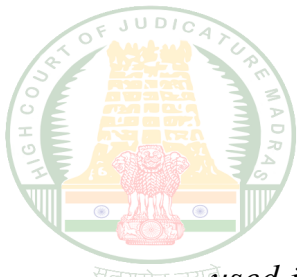
12. The assessee carried a legitimate belief that it was entitled to the benefit of Rule 57F(3) of the Rules and hence there was no requirement to reverse credit for inputs under VABAL Scheme.

13. The view, as above, had been conveyed to the Assistant Collector of Central Excise by letter dated 11.11.1993. By way of abundant caution, a clarification had been sought from the Member (Customs) from the Central Board of Excise and Customs with a copy marked to the local Commissioner on 22.02.1994.

14. The assessee draws support from the decisions of the Tribunal in *CCE, Hyderabad V. Aggarwal Rubber Products Ltd.*¹ and *CCE, Chandigarh V. Oswal Agro Mills Ltd.*². The view of the assessee also found favour in the minutes of the Principal Collector's Conference conducted on 20/21 January, 1995 clarifying that *'In those cases where the imports have already been effected under the DEEC Scheme, the exporter can be permitted to reverse the credit taken in respect of inputs*

¹ 1997 (73) ECR 155

² 11997 (93) ELT 184 (Tribunal)



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used in exported finished product with reference to the actual amount of duty credit taken. If quantification is not possible reversal of credit should be based on the input-output norms approved by the Commerce Ministry., reiterated in Circular bearing No.109/19/95-CX dated 02.03.1995 ('1995 Circular').

15. The assessee relies on Notification No.203/92-Cus., dated 19.05.1992, including condition (v)(a) thereof.

16. That apart, it relies upon four judgments (i) *Chandrapur Magnet Wire (P) Ltd. V. CC, Nagpur*³, (ii) *CCE V. Bombay Dyeing and Mfg Co. Ltd.*⁴, (iii) *Hello Minerals Water Pvt. Ltd. V. UOI*⁵ and (iv) *CCE V. Sanjay Engineering Industries*⁶.

17. The ratio of these decisions is that reversal of Modvat Credit is a revenue neutral event, since it does not amount to availment of credit. Hence, any exemption Notification which contains a condition that input stage credit cannot be taken would stand satisfied on reversal of credit and the Department cannot deny the assessee the benefit of such exemption on the ground that credit was taken and then reversed.

³ 1996 (81) ELT 3 (SC)

⁴ 2007 (215) ELT 3 (SC)

⁵ 2004 (174) ELT 422 (All)

⁶ 2016 (43) STR 354 (Raj)



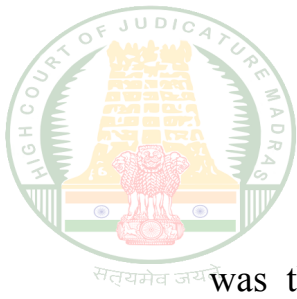
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18. The 1995 Scheme provided that reversals could be made on the basis of Input-Output norms (SION norms) and the admitted position is that the assessee has effected reversals based on these norms. Thus, and applying the ratio of the decisions cited supra, the effect is that no credit was taken by the assessee at all.

19. The revenue was well aware of the expungement of the credit by way of SION norms and no dispute was raised in this regard. There were no communications indicating disapproval of the revenue in regard to the modus operandi followed by the assessee and no show cause notice issued at any stage proposing any adverse action in this regard.

20. An amnesty scheme was introduced in 1997 which the assessee sought to avail. The contention of the revenue was that the appellant had not complied with the stipulations under that Scheme, whereas the assessee countered by stating that, in fact, it had complied with the stipulations under the amnesty scheme long prior to the introduction of that Scheme, in 1995 and thereafter.

21. Thus, according to the assessee, the reversals had been effected strictly in line with the 1995 Circular and hence the resultant position



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was that no input credit had been availed by it. There was thus no justification to deny it the benefit of the Notification.

22. For this, the assessee relies on the judgment of the Supreme Court in *Bharti Telecom Ltd. V. CC*⁷ and of the Tribunal in *JCT Ltd. V. CCE*⁸. Without prejudice to the argument that reversals had been made as stipulated under the applicable schemes, the assessee would maintain that a significant portion of the reversals had been made prior to the passing of order-in-original dated 31.01.2002 and, of some portion, prior to the passing of the Tribunal's order dated 29.03.2006.

23. With the reversal, and applying the ratio of the judgement in *Chandrapur Magnet Wire (P) Ltd.* (supra), the resultant position is that the Assessee has not availed credit.

Substantial question of law No.2:

24. The 1997 Scheme did not have retrospective effect, so as to amend the basis of quantification of Modvat Credit, requiring reversal under Condition (v)(a) of the Notification. This finding of the Tribunal alters the very object of the Scheme.

7 2001 (134) ELT 327 (SC)

8 2002 (149) ELT 433 (T-Del)



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25. The assessee argues that the amnesty scheme was introduced to benefit exporters who had availed input stage credit provided under the Notification. This was a standalone Scheme which was not a continuation of, or in any way related to the 1995 Circulars.

26. This is apparent from the position that the Scheme does not anywhere refer to the 1995 Circulars or state that it was a continuation of the same. In any event, no such Circular, with retrospective effect could have been issued in light of the judgments of the Supreme Court in *Cannanore Spinning and Weaving Mills V. CCE*⁹ and *H.M Bags Manufacturer V. CCE*¹⁰. Applying the law in *MRF Ltd. V. CST*¹¹, the power to legislate retrospectively cannot be assumed unless such power was specifically conferred.

27. In any event, it is a matter of record that the Revenue accepted all the reversals effected by the Assessee under the 1995 Circulars raising no dispute whatsoever till after the introduction of the amnesty scheme.

9 1978 (2) ELT 375 (SC)

10 1997 (94) ELT 3 (SC)

11 2006(8) SCC 702



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28. Thus, the Department cannot proceed to rake up a settled issue.

However, as a measure of goodwill, the assessee, had, remitted interest, in line with the amnesty scheme though it believes it had no necessity to do so.

29. The judgment of the Supreme Court in *Bharti Telecom Ltd.* (supra) has not been appreciated by the Cestat in proper perspective.

30. The amnesty scheme prescribed the cut-off date as 31.01.1997. Admittedly, the assessee had made payments even thereafter, till 15.02.1999 and the quantum of payments made post 31.01.1997 till 15.02.1999, amounted to Rs.3,60,29,072/-. The judgment of the Supreme Court in *Bharti Telecom Ltd.* was rendered on 07.01.2001 and the Assessee could not have anticipated the interpretation given by the Supreme Court. In fact, the continuing remittances had been at the instance of the Department, and on account of the pressure exerted by the departmental officials.

31. In any event, the reversals post 07.01.2001 was of an insignificant amount when compared with the demand under the impugned orders, that is disproportionately higher.

Substantial questions of law Nos.3, 4 and 5



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32. On the aspect of limitation, the Assessee submits that the longer period of limitation under Section 28 would not be available in the present case as there has been no suppression or mis-declaration on its part and the Declarations made were in line with requirement under the Rules. There is no merit in the contention that the Declarations had been false or that it had suppressed any material.

33. The entirety of the transactions in question had been carried on with the knowledge of the Department and there is not even a solitary instance when the Department had raised a flag in regard to either the transactions or the modus operandi by which they were carried out. Reference to the Declarations was thus misconceived and concocted to suit the Revenue's case.

Levy of Interest

34. The levy of interest is contested on the ground that the Handbook of Procedures 1992-1997 governing the VABAL Scheme does not envisage the levy of interest. Moreover, the Customs Act 1962 ('Act') also, at the relevant point in time, did not provide for the levy of interest. Hence the impugned levy of interest is without the support of any enabling provision under the Statute.



