

Vikram Ispat and ors. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-22-1999

Reported in : (2000)(88)LC327Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Vikram Ispat and ors.

Respondent : Cce

Judgement :

1. These are 16 appeals filed by the assesseees against the orders.

These appeals are against the adjudication orders made against 5 show cause notices which were confirmed by the Collector of Central Excise, Mumbai-III. The following _____ are _____ the _____ show _____ cause notices:_____ Da

Demand

penalty_____

On Company On Managers15.4.1996 Rs. 32.26 Rs. 15 Rs. 11.2528.5.1996 Rs. 89.58 Rs. 100 2. The facts of the case are that the Appellants are manufacturer of HP Sponge Iron 72.03 wherein the Appellants has one of the inputs required is Iron Ore Pellets falling under heading 26.01. The inputs are either imported, procured from domestic manufacturers, or procured from 100% EOUs (Export Oriented Units).

3. When they are imported they bear customs duty as well as Additional Duty of Customs. The Appellant avails modvat credit of Additional Duty.

When such inputs are received from domestic manufacturer they bear Central Excise duty and the Appellants take modvat credit on such duty paid. When such inputs are received from 100% EOUs they bear the Central Excise duty which according to the Appellants is quantified in terms of Notification 2/95 and the Appellants take modvat credit on such duty paid. The Appellants also stated that Notification No. 5/94 is also relevant for the purpose of determination of the cases. The Learned Advocate for the appellants Shri C.S. Lodha argues that the restriction provided in the Notification will be applicable to the facts of the case. It was the case of the Appellants before the department that what has been indicated in Notification 2/95 is measure. It is the view of the department that the duty that is borne is excise duty, the measure provided for in proviso to Section 3 is significant. The measure provides for levy of excise duty equivalent to customs duty.

4. The department's view was that the assessee had taken more credit than what they were entitled to it and five show cause notices were issued. Against two show cause notices which were heard by the adjudication authority and they passed the impugned orders and appeals were filed by the assessee.

5. In the show cause notices it was proposed to levy penalty not only on the assessee Vikram Ispat, but also on its officers as well as two officials working in the department. The action was proposed to be taken against them by way of levying of penalty. The replies were filed along with the opinions given by three advocates, one by Shri P.K.Desai, former Member of the Tribunal, by Shri C.S. Lodha, the present Advocate for the Appellant as well as Shri L.P. Asthana, another advocate. On the basis of the materials before him, the Commissioner passed the impugned orders levying the duty and penalty as mentioned above. Hence the present appeals.

6. It may be relevant to mention that by our order dated 26.6.1996 made in Appeal No. E/1353/96 we had stayed the recovery. By our another order dated 13.8.1996 the Tribunal not only stayed the recovery but also ordered suspension of hearing

of other show cause notices issued on the identical issues pending for determination.

7. It is contended by the Learned Counsel for the Appellants Shri C.S.Lodha that the Appellant is manufacturer of HP Sponge Iron. In 3 ways they gets input for manufacture of final products. They are as follows: When the import of the inputs takes place such imports bear customs duty as well as Additional Duty of Customs. The Appellants avail modvat credit in respect of Additional Duty of Customs which is measured by the Customs Duty levied on such products. When such pellets are procured from domestic manufacture equally they bore the excise duty and modvat credit is taken by the Appellants. The problem in this case, according to him, in respect of procurement of such pellets from 100% EOUs. He invited our attention to two Notifications viz. Notification No. 5/94 and Notification No. 2/95. He explained that the duty payable for clearance into domestic area of goods manufactured by 100% EOU, is prescribed in Notification 2/95. It only limits that the duty payable on such clearances to 50% of the duty of similar goods which would be payable on such goods when they were imported into India, but provides that the duty payable will not be in any case less than the excise duty leviable on like goods produced or manufactured in the domestic tariff area. The Excise duty payable on Iron ore pellets is classifiable under heading 26.01 at 10% ad valorem and since this is higher the 50% customs duty this is the rate that will apply. He further explained to us that because of the same dispute, the manufacturer of iron ore pellets, namely Kudremukh Iron Ore Company had been paying excise duty at 7.62%. Shri Lodha says on this fact Notification 5/94 dated 1.3.1994 is very relevant. That Notification issued under Rule 57A provides for modvat credit of duty being good manufactured and cleared from 100% EOUs into DTA "can be restricted to the extent of duty which is equal to the Additional Duty leviable on like goods under Section 3 of the Customs Tariff equivalent to the basic excise duty and additional excise duty leviable under the Additional Duties of Excise (Textiles and Textiles Articles). In other words he argued that modvat credit should not exceed the total of these two duties. In that duty leviable is to the tune of the 10%, then the appellant is entitled to take credit at 10%. In this case it is actually taken Customs Act, 1962 7.625%. In the gate pass showing the claims of KOCL the Customs duty and Additional duty 2.15% present and 5.125%