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35. Reliance is placed on the following decisions by the Assessee:

1. *Commissioner of Central Excise, Bhubaneswar – I V. Champdany Industries Limited*¹²
2. *Commissioner of Customs, Mumbai V. Toyo Engineering India Ltd.*¹³
3. *Prolite Engineering Co. V. Union of India*¹⁴
4. *Chandrapur Magnet Wire (P) Ltd. V. CC, Nagpur*¹⁵
5. *CCE V. Bombay Dyeing and Mfg Co. Ltd.*¹⁶
6. *Hello Minerals Water Pvt. Ltd. V. UOI*¹⁷
7. *CCE V. Sanjay Engineering Industries*¹⁸
8. *Bharti Telecom Ltd. V. CC*¹⁹
9. *Bharti Telecom Ltd. V. CC*²⁰
10. *JCT Ltd. V. CCE*²¹
11. *Rane Engine Valves Ltd. V. CCE, Chennai*²²
12. *Arviva Industries India Ltd. V. Uoi*²³
13. *UOI V. Arviva Industries Ltd.*²⁴
14. *Shasun Drugs and Chemicals V. CESTAT*²⁵
15. *Shasun Chemicals and Drugs Limited V. CC, Seaport (Chennai)*²⁶
16. *CCE, Hyderabad V. Aggarwal Rubber Products Ltd.*²⁷
17. *CCE, Chandigarh V. Oswal Agro Mills Ltd.*²⁸
18. *CCE V. Kotley Gum Industries*²⁹
19. *Asst. Commr. GST V. Shriram Value Services Pvt. Ltd.*³⁰

12 (2009) 9 SCC 466

13 (2006) 7 SCC 592

14 1995 (75) ELT 257 (Guj)

15 1996 (81) ELT 3 (SC)

16 2007 (215) ELT 3 (SC)

17 2004 (174) ELT 422 (All)

18 2016 (43) STR 354 (Raj)

19 2001 (134) ELT 327 (SC)

20 2001 (130) ELT 133 (T-Del)

21 2002 (149) ELT 433 (T-Del)

22 2003 (153) ELT 92 (T-Che)

23 2004 (167) ELT 135 (Bom)

24 2007 (209) ELT 5 (SC)

25 2006 (198) ELT 179 (Mad)

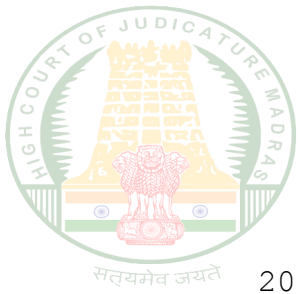
26 2014 (299) ELT 337 (T-Che)

27 1997 (73) ECR 155

28 11997 (93) ELT 184 (Tribunal)

29 2016 (335) ELT 581 (SC)

30 2019 (368) ELT 928 (Mad)



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20 .*Pushpam Pharmaceuticals Co. V. CCE*³¹

21 .*Modipon Fibre Company V. CCE*³²

22 .*CCE V. Malleable Forgings*³³

23 .*CCE V. CMS Computers*³⁴

24 .*Nizam Sugar Factory V. CCE*³⁵

25 .*Bharti Telecom V. CC*³⁶

36. The submissions of Mr.AR..Sundaresan, learned Additional Solicitor General assisted by Mr.Sai Srujan Tayi, learned Senior Panel Counsel on behalf of the Revenue/Customs Department are now summarised. In its appeal, the revenue challenges that part of the order of the Cestat partly accepting the challenge of the Assessee on the ground of bar of limitation.

37. The Revenue is aggrieved by the findings of the Tribunal in its interpretation of Section 28 of the Act. The Tribunal has proceeded on the basis that the goods referred to in the show cause notice would comprise both imported and indigenous inputs, concluding that the Notification would apply only in respect of imported inputs.

38. According to the revenue, it is the imported inputs that have been transformed into the final products that were exported and hence

31 1995 (78) ELT 401 (SC)

32 2007 (218) ELT 8 (SC)

33 1998 (100) ELT 8 (SC)

34 2005 (182) ELT 20 (SC)

35 2006 (197) ELT 465

36 2001 (130) ELT 133 (T-Del)



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the exports/sale consideration, were liable to be confiscated under Section 120(1) of the Act.

39. The revenue harps on the fact that input stage credit in terms of Rules 56A and 57A of the Rules had been availed for the manufacture of the products exported, in violation of Clause (v)(a) of Notification dated 19.05.1992, going so far as to equate the transaction to smuggling under Section 2(39) of the Act, of prohibited goods.

40. Learned Additional Solicitor General would draw note to condition (v)(a) of the Notification that makes it clear that the export should be in respect of those goods where no input stage credit has been claimed and it is only upon satisfaction of all conditions including condition (v)(a) that the export obligation would stand discharged. In fine, the case of the revenue is Section 28 of the Act must be read along with Sections 111(o), 113(d), 120, 121 and 124 of the Act to sustain the penalty imposed on the assessee.

41. According to the Department, the modus operandi followed by the assessee was never within the knowledge of the Department and thus the extended limitation would apply to the present matter. This issue came to the fore when noticed by the Cochin Commissionerate which



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issued a Public Notice bearing No.36/94 calling upon importers of inputs under the DEEC Scheme to declare those shipping bills where input credit had not been availed.

42. Such a declaration came to be filed by similarly placed entities only after 24.10.1994, which is the date of the public notice. Even in these, some of the statements made are false, manipulated and intended to deceive the Department. Hence and since mis-declaration is established, the proviso to Section 28(1) can be invoked by the revenue and the show cause notices issued were in order.

43. It is only after the inspection of the factories of various assesseees including MRF on 07.10.1993 that the Department woke up to possible misdeclaration which was confirmed by subsequent verification of the details. This modus operandi is nothing but fraud having been played upon the revenue, which vitiates all proceedings.

44. On the availment of credit under Rule 57F(3) of the Rules, the revenue relies on the first proviso to that Rule, which reads as follows:

Provided that the credit of specified duty in respect of inputs used in the final products cleared for export under bond or used in the intermediate products cleared for export in accordance with sub-rule (2) shall be allowed to be utilized towards payment of duty of excise on similar



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final products cleared for home consumption or for export on payment of duty and where for any reason such adjustment is not possible, by refund to the manufacturer subject to such safeguards conditions and limitations as may be specified by the Central Government in the Official Gazette.

45. According to the respondent, the above Rule applies to all manufacturer-exporters generally, and does not apply to manufacturer-exporters like the assessee who have opted to be assessed under a special scheme. In the case of such assessees, it is the governing Notification that would apply and in the case of the assessee it is Notification No.203/92-Cus that would apply.

46. The above Notification says that the final product may be exported only without availing of input credit used in the manufacture and this condition has been violated by the assessee.

47. The Department has relied on the following decisions:

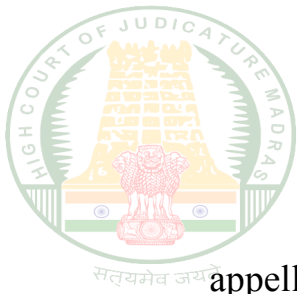
1. *Manohar Lal (Dead) by Lrs. V. Ugrasen (Dead) by Lrs. and others*³⁷
2. *Pancham Chand and others V. State of Himachal Pradesh and others*³⁸

Discussion and conclusion

48. The question that arises in this matter is the entitlement of the

³⁷ (2010) 11 SCC 557

³⁸ (2008) 7 SCC 117



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appellant to customs duty exemption under Notification No.203 of 1992 (in short 'Notification'). Under that Notification, an exemption had been extended for payment of duty in respect or raw materials and inputs imported by an assessee under the Value-Based Advance Licences (VABAL) issued under Export-Import Policy (EXIM policy) from 1992 to 1997.

49. The CESTAT had also called for copies of all the Bills of Entry and Shipping Bills relating to the materials in question and after examining the documents, the CESTAT has made a neat tabulation in regard to the transactions. The issues were crystallized as follows:-

- (a) whether the appellants can be held to have fulfilled condition v(a) of Customs Notification No. 203/92 dated 19-5-92 in respect of the imports made under the DEEC scheme during Oct'92 to March'95 in respect of their factories at Goa, Arkonam and Medak.*
- (b) whether, in respect of their Thiruvottiyur factory, the appellants can be held to have fulfilled condition v(a) of the Notification for similar imports.*
- (c) whether Section 28 of the Customs Act is applicable in this case.*
- (d) whether, in the event of the appellants beings found liable to pay Customs duty on any of the above imports on account of breach of the above condition of the Notification, the extended period of limitation under Section 28(1) of the Customs Act is invocable for recovering such duty from them.*



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(d) whether any penalty is liable to be imposed on the appellants under Section 112 of the Customs Act and, if so, to what extent?

50. The second issue was held in favour of the appellants holding that it had fulfilled condition v(a) of the subject notification in respect of the raw materials imported by them and used in Thiruvottiyur as those arrears had been settled under the Kar Vivad Samadhan Scheme.

51. As regards the first issue, the matter was remanded with the direction that the MODVAT credit reversals and interest payments need to be verified license-wise. There is a direction to the effect that if the full MODVAT credit reversals and interest payments had not been made on or before 31.1.1997, the appellants would be held to have committed breach of the condition v (a) of the subject notification. The conclusion of the Tribunal is at para 7.14 as follows:-

7.14 Reverting to the question whether MRF can be held to have fulfilled condition v(a) of Notification 203/92-Cus. in respect of their factories at Goa, Arkonam and Medak, we find that the Commissioner dealt with this question factory wise and answered it in the negative following Bharti Telecom (supra). In the case of Bharti Telecom Ltd., the Supreme Court was handling a situation involving only one VABAL whereas , in the case of Shasun Drugs &



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*Chemicals (supra), the High Court was dealing with a case involving several Advance Licences. The High Court held that the question whether the importer (under the DEEC scheme) had complied with the above condition of the Notification required to be considered **in respect of each licence**. Accordingly, the court remanded the case to the adjudicating authority to reassess the Modvat credit reversals **licencewise**. We have been told that the Commssioner concerned has done the job vide Order-in-Original No.1221/05 dated 7.10.2005 in Shasun Chemicals & Drugs case. The Commissioner found that, in respect of 12 licences (out of 14), the party had complied with condition v(a) ibid by making full reversal of credit and paying interest by 31.1.97 and, accordingly the demand of duty on the inputs imported under the 12 licences was dropped. In respect of the remaining 2 licences, no such compliance was found and, accordingly, the demand of duty on the inputs imported under these licences was confirmed. Nobody has claimed that the Department has not accepted the above order in Shasun Drugs & Chemicals case. Therefore, we are of the view that, in the present case also, the Modvat credit reversals and interest payments need not be verified licence wise. [That a few licences are yet to be redeemed on account of non-logging of DEEC book will have no bearing on such verification in as much as the Revenue has no case that the appellants did not fulfil their export obligation under any of the twelve licences. The Revenue cannot take advantage of Customs authorities' inaction in the matter of logging necessary entries in DEEC book]. If it is found that full*



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Modvat credit reversals and interest payments in terms of the amnesty scheme were not made on or before 31.1.97 in relation to the exports made under any of the VABALs, the appellants will be held to have committed breach of condition v(a) of the Notification in respect of the inputs imported under such VABAL.

52. The relevant portion of Notification No.203 of 1992

(hereinafter referred to as 'subject notification') reads as follows.

General Exemption No.69

Exemption to materials imported against value based advance licence – In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, 1962 (52 of 1962), the Central Government being satisfied that it is necessary in the public interest so do, hereby exempts materials imported into India, against a Value based Advance Licence (hereinafter referred to as the sale licence) issued on or before 31st March, 1995 in terms of para 19 of the Export and Import Policy, 1st April, 1992 - 31st March 1997, from the whole of the duty of customs leviable thereon which is specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) and from the while of the additional duty leviable thereon under Section 3 of the said Customs Tariff Act, subject to the following conditions

.....

(v) that the export obligation is discharged, within the period specified in the said certificate or within such extended period as may be granted by



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the Licencing Authority by exporting goods manufactured in India, in respect of which

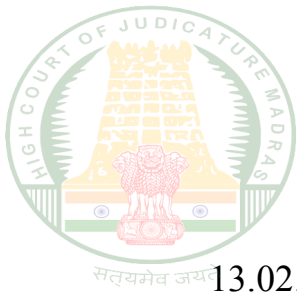
(a)no input stage credit is obtained under Rule 56A or 57A of the Central Excise Rules, 1944 (hereinafter referred to as the said rules);

.....

53. The Notification provided that an assessee is not entitled to any credit at the stage of inputs that were used for manufacture of the goods exported under that Scheme. There were difficulties faced by the assesseees in the segregation of inputs as they were engaged both in manufacture in domestic market as well as for export.

54. In the former case, the manufacturer assessee was permitted to avail input stage credit or Modvat. Thus, assesseees claimed Modvat credit in full and thereafter determined the quantum of inputs that were utilised in manufacture of domestic purposes and the quantum utilised for manufacture that was ultimately exported. In the case of the latter scenario, the input credit that had been taken was reversed proportionately.

55. Hence, and in order to provide clarity, the Central Board of Excise and Customs (CBEC/Board) had issued Circulars dated



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13.02.1995 and 02.03.1995 which lay down a formula for quantifying the input credit that would have to be reversed. The minutes of the Principal Collector's Conference dated 20/21.01.1995 had discussed the DEEC Scheme in the context of various notifications and the Committee had resolved that in those cases where imports had already been effected under the DEEC Scheme, the exporter may be permitted to reverse the credit taken in respect of inputs used in exported finished products with reference to the actual amount of duty credit taken.

56. If such quantification of input and credit was not possible then the reversal was to be based on the input and output norms fixed by the Commerce Ministry. The assessee has confirmed, and there is no dispute on this position, that SION norms had been applied to the transactions. The relevant portion of Circular No. 267/9/95-CX dated 13.02.1995 and relating to the DEEC Scheme, reads thus:

***Minutes of the Principal Collector's conference held
on 20th/21st Jan. 1995.***

.....

Point No.10

***Problems relating to issuance of invoice from
Dealers
DEEC SCHEME***

The Conference discussed the operation of DEEC



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Scheme involving Notification No.203/92-Cus and 204/9-Cus. It was felt that issue of advance license was dealt with by the Ministry of Commerce and Directorate General of Foreign Trade. However, allowing export of goods through shipping bills and other allied functions as well as completing different in port and export trade control formalities are the responsibilities of the Customs Houses. On the other hand, granting of MODVAT Credit as well as sanction of Maritime Rebate claims are the function of Central Excise Collectorates. Many of the instructions issued by Custom Houses are not available with the Central Excise formations. Even if these are available these instructions are not studied properly. In respect of DEEC Scheme the recommendation of Conference are as follows: :-

- 1. Supdt. of Central Excise at the time of scrutiny of AR Forms should ensure that a declaration is made by the exporters thereon that the export is (or is not) under Vabal/Qabal and that they have/have not taken modvat credit on the inputs.*
- 2. Whenever any instructions are issued by Customs Houses in respect of export procedure including exports under DEEC Scheme, copies thereof must be endorsed to all Divisional Assistant Collectors of Central Excise. This is particularly more important with respect to Central Excise Collectorates of Chandigarh, Ahmedabad, Hyd abad, Bangalore, Raipur.*
- 3. Where a manufacturer exporter or his supporting manufacturer has already availed of input credit in respect of export consignment but where the import import under DEEC Scheme have yet to be made, the concerned exporter should advised in writing that in terms of Notification No.263/94-Cus. Exports made cannot be counted towards discharge of export obligation. In those cases where the imports have already been effected under the DEEC Scheme, the exporter can be permitted to reverse the credit taken in respect of inputs used in exported finished product with reference to the actual amount of duty credit taken. If*



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quantification of input credit is not possible reversal of credit should be based on the input-output norms approved by the Commerce Ministry.

57. Circular 108/18/95-CX was issued on 02.03.1995, wherein the

Board clarifies as follows:

Modvat – reversal of credit in respect of inputs used in the exported finished product

. . . .

2. Some doubts have been raised whether the expression "the exporters can be permitted to reverse the credit taken in respect of inputs used in the exported finished product with reference to the actual amount of duty credit taken, and if the quantification of input credit is not possible reversal of credit should be based on the input output norms approved by the Commerce Ministry" implies that the Department should ask/direct the exporters to reverse input credit taken on the export goods and that we need not thereafter take any further action.

3. In the above connection, it is clarified that the aforesaid observations were made to cover the situations wherein if the exporters after having availed credit themselves reverse the credits, then we may not object to the same. Similarly, if the amounts of input credit availed are not known the conference was of the view that reversal of credit can be based



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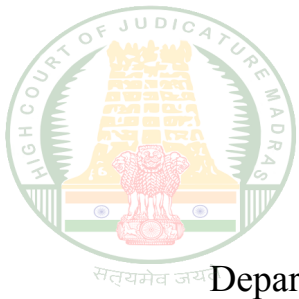
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*on the input-output norms approved by the
Commerce Ministry.*

58. Those Notifications were followed by a Press report/announcement by the Central Government that if the reversal as per the SION norms was completed prior to 15.07.1995, then the assessee could seek benefit of exemption provided under the Notification. According to the appellant, it had scrupulously abided by the stipulation under the two Circulars and completed the reversal of credit on 13.07.1995, prior to the cut-off date. The Cestat has not given credence to the cut-off date stipulated under the Press note stating that it was not an authenticated document.

59. Two SCNs were issued alleging non-compliance with the condition under clause v(a) of the Notification and calling upon the assessee to show cause why duty, interest and penalty not be imposed for wrongful availment of credit, along with confiscation of the goods imported, under the relevant provisions of the Customs Act 1962 ('Act').