respectively. This has been done, he argues on the basis of the 50% basic duty and 5% of Additional duties after taking into customs basic duty payable would be 10.5%. He emphasises the fact for the purpose of calculation it is only measure. He, therefore argues that the consideration would not apply in the present case since by application of the proviso the excise duty payable would be 10% which the Appellant is entitled to take. The Collector's reliance on Tribunal decision in *Weston Electronics v. CCE* Order No. 766 of 1994 is wrong. He argues that premises under which the said order was passed is absolutely wrong. The product considered in that case was exempted from payment of Additional Duty. Therefore by application of the proviso to Notification 5/94 no amount could be taken as credit. He also argued further that by means of another Judgment of the same Tribunal in *Collector of Customs v. Weston Electronics Ltd.* 1997 (95) ELT 624 the approach of the Tribunal has changed and it has been rightly applied the subject of modvat credit where inputs are manufactured in 100% EOUs and supplied to DTA for manufacture of final products. He invited our attention to paragraph 8 of the said order to state that it has been applied correctly the entire claim of the modvat credit in respect of such supplies. He emphasises the fact that after passing of the order in the second *Weston Electronics* case the matter is settled and that it should be followed in this case as the facts are identical. He also stated arguing on behalf of the Managers, Officers of the assesseees the question of levy of individual penalty on these officers are not correct. He specifically stated that all actions have been taken in a bona fide manner. He also invited our attention to the opinions given by the three advocates namely, himself, Shri P.K. Desai, incidentally who was the former Member of the Tribunal, and Mr. L.P. Asthana in this matter and question of levy of penalty on these officers do not arise.

He also argued that even though the Judgment of the Tribunal in the first *Weston Electronics* case in Order No. 766/94 is there, that Judgment should not be followed and that it has been rendered per incuriam and it need not be referred to a Larger Bench because of the fact that it is a sub silentio. He states the decisions of the Supreme Court in *Synthetics & Chemicals Ltd.* 1991 (4) Supreme Court cases 139, as well as Judgment of the Bombay High Court in *Sitaram Hari Salunke v. Lakshman Rambodh Dubey*. There were also other decisions which he discussed about the discrepancies in the weight. He refrained about the

discrepancies in the weight of the inputs shown in the invoices and the actual receipt for which we passing reference.

8. Shri C.P. Rao, the Learned SDR would argue that, provisions contained in the Notifications 5/94 restricts the credit to the Additional duty component of the excise duty paid by 100% EOU of the excise duty paid EOU equivalent to Customs duty paid under Section 2 of the Customs Act, which consists of various components like basic customs duty and Additional duty, etc. Provision restricts the credit only to the component of excise duty equal to additional excise duty.

He invited our attention to the following words in the case of Collector of Central Excise, Meerut v. Weston Electronics Ltd.: A careful reading of this Notification shows that the duty collected is Central Excise duty and out of this Central Excise duty, only that portion will be eligible for credit which is equal to the additional duty leviable on like goods under Section 3 of the CTA, 1975.

He argues that the entire issue has to be looked into with the actual words contained in Notification 5/94 with the words "equivalent to in that part of the duty is available. Duties of excise specified under Clauses (i), (ii) above paid on such inputs. He specifically pointed out that the restriction mentioned in the clause is with reference to the actual payment of duties on such inputs. He emphatically argued that the second Weston Electronics case 1997 (95) ELT 624 and the first Weston Electronics i.e. in Appeal No. E/766/94 are directly in conflict. He says first Weston Electronics case put the case in a proper perspective. He invited our attention to para 13 of the said order. He also countered the argument of the Learned Advocate for the appellant that Notification 175/84, the ratio laid down is that credit could be restricted to the amount of Additional Duty payable. Having noted the rate of duty prescribed under the Notification was nil, to conclude that the credit permissible was nil. Even if this simple arithmetical fact was wrong it would not be fatal to the ratio laid down that the credit can within amount actually equal to the additional duty component paid on the inputs. He also emphasised the fact that actual payment of duty is carried over principal to be followed for taking credit and this decision do nothing more than to re-ascertain the same principle. He emphasised the fact that the word 'paid on such inputs' is very

crucial. He adopted the decision of the CEGAT in 1997 (95) ELT 624. He asserted that such decision assumes with the component of Excise Duties equal to the Basic Excise duty was otherwise higher than the Additional Duty component. If the ratio laid down in this case is applied to the facts of the case it would lead to anomalies which are as follows: By virtue of Notification 2/95 half portion of Customs duty, half of 2.5% of Additional Customs Duty 1.25%, Additional Excise Duty payable is 7.635%. Component additional customs duty permitting they are imported. It is submitted that the in lieu of the above working that apparently the ratio is not workable. He also argued that there is nothing on record except the statement of Learned Advocate to indicate that the supplier 100% EOU has paid duties in like manner. In the first place it was submitted that the measure of inclusion of duty has been referred to in the provision to Notification 5/94 CEMT in the sense that the credit is confined to Additional duty of components, that the fact that the difference between excise duty payable for domestic manufacturers and the duty worked out as payable by 100% EOU is being paid would not alter the measure laid down in Section 3 of the Central Excise Act in any manner and refer to any exemption Notification. It merely adds one more factor which equals the local excise duty. He further argued that both Weston Electronics Judgment were unique in this aspect. Credit of complete duty paid by an 100% EOU would not be available. Only credit equivalent to the component to additional duty of customs would be available. He argued that customs duty actually to be paid on this basis under section duty leviable on like goods when imported. He also pleaded for reference of the case to the larger bench in view of the contradiction between two Weston Electronics judgement.

He also argued that credit of duty demand after 6 months is wrong in as much as the decision of the Tribunal in Mysore Lac and Paints v. CCE 1991 (33) ECR 329 (T) against such taking of such credit.

9. There are other issues involved, namely the other appellants, i.e.

one official of the department, Shri V.K. Jain, Chartered Accountant of the officials of the department, arguing on behalf of these appellants stated that the levy of penalty on these officials is absolutely wrong.

One of the officials Shri Ramdas Nerulkar, he says, has taken the opinion of the Advocate Shri L.P. Asthana, and on that basis he had granted credit. Levy of penalty under Section 209A involves mens rea, which is absent in this case. Therefore he argues question of levy of penalty does not arise. He relies on number of judgements and he adopts that portion of the argument of the Learned Advocate Shri C.S. Lodha, when he argued for the appellant Vikram Ispat, that no penalty is imposable on bona fide action which is not contumacious. They cited about 15 cases for the proposition.

10. Mr. Sahasrabude, Learned Consultant appearing for Shri N.L. Wagle, Central Excise Inspector, that he had recently joined the department after doing the training, and that he had come for 10 days for work in November 1994, and on the basis of the directions by the Superintendent he had allowed the credit. It is bona fide act, therefore no penalty could be levied on him. He also adopts the case law cited by Shri Jain, namely Cement Marketing Co. of India Ltd. v. Assistant Commissioner 1980 ELT 295 : 1981 ECR 58D(SC) : ECR C 571 SC etc. Shri C.P. Rao countered these two cases adopting the reasoning given by the adjudicating authority.

11. We have considered the rival submissions. For the purpose of modvat claim we have to see the Notifications referred to by both sides.