60. The first SCN related to seven licences, and the second SCN, to the remaining five licences. The assessee submitted detailed responses dated 14.07.1995 and 21.12.1995 to the SCNs, duly received by the



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Department, explaining the modus operandi followed by it. The responses are extracted below:

First SCN

Show Cause Notice F.No.S8/355/95 AP dt. 19.6.95 – DEEC Expungement of Modvat for the years June'92 to March'93, 1993-94 and 1994-95 under VABAL Exports.

May we refer to our letter dt. 12.7.95

We are glad to inform that you that we have completed submission of all the details called for by the Central Excise Department by way of Annexure – I & II provided by the Central Board's Office and as per the calculations made therein, we have also expunged on 13.7.95, modvat credit in respect of VABAL exports from all our 5 factories as follows:-

<i>Name of factory</i>	<i>Gross Modvat Amount</i>	<i>Amount expunged earlier</i>	<i>Nett Modvat Amt. Expunged on 13.7.95</i>
<i>Thiruvottiyur</i>	<i>1,53,48,195.00</i>	<i>44,05,402.00</i>	<i>1,09,42,793.00</i>
<i>Kottayam</i>	<i>13,81,506.00</i>	<i>7,85,015.87</i>	<i>5,96,490.13</i>
<i>Goda</i>	<i>1,41,67,313.00</i>	<i>75,48,801.00</i>	<i>66,18,542.00</i>
<i>Arkonam</i>	<i>7,69,358.00</i>	<i>1,21,145.00</i>	<i>6,48,213.00</i>
<i>Medak</i>	<i>72,098.00</i>	<i>9,670.00</i>	<i>62,428.00</i>
<i>G.Total</i>	<i>3,17,38,500.00</i>	<i>1,28,70,033.87</i>	<i>1,88,63,466.13</i>

We now enclose copies of the following documents for your



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perusal

(i) Letter dt. 12.7.95 addressed to Shri J.P.Gregory, Addl. Commissioner of Central Excise, Madras together with enclosures in 18 pages (Annexure I contains only AR4 details and hence not enclosed herewith)(Annexure 'A' Collectively).

(ii) Letter Ref. No. E/1.15/CP dt.13.7.95 sent by our Thiruvottiyur factory to their jurisdictional Asst. Commissioner intimating him regarding expungement of modvat credit on 13.7.95 itself (similar 4 other letters sent by other 4 factories of MRF are not being enclosed herewith), as they are identical letters. (Annexure 'B').

We have called for Certificates of such expungements from the Superintendents of Central Excise in respect of each of the 5 factories and as soon as these certificates are received, we shall forward the same to you.

We would also like to inform you that Representatives of Automotive Tyre Manufacturers' Association (ATMA), met Shri K. Viswanathan, Member Customs, at Delhi and the message received from Shri P.G.Mukundan, Secretary General of the Association (ATMA), after the said meeting, is reproduced below:-

"During our discussions, Mr.Viswanathan has confirmed that if the industry reverses MODVAT credit availed on the basis of the formula devised by the Central Board of Excise & Customs, there would not be any demand on the industry for payment of Customs Duty."

In view of the foregoing, we request you to drop proceedings proposed in the Show Cause Notice F.No. 58/355/95 AP. dt. 19.6.95.

Second SCN

21, December '95

To :



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*Custom House,
The Commissioner of Customs
No.33, Rajaji Salai.
Madras 600001*

*Dear Sir,
Show Cause Notice No. S591 242/93 GP7A;
S8/667/96 GP7A dt.23.11.95.*

*We acknowledge the above mentioned Show Cause Notice
at. 23.11.95 received by us on 5th Dec. '95.*

*1. At the outset, we would like to state very clearly that we
have not made any misdeclaration as alleged in the show
cause notice. In fact, while giving the declaration in terms
of clause (V) (a) of the Customs Notification No. 203/92,
we have made the declaration as below: -*

"We have not availed modvat credit on DEEC inputs."

*We made the above mentioned declaration in a qualified
manner because we believe even today, that Clause (V) (a)
can qualify only DEEC inputs and not other duty paid
inputs which might have been used along with DEEC
Inputs. This belief was based on Rule 57F (4) which
permits a manufacturer to utilise the modvat credit
pertaining to export clearances made under bond, for
payment of excise duty on similar final products cleared for
domestic consumption. However, we have subsequently
expunged modvat Under Protest, after registering a letter
of Protest with the Excise Department, only because the
Excise Dept. forced us to make such payment. A copy of the
letter of Protest will be produced to you on demand.*

*2. However, we have already expunged credit in respect of
the past period, i.e. June '92 to March '95 for a total amount
of modvat amounting to Rs,3,17,38,500/- in respect of our 5*



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factories situated in Thiruvottiyur, Arkonam, Kottayam, Goa, and Medak and effective from 1.1.95, we are expunging modvat credit at the time of each removal for export and the debit is shown on each AR4. We are in correspondence with the respective Central Excise Asst. Commissioners who have asked us to expunge more amount in respect of the past period. You have also referred to one such letter t. 24.2.95 from the Superintendent of Central Excise, Arakonam Range in respect of our Arkonam factory and another from Goa.

3.In your show cause notice de. 23.11.95, you have acknowledged that the Central Excise Dept. atleast in Arkonan and Goa have admitted expungement of modvat credit by MRF and they are in the process of finalising the figures of such expungement. We assure you, in respect of our factories in Madras, Kottayam and Medak also, the Central Excise Departments are in the process of finalising such figures.

We have also received a letter OC No.275/95 dt. 19.6.95 from the superintendent of Central Excise, incharge of our thiruvottiyur factory to furnish details in a revised proforma to complete details of further modvat to be expunged. A copy of this letter together with the revised proforma and our Interim reply to the Superintendent de. 27.6.95 are enclosed marked as Annexure "A" Colly (in 3 sheets) and Annexure "B" (in 2 sheets), respectively, for your information. It may be seen from this letter that the Excise Dept. has, for the first time, devised a method to arrive at the figure of modvat to be expunged on VABAL exports and also their willingness to accept and reckon the modvat already expunged, subsequent to Export clearance.

4.We have now expunged a total amount of Rs.3,17,38,500/-on the basis of a Proforam circulated by Shrij. B.C.Rastogi Member, Central Board of Excise &



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Customs and Shri. Tarun Roy, Chairman, Central Board of Excise & Customs deputed Shri R. Gopalonathan, Director General-Anti Evasion to visit Madras and finalise the figures of expungement made by MRF and to confirm that the expungement made by MRF was in accordance with Customs Notification No. 203/92. Shri R. Gopalanathan visited our company on 29th and 30th September' 95. Copies of our letter dt. 12.10.25 to Shri Tarun Roy and letter dt. 13.10.95 sent to Shri. R.Gopalanathan subsequent to such visit is enclosed marked as Annexure 'C' and Annexure 'D' respectively. We are awaiting order confirmation from the Central Excise department.

May we therefore request you to keep the present Show Cause Notice S591 242/93. GP74 dt.23.11.95 also pending along with earlier Show Cause Notice P. No.58/355/95AP at.19.6.95 till the Central Excise Dept. finalises the issue as directed by the Chairman, Central Board of Excise & Customs.

....

61. While this was so, and there was no finality to the SCNs issued in 1995, the Department had come out with an Amnesty scheme by way of Circulars issued in 1997 ('Amnesty'/1997 Circulars'). The 1997 Circulars and a Clarification, being (i) Circular No.605/140/95-DBK dated 03.01.1997, (ii) Ministry of Finance Circular No.285/1/97-CX dated 10.01.1997 and (iii) Board's Circular No.318/34/97 – CX dated 26.06.1997 are extracted below:

(i)Circular No.605/140/95-DBK dated 03.01.1997



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Scheme for permitting Reversal of Modvat Credit availed by the Exporters of goods under value based advance licence scheme in contravention of conditions of the scheme.

Director (Drawback) D.O. F. No. 605/140/95-DBK dt. 3.1.1997]

(Nagpur Commissionerate's T.N. No. 204/1/97, (Nagpur), dt. 8.1.1997]

The Export-Import Policy 1992-97 as well as the corresponding Customs exemption Notification No. 203/92 Customs permitting duty-free import of materials required for export production under the Value Based Advance Licensing Scheme had inter-alia provided that in respect of the export goods the benefit of input stage credit should not have been availed of by the exporter under Rule 57A of the Central Excise Rules, 1944. However, it was noticed by the Government that a large number of exporters availing benefit under the aforesaid Scheme had also availed input stage credit in respect of the goods exported by them. Such exporters had obtained duty-free clearances by misdeclaring that they had not availed any input stage credit in respect of such export goods and thus rendered themselves liable to penal action.