Section 3 of the Central Excise Act provides for levy of excise duty on the goods manufactured and proviso thereof provides that the excise duty shall be levied and collected on any excisable goods which are produced or manufactured by 100% Export Oriented Undertaking and allowed to be sold in India, it shall pay amount would be equivalent to the aggregate of the duties of customs which shall be leviable under Section 12 of the Customs Act chargeable notwithstanding anything contained in any other provisions in this Act to be determined in accordance with the Customs Act and the Customs Tariff Act. We have to see the Notifications 5/94 and 2/95.

(1) Goods notified for purposes of credit of duty under MODVAT--In exercise of the powers conferred by Rule 57A of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the Ministry of

Finance (Department of Revenue) No.177/86-Central Excises, dated the 1st March, 1986, the Central Government hereby specifies the final products described in column

(3) of the Table hereto annexed and in respect of which,- (i) the duty of excise under the Central Excises and Salt Act, 1944 (1 of 1944); (ii) the additional duty of excise under Section 3 of the Additional duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978); and (iii) the additional duty of excise under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); and (iv) the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to: (herein referred to as "specified duty") paid on inputs, described in the corresponding entry in column

(2) of the said table, shall be allowed as credit when used in or in relation to the manufacture of the said final products and the credit of duty so allowed shall be utilised for payment of duty leviable on the said final products, or as the case may be, on such inputs, if such inputs have been permitted to be cleared under Rule 57F of the said Rules:

(1) credit of specified duty in respect of any inputs produced or manufactured- (a) in a free trade zone and used in the manufacture of final products in any other place in India; or (b) by a hundred percent export oriented undertaking or by a unit in an Electronic Hardware Technology Park or Software Technology Parks and used in the manufacture of final products in any place in India, shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), equivalent to the duties of excise specified under (i) and (ii) above paid on such inputs;

(2) the credit of specified duty allowed in respect of inputs shall be utilised towards payment of duty of excise leviable under the Central Excises and Salt Act, 1944 (1 of 1944) on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under Rule 57F of the said Rules: Provided that the credit of specified duty in so far as it relates to the additional duty of excise specified under (ii) above or the additional duty specified under (iv)(b) above, allowed in respect of inputs shall be utilised only towards payment of duty of

excise leviable under the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978 (40 of 1978), on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under Rule 57F of the said Rules: Provided further that the credit of specified duty in so far as it relates to the additional duty of excise specified under (iii) above or the additional duty specified under (iv)(c) above, allowed in respect of inputs shall be utilised only towards payment of duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), on the final products or, as the case may be, on the inputs, if such inputs have been permitted to be cleared under Rule 57F of the said Rules:

(1) the credit of specified duty paid in respect of inputs, namely, vegetable products falling under sub-heading No. 1504.00 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and used in the manufacture of final products in any place in India shall be restricted to the extent of Rs. 500 per tonne or the actual duty paid, whichever is less;

(2) the credit of specified duty paid in respect of inputs, namely the goods falling under heading Nos. 72.30 and 73.27 and obtained from breaking-up of ships, boats and other floating structures as are manufactured in India and used in the manufacture of final products in any place in India shall be restricted to the extent of Rs. 920 per tonne or the actual duty paid, whichever is less;

(3) the excess credit, if any, available in the separate RG 23A account maintained in terms of the fourth proviso to erstwhile notification No. 177/86-Central Excises, dated the 1st March, 1986 in respect of the specified duties paid on the goods falling under the heading No. 39.04 of the said Schedule shall not be allowed to be utilised for payment of duty on any excisable goods or refundable to the manufacturer: Provided that nothing contained in the above proviso will apply in respect of specified duty paid on goods falling under heading No. 39.04 which- (b) are used in the manufacture of final products which are cleared from the factory on or after the 1st day of March, 1994.

Description	of	inputs	Description	of	final
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S.

product_____

(2) (3)1.

All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than (5 of 1986), other [than] the following, namely: the following, namely- i.

goods classifiable i. goods classifiable under any heading of Chapter 24 of the Schedule to the said Act; ii. goods classifiable under heading Nos. 36.05 under heading Nos.

or 37.06 of the Schedule 36.05 or 37.06 of the Schedule to the said Act; 2710.11, 2710.12, Chapter 52 or Chapter 2710.13 or 2710.19 (except 54 or Chapter 55 of (2) Modvat credit extended to specified tobacco products and preparations, yarn, fibres, ropes and fabrics - In exercise of the powers conferred by Rule 57A of the Central Excise Rules, 1944 (hereinafter referred to as the said Rules), the Central Government hereby specifies the final products (hereinafter referred to as the said final products) of the description specified in Column (2) of the Table hereto annexed and falling under chapter or heading numbers or sub-heading numbers of the schedule to the Central Excise Tariff Act, 1985 (5 of 1986) specified in the corresponding entry in Column (3) of the said Table, in respect of which the credit of- (i) the duty of excise under the Central Excises and Salt Act, 1944 (1 of 1944); (ii) the additional duty of excise under Section 3 of the Additional Duties of Excise (Textiles and Textiles Articles) Act, 1978 (40 of 1978); (iii) the additional duty of excise under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957); and (iv) the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to: Exemption to all excisable goods produced in 100% EOU, FTZ, EHTP or STP units when sold in India.

In exercise of the powers conferred by Sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Government being satisfied that it is necessary in the public interest so to do, hereby exempts all excisable

goods (hereinafter referred to as the said goods) specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and produced or manufactured in a hundred percent export oriented undertaking or a free trade zone or an Electronic Hardware Technology Park (EHTP) unit or a Software Technology Park (STP) unit and allowed to be sold in India under and in accordance with the provisions of, (i) Para 102 and 114 of the Export and Import Policy, 1 April 1992-31st March, 1997, in the case of hundred percent export oriented undertaking or a free trade zone; or (ii) Notification of the Government of India in the Ministry of Commerce No. 42 (N-8)/92-97 dated 14th Sept. 1992 upto a value not exceeding forty percent of the value of the production of components and finished goods manufactured, in the case of an Electronic Hardware Technology Park (EHTP) unit; (iii) Notification of the Government of India in the Ministry of Commerce No. 33/RE/92-97, dated the 22nd March, 1994 upto a value not exceeding twenty five percent of the value of production of software manufactured in the case of STP unit, from so much of the duty of excise leviable thereon under Section 3 of the said Central Excise and Salt Act as is in excess of the amount calculated at the rate of fifty percent of each of the duties of customs, which would be leviable under Section 12 of the Customs Act, 1962 (52 of 1962) read with any other notification for the time being in force issued under Sub-section (1) of Section 25 of the said Customs Act on the like goods produced or manufactured outside India if imported into India; Provided that the amount of duty payable in accordance with this notification in respect of the said goods shall not be less than the duty of excise leviable on the like goods produced or manufactured outside the hundred percent export oriented undertaking or free trade zone or EHTP unit or STP unit which is specified in the said Schedule read with any other relevant notification issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 or Sub-section (1) of Section 5A of the said Central Excises and Salt Act, as the case may be: Provided further that nothing contained in the above proviso shall apply to the goods which are chargeable to nil rate of duty leviable under Section 12 of the Customs Act read with any other notification for the time being in force issued under Sub-section (1) of Section 25 of the said Customs Act.

(1) Export and Import Policy, 1 April, 1992 - 31st March, 1997" means the Export and Import Policy, 1 April, 1992 - 31st March 1997 published vide Public Notice of

the Government of India in the Ministry of Commerce No. 1-ITC(PN)/92-97, dated the 31st March, 1992 as amended from time to time.

(2) "Electronic Hardware Technology Park (EHTP) Unit" means a unit established under and in accordance with EHTP Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 42(N-8)/92-97 dated 14th Sept. 1992 and approved by an Inter-Ministerial Standing Committee appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 117(E) dated 22nd Feb. 1993, (3) "Software Technology Park (STP) unit" means a unit established under and in accordance with Software Technology Parks (STP) Scheme notified by the notification of the Government of India in the Ministry of Commerce No. 33/(RE)/92-97 dated the 22nd March, 1994 and approved by an Inter-Ministerial Standing Committee appointed by the notification of the Government of India in the Ministry of Industry (Department of Industrial Development) No. S.O. 117(E) dated the 22nd February, 1993.