2. The Government has comprehensively examined this matter keeping in view the legal and administrative implications as well as repercussions on the export trade if it were to initiate enforcement proceedings against the exporting community for the breach of the condition of the Scheme as well as the customs exemption Notification.

3. Enforcement action in terms of Law may not only adversely affect export efforts of the country but would also cast a tremendous administrative burden on pursuing a large number of adjudication cases. The Government, therefore,



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deems it expedient to relax the relevant condition of Customs Notification No. 203/92-Cus., ex-post facto on compliance of following conditions:—

- (a) The concerned exporters reverse the Modvat Credit, incorrectly availed of by them on the goods exported under the Scheme, together in with interest at the rate of 20% on the said amount of Modvat credit retained by them between the date of export and the date of reversal.*
- (b) If reversal of Modvat credit and payment of interest as contemplated in condition (a) is completed by 31st January, 1997 and thereupon no demand of Customs duly leviable on goods imported against the Value Based Advance Licence in question shall be payable.*
- (c) The proposed relaxation will, however, not cover such merchant-exporters who had not declared the details of their supporting manufacturers and, consequently, in whose cases the reversal of Modvat is not practicable.*
- (d) In all cases where Modvat credit is reversed and the amount of interest is also paid before 31.1.1997, no penal action or prosecution proceedings shall be initiated against the Value Based Advance license holder.*
- (e) The Value Based Advance Licence holder who fail to reverse the Modvat credit in full before 31st January, 1997 shall not be exempt from penal proceedings under law.*

(ii) Ministry of Finance Circular No.285/1/97-CX dated 10.01.1997:

- Reversal of Modvat credit and payment of interest where exports were effected under Value Based Advance Licence before 31.1.1997 under Special Scheme.*

[MF (DR) Circular No. 285/1/97-CX (F. No. 209/4S/96-CX. 6) dt. 10.1.1997)

The text of the abovesaid scheme announced by the Government to allow reversal of the Modvat credit availed by exporters in contravention of the conditions of the Value Based Advance Licensing Scheme which has already been



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circulated by the Directorate of Drawback vide DO F. No. 605/140/95-DBK dated 3.1.1997. The conditions subject to which the benefit of the present scheme is being extended is set out in the enclosed text.

2. The quantification of the Modvat credit required to be reversed in such cases is to be done in the following manner:

A=Modvat Credit to be reversed.

B = Total value of exports under VABAL during the financial year, as declared in AR-4 (Sec. 4 Value).

C=Total credit availed in RG-23A during the financial year on all inputs

D = Total value of goods cleared for home consumption during the financial year arrived at under Section 4.

FORMULA:

$$A = \frac{B \times C}{D + B}$$

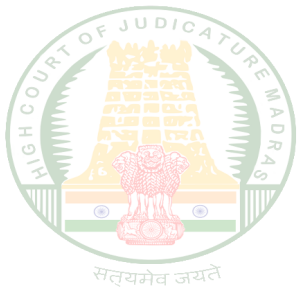
3. In addition to the above amount, an interest @ 20% on the amount of.

Modvat credit retained by such exporters for the period between the date of exports and the date of reversal has to be calculated and deposited by them before 31.1.1997 under the Central Excise Head along with the amount of Modvat wrongly availed and calculated as above. Where credit has already been reversed, the exporters shall deposit the interest amount calculated in the manner prescribed above before 31.1.1997 under the Central Excise Head.

4. Similar action should also be taken, mutatis mutandis, for merchant-exporters who declared the name of supporting manufacturers while applying

5. The Calculation Sheet regarding reversal and the amount of interest should also be submitted in the Office of the Jurisdictional Assistant Commissioner who will examine the correctness and intimate the same to the Commissioner in the following formal:—

<i>Name & address of the</i>	<i>Sl.No & date of</i>	<i>Description of</i>
----------------------------------	----------------------------	-----------------------



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Exporters

AR-4/AR-4A

Commodity

(2)

(3)

Value of exports

Amount of Modvat

Amount of Modvat

credit required to be reversed actually reversed

A.Amount

B. Particulars of debit entry

C.Date

(4)

(5)

(6)

*Amount of Interest re-
quired to be deposited*

*Amount of interest
actually deposited with
particulars date of TR-6
Challans*

Remarks

(7)

(8)

(9)

6. The Commissioner of Central Excise should submit the particulars in the aforesaid format to Chief Commissioners of Central Excise who will prepare a consolidated report indicating clearly the defaulting units/manufacturers who have not reversed the credit and deposited the interest as stated above and forward his report by 15.2.1997 to the concerned Commissioners of Customs for taking necessary actions for non-compliance with the conditions of Customs Notification by them under intimation to the Board.

7. It should be ensured that certificates regarding reversal of Modvat in full part and payment of interest due shall be issued only by an officer of the rank of Assistant Commissioner of Central Excise.

8. Earlier instructions regarding reversal related to VABAL, Scheme stand modified to the above extent.



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(iii) Board's Circular No.318/34/97 – CX dated 26.06.1997:

CENTRAL EXCISE TRADE NOTICES

Modvat — Reversal of Modvat credit and payment of interest where exports effected under VBAL before 31-1-1997 under Special Scheme - Issue of Certificate.

It has been brought to the notice of the Board that certificates are not being issued to the exporters, who have reversed the mod vat credit in terms of the instructions and formula contained in Board's Circular No. 285/1/97-CX., dated 10th January, 1997. It has also been suggested that such certificates should contain such particulars which may enable the concerned Custom Houses to expeditiously close the DEEC Book

- 2. The matter has been examined by the Board.*
- 3. It has been decided that in cases where a manufacturer-exporter, or a merchant-exporter. whose supporting manufacturers' name is mentioned in DEEC Book/Shipping Bills, approach the jurisdictional Assistant Commissioners of Central Excise with particulars in the format enclosed as Annexure-A, the same may be verified by the Assistant Commissioner with reference to the records of the exporter to ascertain its correctness in terms of the formula prescribed in the Circular dated 10-1-1997. A certificate should be issued by an officer of the rank of Assistant Commissioner on the body of the document containing the aforesaid particulars with initials on each of the leaf, indicating whether credit has been correctly reversed as per the formula and interest has been fully paid. Where reversal is not in conformity with the Board's formula, the same can be got determined by Cost Accountant nominated by the Chief Commissioner under Section 14A of Central Excise Act, 1914 before issue of any such certificate.*



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In cases of part reversal or part payment of interest, the same can be brought out clearly in such certificates.

- 4. In the cases where credit is reversed on actual basis, such Certificates should be issued only after verification of the records of the exporter by a Cost Accountant nominated by the Chief Commissioner under Section 14A of the Central Excise Act, 1944.*
- 5. It is also clarified that where any certificate has already been issued to an exporter and accepted by the Customs, no fresh certificate is required to be issued.*

EXCISE LAW TIMES ANNEXURE – A

Name & Address of the Exporter – _____

Central Excise Commissionerate _____

Division _____ Range _____

*Shipping Bill No. Sl.No. & date of Amount of Modvat credit
AR 4/AR 4A covered by required to be reversed in
Shipping Bill mentioned terms of formula
in Col. (1)*

(1) (2) (3)

*Amount of modvat Amount of Interest Amount of interest
actually reversed required to be deposited actually deposited
with particulars &
date of TR6 challans*

A. Amount

*B. Particulars of
entry in RG 23A/PLA*

C. Date

(4) (5) (6)



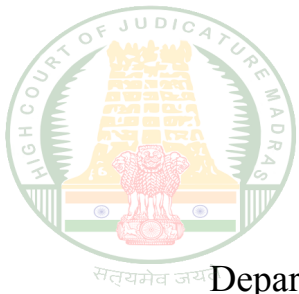
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(Based on C.B.E. & C. Circular No. 318/34/97-CX., dated 26-6-1997)

62. The assessee was in receipt of communications from the Department announcing the Scheme, and responded stating that they had expunged credit in toto, in terms of the 1995 Circulars. They corresponded with the Departmental officials giving them the particulars of the credit expunged in each of their factories and adopted the stand that with such reversal, the SCNs were liable to be dropped. In fact the responses sent to the SCNs had itself made this position clear.