12. Shri Lodha's argument when we take, when the pellets are imported they bear the Customs Duty as well as the Additional Duty of Customs.

The appellant avails of the modvat credit of Additional duty only. When such pellets are received from 100% EOU they bear the Central Excise duty which is quantified in terms of Notification 2/95. He emphasises the fact that the Notification 5/94 determines the extent of entitlement of modvat credit of recipient manufacturer. Notification 5/94 the said Notification provides the credit of duty specified duty in the event on inputs manufactured by 100% EOU shall be restricted to the extent of duty which is equal to the Additional Duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975 equivalent to the duties of excise specified in (1) and (ii) above paid on such inputs. He also stated that Notification 2/95 provides the effective rate of duty of excise required to be paid by 100% EOU. According to the said Notification any duty of excise, the duty which is calculated @ 50% of basic Customs duty and 50% of the Additional Duty of Customs shall be exempted. The Notification also provides that in any event on goods the duty of excise to be paid by 100% EOU shall be less than the duty

required to be paid by the domestic manufacturer. The show cause notice dated 28.5.1995 mentions inter alia as under: 4. The assessee manufacture product called Hot Briquetted Iron (HBI) more commonly and popularly known as Sponge Iron. Inter alia, manufacture of such Sponge Iron requires use of Iron Ore Pellets, as an important raw material. The said Iron Ore Pellets are either indigenously manufactured or are also imported. The duty of excise on the manufacture of Pellets by a 100% E.O.U. and allowed to be sold in India is levied and collected under Section 3 of Central Excise and Salt Act, 1944. As per the first proviso to the said Section, such duty of excise shall be an amount equal to the aggregate of duties of Customs which would be leviable under Section 12 of the Customs Act, 1962, on like goods produced or manufactured outside India if imported into India. Further as a matter of further concessional benefits, the rate in operation on the sale of Iron Ore Pellets manufactured by E.O.U. and allowed to be sold in Domestic Tariff Area was 50% of the tariff rate on the import of such goods as far as basic customs duty as well as additional (Customs) duty (C.V.D.) was concerned in terms of Notification No. 2/95-CE dated 4.1.1995. Thus according to concessional rate the assessee herein was entitled to take modvat credit to the extent of 50% of the Additional (Customs) duty leviable on the import of such product and which actually paid by the manufacturer of Iron Ore Pellets as excise duty.

5. As per the first proviso to the Notification No. 5/94-CE(NT) dated 1.3.1994 issued under Rule 57A of the said Rules, the credit of specified duty in respect of any inputs produced or manufactured by a 100% E.O.U. and used in the manufacture of final products in any place in India is restricted to extent of duty which is equal to additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975, paid on such inputs. In other words the restrictive clause provides that the recipient of the goods cleared by 100% E.O.U. will be entitled to avail of the modvat credit of duty of excise paid, subject, however, to the condition that the said credit shall be restricted to the extent of duty which is equal to the Additional (Customs) Duty representing the duty of excise actually paid on such inputs. Therefore, it is evident that modvat credit in respect of goods cleared by 100% EOU would be available only to the extent of the countervailing duty component of excise duty which has actually been paid by the EOU and part of

duty represented by Basic Customs Duty component is not admissible as modvat credit under Rule 57A and Notification issued thereunder.

6. During the course of investigation, pertaining to the period from January, 1996 to Feb., 1996, it was revealed that: i. even though they have been issued show cause notice on 2.11.1995 whereby the view point of the department regarding the misuse of modvat credit was specifically brought to the notice of the assessee, they continued to misuse the modvat benefit even for a period subsequent to the issuance of the said show cause notice.

This has been very evident from the fact that they received the same inputs from said 100% EOU under invoice No. 9 dated 27.1.1996 and invoice No. 10 dated 12.2.1996 and availed the credit for the entire duty paid overlooking purposely and wilfully the restrictive clause of the said Notification. The details are as under:_____

No. Invoice No. & Dt.