63. The aforesaid correspondence appears to have stretched from 1997 to 2002, as the order-in-original passed on 31.01.2002 reveals that letters were furnished by the assessee on 05.02.1997, 05.10.1998, 23.11.1998, 01.04.1999, 19.05.1999 and 28.07.1999, post which there do not appear to have been any more correspondence on the subject. All of a sudden the assessee received order-in-original dated 31.01.2002, confirming the proposals under the SCNs dated 16.09.1995 and 23.09.1995, of duty, interest, penalty of Rs.5,00,00,000/- and confiscation of the goods imported.

64. An appeal was filed before the Cestat where the assessee argued both on the propriety of the procedure followed by the



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Department, as well as the merits of levy itself. On the procedure followed, that is, the application of the norms under the 1997 Circulars and not the SION norms prescribed under the 1995 Circulars, the Cestat disagreed with the assessee.

65. In *Chandrapur Magnet Wire (P) Ltd.*(supra) and *Bombay Dyeing and Mfg Co. Ltd* (supra), the Supreme Court has held that reversal of Modvat or Cenvat would tantamount to non-availment of credit on the inputs. In other words, in a case where credit was originally taken but reversed before utilisation, the position would be that no credit had been taken at all. This position would apply to this case, and the reversal of credit by the assessee, in effect, effaces the factum of credit having been taken initially.

66. The ratio of the above judgment has been followed by the Allahabad High Court in *Hello Minerals Water Pvt. Ltd* (supra) and Rajasthan High Court in *Sanjay Engineering Industries* (supra).

67. The Cestat, and the Department before us, has placed reliance on the case of *Bharti Telecom Ltd.* (supra). The claim of Bharti Telecom Ltd. was that the Amnesty Scheme was a beneficial scheme intended to aid exporters under the VABAL Scheme. Hence, reversal of credit



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effected in 1994 under VABAL Scheme should be taken into account and treated as compliance of the conditions under the Amnesty Scheme.

68. The argument was rejected on the ground that an Amnesty Scheme was of a special dispensation and was intended to be operated strictly within the four corners of that Scheme only. The assessee was required to comply with the parameters under that Scheme in light of the terms, conditions and formulae contained therein.

69. That Scheme imposed interest at the rate of 20% on the Modvat credit retained by the exporters between date of export and date of reversal which is to be computed and deposited before 31.01.1997. This is a special condition that figures in the 1997 Amnesty scheme only and calls for scrupulous compliance.

70. Hence, the Tribunal concluded that it cannot be said that there is a direct connect between compliance under the VABAL Scheme and compliance with the Amnesty scheme. The penalty and demand were confirmed as against which Bharti Telecom filed an appeal, unsuccessfully. The operative portion of the judgement in Bharti Telecom reads thus:

. . . .



9. *Learned counsel for the appellant lastly contends that the appellant had not violated Notification No.203/92. The submission is that the appellant was manufacturing goods both for home consumption and also for export and it was not possible to segregate input utilized in the manufacture of the final product which was exported, therefore, it was permissible for the appellant to first avail the modvat credit and then to reverse it after export. In support, reliance is placed upon a decision of this Court in Chandrapur Magnet Wires (P) Ltd., Nagpur v. Collector of Central Excise, Central Excise Collectorate, Nagpur [(1996) 2 SCC 159] and a departmental circular taken note of in that decision. That circular reads as under :*

"3. The credit account under MODVAT rules may be maintained chapterwise. MODVAT credit is not available if the final products are exempt or chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. an end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacturer of the final products, provided that credit of duty paid on the inputs in such exempted final products."

Para 8 of the judgment relied upon by the learned counsel reads thus:

"8. This circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not



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reasonably possible to segregate inputs utilized in manufacture of the dutiable final products from the final products which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products."

10. The appellant had at no stage took the plea that it was not reasonably possible for it to segregate inputs utilized in the manufacture of the dutiable final products from the final products which are exempted from duty. Now, the appellant cannot be permitted to raise such a new plea.

11. For the aforesaid reasons, the appeal is dismissed with costs.

71. The ratio of the judgment in *Chandrapur Magnet Wire (P) Ltd.*(supra) had not been considered by the Bench in *Bharti Telecom Ltd.*, since the argument of segregation of inputs used in manufacture of dutiable products vis-a-vis exempt products, was not taken before any of the authorities or even the High Court, and had been raised for the first time only before the Supreme Court, which had not been permitted.

72. However, the assessee before us has been urging this point



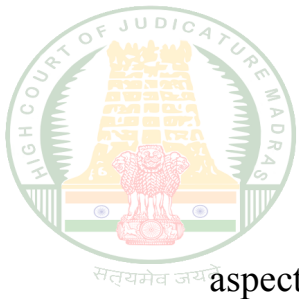
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from inception, seeking bifurcation of inputs utilised in manufacture of dutiable and exempt products, details of which have been admittedly placed before the authorities.

73. As regards the finding of the Tribunal that no parity should be maintained between the reversal effected under the VABAL Scheme, 1994 and the 1997 Amnesty Scheme, that finding of the Tribunal has been reversed by the Supreme Court in the case of *Bharti Telecom* (supra) in the following terms:

7. Challenging the order of the Tribunal, learned counsel for the appellant contends that the respondent was not justified in denying the benefit of the Amnesty Scheme to its client on the ground that it had reversed the modvat credit earlier to the enforcement of the scheme. There is considerable force in the contention. The Amnesty Scheme recognises the already reversed modvat credits. The reversal of credit made by the appellant in 1994 has to be treated at par with the reversal of credits made by exporters after coming into force of the Amnesty Scheme.

74. If one were to apply this conclusion to the present case, the entire demand under the impugned orders would stand cancelled as the assessee has reversed the credit, applying SION norms, even prior to the issuance of the 1997 Circulars/Amnesty scheme. There is yet another



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aspect of the matter before us, that would distinguish this case from that of Bharti Telecom.

75. The SCN in the case of Bharti Telecom had itself been issued only in 1997 after the Amnesty was announced by way of the 1997 Circulars. It was in response to the SCN that Bharti Telecom explained that there had been reversals made even earlier, seeking to take advantage of that position. The Supreme Court rejected that plea. Bharti Telecom had also parallelly been remitting the interest of 20% as per the 1997 Circulars/Amnesty Scheme and the final component of interest came to be settled only after the cut-off date stipulated under the Scheme, being 31.01.1997. It was in these circumstances that the Court held as follows:

8. According to the Amnesty Scheme, the interest for the period between the date of export, and the date of reversal has to be deposited by 31st January, 1997. It was not deposited by the said date. It was deposited only on 7th February, 1997. There is no provision for relaxation or extension of time to deposit the amount of interest. Such schemes or exemption notifications have to be strictly construed. The provision in the notification dated 10th January, 1997 for deposit of interest by a specified date has to be interpreted strictly in the manner stated in the notification and on no other basis. It is well settled that in a taxing statute, there is no room for any intendment and regard must be had to the clear meaning of the words and



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that the matter should be governed only by the language of the notification, i.e. by the plain terms of the exemption. Learned counsel for the appellant, however, relied upon order dated 21st January, 1997 and 22nd January, 1997 passed by this Court in M/s.Raj Exports v. National Aluminium Co. & Ors. [SLP (C) No.8755/1986] wherein while disposing of the special leave petitions and connected petitions, it was directed that the petitioners in those cases shall be entitled to release of the goods imported without payment of the customs duty. Counsel contends that the said order had reversed the decision of the High Court of Orissa in Raj Exports v. National Aluminium Co. Ltd. [1996 (87) E.L.T. 349 (Ori.)] whereby the High Court had declined to grant relief to the exporter on account of breach of the conditions of the same exemption notification. The orders dated 21st and 22nd January, 1997 relied upon by the learned counsel were passed on the facts of the said case without settling any principle and without reversing principles laid down by the Orissa High Court. It has not been held by this Court that even in case of non-compliance of the conditions of exemption, the exporter shall be allowed to take benefit of the exemption. Further it may be noticed that in case of Raj Exports, interest had been deposited on 18th January, 1997, i.e., before the time prescribed in the Amnesty Scheme.

76. In the present case, the circumstances are different as the assessee had been issued with SCNs even in 1995 based upon the circumstances that existed then. To those SCNs the assessee had responded stating that it was in compliance with the 1995 circulars. In those responses the assessee has categorically confirmed that it is in



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compliance with the SION norms that had specifically been made applicable to the imports.

77. In *Cannanore Spinning and Weaving Mills* (supra), *H.M Bags Manufacturer* (supra), *Arviva Industries India Ltd.* (supra) and *MRF* (supra), the Supreme Court settles the position that Circulars/Instructions would have to be issued with prospective effect only and cannot operate retrospectively to take away vested rights of parties. The ratio of these judgements is applicable to this case.

78. In *Shasun Drugs and Chemicals* (supra), the Madras High Court has held that compliance with the 1997 Amnesty Scheme is to be considered on a licence wise basis and liability can be determined qua each licence rather than on a cumulative appropriation of licences. That discretion was left with the assessee. We need not dwell on this case as we have concluded the matter on the basis of the unique factors that arise in this case as noticed in the paragraphs supra.

79. The assessment of duty has been made under Section 28 of the Act where a limitation of six months is available to the Department to complete an assessment. In the present case, the SCNs have been issued on 19.06.1995 and 23.11.1995 and the assessments ought to have thus



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been completed within the statutory limit, failing which records should be produced to establish that the time had been extended for reasons set out in writing. This has not been done.

80. The two SCNs issued in 1995 appear to have been dropped, perhaps for the reason that the responses of the assessee had been accepted by the Department. Had the Department not been so convinced with the replies, the SCNs ought to have culminated into orders which was never done.

81. Instead, what had happened was that the 1997 Amnesty scheme had been announced and the Department had issued notices in a routine manner notwithstanding that SCNs issued to the assessee had been dropped in light of the assessee's replies. The subsequent proceedings are solely based upon the replies of the assessee and there is no other legal justification for the same.

82. The Supreme Court, in *Kotley Gum Industries, Pushpam Pharmaceuticals Co, Modipon Fibre Company, Malleable Forgings, CMS Computers, Nizam Sugar Factory* and the Madras High Court in *Shriram Value Services Pvt. Ltd.* held that where there are conflicting decisions of the authorities and there is nothing to indicate that the



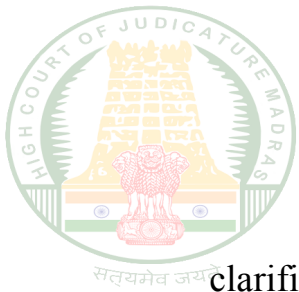
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actions of the assessee have been anything but bonafide, extended period of limitation under the Statute would not be available to the revenue.

83. We take a cue from these decisions cited in paragraph 82 as in the present case too, we find that the Department has also been adopting conflicting stands, issuing first the 1995 Circulars, then the 1997 Amnesty Scheme, all the while corresponding with the assessees giving the impression that the approach of the assessees is proper.

84. Testing this position in this case, we find that there is nothing on record to indicate that the assessee concealed either its modus operandi or any material for that matter, from the Department, at any point in the proceedings. The voluminous correspondence with the officials reveals that at every stage the assessee was discussing the question of imports and credit, also approaching the higher officials where clarifications were required.

85. The letters are detailed setting out the queries that arose from time to time, and the assessee has been corresponding with not just the senior officials but also with the members of the Board. Importantly, the correspondence is not unilateral but bilateral, in that the Department has participated closely with the assessee, supplying required details,



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clarifications and answers. One such is extracted below:

*F.NO.605/6/94-DBK
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE*

28.9.90 Central Board of Excise & Customs

*3rd Floor, Jeevan Deep
Parliament Street, New Delhi
New Delhi, the 16th Sep, 94.*

To

*M/s. Automotive Tyre Manufactureres'
Association,
PHD House (4th Floor),
Opposite Asian Games Village,
Siri Fort Institutional Area,
NEW DELHI – 110 016.*

*Subject : Reversal of MODVAT Credit taken on export tyres
– regarding-*

Dear Sir(s),

I am directed to refer to your letter No. ATMA D-25/448/94 dated 30th August, 1994 regarding availment of MODVAT credit on export tyres.

2. It will be recalled that during discussions, it had been amply clarified that in view of the provisions of the Notification and our instructions on the subject, it is in the interest of the trade to comply with them immediately.

The above may please be brought to the notice of the members of your Association.

Yours faithfully,

Sd/-

(P.K.Khera)

Senior Technical Officer

86. The above letter will show that there were discussions that were



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on-going through-out the proceedings, and that the Department had itself exhorted the assessee to comply with the norms that prevailed from time to time. The question of invocation of extended limitation thus, in our considered view, does not arise as there has been no suppression or misdeclaration at any stage of the proceedings.

87. As regard the alleged misdeclaration, the assessee specifically denied the same and the explanation tendered is as follows:

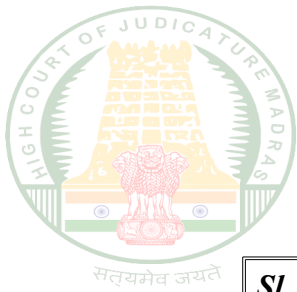
Statement in response to queries raised by the Assistant Collector of Central Excise, Madras VIII Division:

Query No.9:- Are you availing Modvat Credit on the inputs going into the manufacture of finished exported under DEEC?

Reply:- We are not availing any Modvat for the materials imported Under DEEC Scheme as no Countervailing Duty is paid for the imported material. However, we are utilizing some inputs procured indigenously on payment of duty, which are not imported by us, like Bead Wire. In respect of these items also, we are entitled to retain the Modvat in terms of Rule 57F(3).

88. Part D of Notification No.203/92-Cus. (General Exemption No.69) dated 19.05.1992 is as follows:

PART-D
Particulars of Import Materials



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Sl. No.	No of the materials in part-C	Bill of Entry No. Date and Customs House of Import	Description	Quantity and net weight
1.	2.	3.	4.	5.

Duty Leviable but for exemption

CIF Value	Heading No. Of the First Schedule to the Customs Tariff Act, 1975 and Heading No. In the Schedule to the Central Excise Tariff Act, 1985 for levy of Additional Duty	Rate of Duty (i) Basic (ii) Aux. (iii) Additional	Amount of Duty	Signature of the Customs Officer with Name, Designation & Seal
6.	7.	8.	9.	10.

Sl. No.	Sl. No in part D under which the import of the materials has been entered	Description, Quantity and value of Materials on which duty paid	Rate of Duty leviable (i)Basic (ii)Auxiliary (iii) Additional
1.	2.	3.	4.



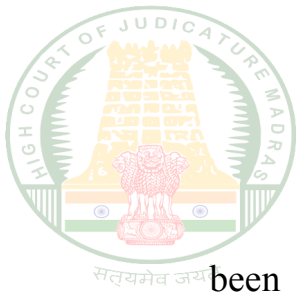
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Sl. No.	Sl. No in part D under which the import of the materials has been entered	Description, Quantity and value of Materials on which duty paid	Rate of Duty leviable (i) Basic (ii) Auxiliary (iii) Additional
Amount of (i) Duty (ii) Interest	Particulars of duty paying documents	Signature of the Customs Officer	
5.	6.	7.	

89. Part D of the Declaration requires the assessee to set out the particulars of materials imported. As pointed out, there is no stipulation therein that domestic inputs must also be part of the declaration. To this end, there could be no insinuation regarding suppression.

90. The Amnesty Scheme requires the reversal of MODVAT Credit and interest thereupon to be paid prior to 31.1.1997 such that no penal action or prosecution would be initiated against the assessee. The assessee had been informed that the remaining amounts to be remitted were Rs.39.87/- and Rs.19.78/- lakhs respectively.

91. Even in reply to SCNs issued in 1995, the assessee had informed the Department that the full amount of MODVAT credit had



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been expunged, producing certificates of expungment from the Superintendent of Central Excise. This was reiterated in the replies to the notices issued under the Amnesty Scheme announced on 03.01.1997. The assessee had also requested that the show-cause notices be kept pending since the Central Excise Department was in the process of finalizing the figures of credit for expungment in terms of various communications issued by the Revenue.

92. The Assessee has furnished a computation setting out the total credit expunged in respect of three units as Table I and the Tiruvottiyur unit as Table II, as below:

TABLE I : TOTAL MODAVT CREDIT REVERSED IN RESPECT OF ARAKONNAM, GOA AND MEDAK

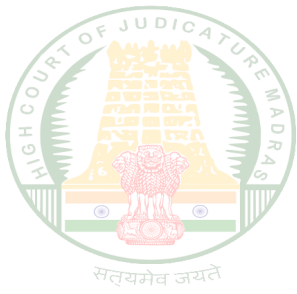
<i>Timeline of Reversals made by MRF Ltd</i>	<i>MODVAT REVERSED</i>	<i>Interest Paid</i>
<i>Reversals made on SION basis under the 1995 Amnesty Scheme</i>	<i>1,43,73,226</i>	
<i>Reversals made under the 1997 Amnesty Scheme upto 31.01.1997</i>	<i>-</i>	<i>59,43,000</i>
<i>Reversals made after the 1997 Amnesty Scheme</i>	<i>17,87,000</i>	<i>24,27,000</i>
<i>Sub-total</i>	<i>1,61,60,226</i>	<i>83,70,000</i>



<i>Total</i>	<i>2,45,30,226</i>	
<i>Reversals made on SION basis under the 1995 Amnesty Scheme</i>	<i>59,298</i>	<i>4,774</i>
<i>Reversals made under the 1997 Amnesty Scheme upto 31.01.1997</i>		<i>11,719</i>
<i>Reversals made after the 1997 Amnesty Scheme</i>	<i>-</i>	<i>-</i>
<i>Sub-total</i>	<i>59,298</i>	<i>16,493</i>
<i>Total</i>	<i>75,791</i>	
<i>Reversals made on SION basis under the 1995 Amnesty Scheme</i>	<i>8,29,041</i>	<i>-</i>
<i>Reversals made under the 1997 Amnesty Scheme upto 31.01.1997u</i>	<i>-</i>	<i>-</i>
<i>Reversals made after the 1997 Amnesty Scheme</i>	<i>11,42,996</i>	<i>13,31,627</i>
<i>Sub-total</i>	<i>19,72,037</i>	<i>13,31,627</i>
<i>Total</i>	<i>33,03,664</i>	

TABLE : 2 CALCULATION SHEET SHOWCASING THE TOTAL MODVAT CREDIT REVERSED IN RESPECT OF THIRUVOTTIYUR

<i>Timeline of Reversals made by MRF Ltd</i>	<i>AMOUNTS REVERSED</i>	<i>Interest Paid</i>
<i>Reversals made on SION basis under the 1995</i>	<i>1,53,48,195</i>	<i>-</i>



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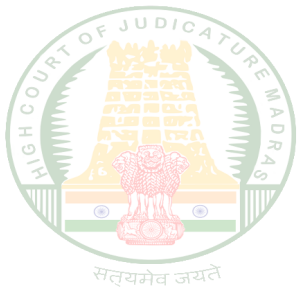


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<i>Amnesty Scheme</i>		
<i>Reversals made under the 1997 Amnesty Scheme upto 31.01.1997</i>	-	20,77,888
<i>Reversals made after the 1997 Amnesty Scheme</i>	2,93,40,449	
<i>Sub-total</i>	4,46,88,644	20,77,888
<i>Total</i>	4,67,66,532	

93. These tabulations have been furnished to the Department and the figures are admitted. Thus, what remained after the 1997 Circulars/Amnesty Scheme was issued was practically only the interest payable per that scheme. The assessee, no doubt, agreed to pay the interest as well; however, that acquiescence would not mean that the aspect of compliance with the 1995 Circulars would stand effaced.

94. Applying the judgement in the case of Bharti, the assessee has thus complied with the Notification conditions applying the parameters under the 1995 Circulars. Any remittances thereafter are voluntary and cannot enure to its detriment. Thus, and in the present circumstances, the fact that some remittances, a small proportion when compared with the total remittance, were made after the cut-off date, will not be fatal to its case.



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95. The Tribunal held that the provisions of Section 28 providing for extended period of limitation could be invoked for all imports upto 10.11.1993. The Tribunal considered the rival contentions in regard to the bonafides of the assessee or otherwise and the veracity of the declarations made in the shipping bills. The assessee had contended that, in any event, up to the period October, 2004, there was no requirement was filing declaration with the shipping bills and that such declaration has come into the scheme of imports only from 1994.

96. Countering this plea, the Department had argued that such requirement was there even from June 1992 referring to two Circulars and public notices. They found that public notice No.36/94 had been issued by the Collector Customs, Kochi for exporters under the VABAL scheme. Since the few exports had been made through the Cochin port, the Tribunal opined that MRF could not plead ignorance of the public notice.

97. As far as two Circulars were concerned, i.e., Circular No.3/91 dated 1.6.1992 and Circular No.34/82 dated 5.10.1982 (F No.224/8/82-CXH), they had been issued only for the guidance of the officers of the Department and were not intended to be read by the trade. Hence, the



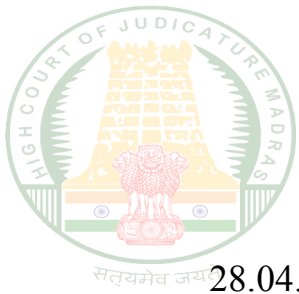
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Tribunal concluded that, at best, the assessee would have been put to notice on and from 24.10.1994 that there was a requirement of making a specific declaration under the DEEC Scheme that no inputs stage credit under Rule 57A of the Central Excise Rules, 1994 had been made.

98. While holding that the assessee need not have filed any declaration till October, 1994, the Tribunal went a step further to state that the assessee had suppressed the fact that they had availed credit on indigenous inputs used in the manufacture of the export goods. The argument that all materials were available in the factories for the perusal of the officers was rejected.

99. After a detailed discussion, the Tribunal concluded that it was only in respect of the exports made from 1.1.1995 that the assessee had declared that it had not availed MODVAT credit on inputs used in the manufacture of export goods and prior thereto there was neither bonafides and on the other hand active suppression. Therefore, they held that the larger period of limitation was not invocable from 1.1.1995.

100. The Department had been asked to categorize those bills where final assessments had been made and those where only provisional assessments had been made and pursuant to that direction dated



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28.04.2004, a total of 233 Bills of Entry had been filed out of the total 366 Bills of Entry filed by the assessee. In all, 319 Bills of Entry had been finally assessed and 47 provisionally assessed.

101. As against those Bills of Entry that had been provisionally assessed, the assessee had made an endorsement that the plea of limitation was not pressed. As far as the conclusion of the limitation is concerned, we are of the considered view that this is not a case where there has been any suppression of material by the assessee to warrant such invocation.

102. As rightly contended on behalf of the assessee, the factory premises were open for inspection at all times and in fact there have been several detailed correspondences qua the assessee and the Department on the aspect of input credit. Hence we see no justification whatsoever for invocation of extended period of limitation.

103. The final decision relied on by the assessee is in the case of *Bharati Telecom Ltd.*(Delhi Tribunal) (supra), where they say that interest would not be imposable as the provisions relate to interest under the Customs Act was incorporated after the period of dispute. No question has been framed on this aspect. Be that as it may, we reject this



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argument as liability towards interest arises not from operation of Statute but the Notification/Circular which provides for such interest. In fact, the assessee has, itself, remitted the entirety of the interest and hence cannot be seen to turn around and challenge the very basis of the levy now.

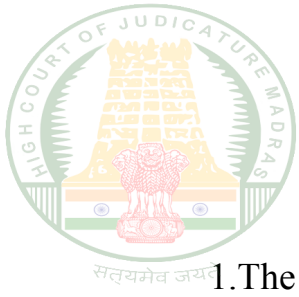
104. In light of the above detailed discussion, Substantial questions 1, 3, 4 and 5 in CMA.No.2384 of 2006 are answered in the negative and in the Assessee's favour and Substantial question 2 in CMA.No.2384 of 2006 and Question relating to the bar of Limitation in CMA. No.3070 of 2006, are answered in the affirmative and in favour of the Assessee.

105. C.M.A.No.2384 of 2006 is allowed and C.M.A.No.3070 of 2006 is dismissed. No costs. Connected Miscellaneous Petition is closed.

[A.S.M., J] [G.A.M., J]
30.04.2025

Index:Yes
Speaking order
Neutral Citation:Yes
sl

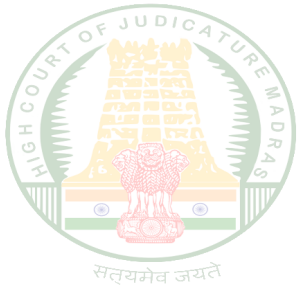
To



C.M.A.Nos. 2384 and 3070 of 2006

WEB COPY 1. The Customs, Excise and Service Tax
Appellate Tribunal (CESTAT),
South Zone Road, Shastri Bhavan Road,
Haddows Road, Chennai – 6

2. The Commissioner of Customs,
Customs House,
Rajaji Salai,
Chennai – 600 001.



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C.M.A.Nos. 2384 and 3070 of 2006

DR. ANITA SUMANTH,J.
and
G. ARUL MURUGAN.,J

sl

C.M.A.Nos. 2384 and 3070 of 2006
M.P.No.1 of 2006 and CMP No.2382 of 2018

30.04.2025