R.G. 23A Part-II Credit availed E. No. & Date Rs. 1.

9 282 -27/01/96 38,53,896/- 27/01/96 300-23/02/96 12,83,095/- 2.

10 306-28/02/96 38,20,903/- 12/02/96 ii. they received the short quantity than shown in the documents i.e. in-voice/AR1A but instead of taking the proportionate credit of duty, they have availed full credit, the details of which are as under:_____

No. Invoice No. & Dt. Qty. on which duty Actual loaded has been paid qty. as shown 1.

9 60500 M.T. 59656 M.T. 27/01/96 2.

10 45000 M.T. 44720 M.T. 12/02/96 iii. they have taken the credit of duty on the document which has not been prescribed as proper duty paying documents in terms of Rule 57G(2) i.e. they have taken the credit on invoices No. 9 dated 27.2.1996 and 10 dated 12.2.1996 which have been issued under Rule 100E of Central Excise Rules, 1944. The said invoices issued under Rule 100E are not prescribed as proper duty paying documents for availing the mod-vat credit under

Rule 57A. Whereas the AR1A's dated 27.1.1996 and 12.2.1996, accompanying the said invoices show only the excise duty equal to basic Customs Duty paid on such inputs and Excise duty equal to Additional (Customs) Duty is shown as NIL.

Therefore the credit equal to Basic Customs duty is not at all admissible to the assessee as per the above referred restrictive provisions.

13. In the show cause notice dated 2nd July, 1996 it has been stated as follows: 4. The assessee manufacture product called Hot Briquetted Iron (HBI) more commonly and popularly known as Sponge Iron. Inter alia, manufacture of such Sponge Iron requires use of Iron Ore Pellets, as an important raw material. The said Iron Ore Pellets are either indigenously manufactured or are also imported. The duty of excise on the manufacture of Pellets by a 100% E.O.U. and allowed to be sold in India is levied and collected under Section 3 of Central Excise and Salt Act, 1944. As per the first proviso of the said section, such duty of excise shall be an amount equal to the aggregate of duties of Customs which would be leviable under Section 12 of the Customs Act, 1962, on like goods produced or manufactured outside India if imported into India. Further as a matter of further concessional benefits, the rate in operation on the sale of Iron Ore Pellets manufactured by E.O.U. and allowed to be sold in Domestic Tariff Area was 50% of the tariff rate on the import of such goods as far as basic customs duty as well as additional (Customs) duty (C.V.D.) was concerned in terms of Notification No. 2/95-CE dated 4.1.1995. Thus according to concessional rate the assessee herein was entitled to take modvat credit to the extent of 50% of the Additional (Customs) duty leviable on the import of such product and which actually paid by the manufacturer of Iron Ore Pellets as excise duty.

5. As per the first proviso to the Notification No. 5/94-CE(NT) dated 1.3.1994 issued under Rule 57A of the said Rules, the credit of specified duty in respect of any inputs produced or manufactured by a 100% E.O.U. and used in the manufacture of final products in any place in India is restricted to extent of duty which is equal to additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975, paid on such inputs. In other words the restrictive clause provides that the recipient of the goods cleared by 100% E.O.U. will be entitled to

avail of the modvat credit of duty of excise paid, subject, however, to the condition that the said credit shall be restricted to the extent of duty which is equal to the Additional (Customs) Duty representing the duty of excise actually paid on such inputs. Therefore, it is evident that modvat credit in respect of goods cleared by 100% EOU would be available only to the extent of the countervailing duty component of excise duty which has actually been paid by the EOU and part of duty represented by Basic Customs Duty component is not admissible as modvat credit under Rule 57A and Notification issued thereunder.

6. During the course of investigation, pertaining to the period from December, 1996 to April, 1996, it was revealed that: i. even though they have been issued show cause notice on 2.11.1995 whereby the view point of the department regarding the misuse of mod -vat credit was specifically brought to the notice of the assessee, they continued to misuse the modvat benefit even for a period subsequent to the issuance of the said show cause notice. This has been very evident from the fact that they availed the differential credit for the entire duty paid overlooking purposely and wilfully the restrictive clause of the said Notification.

The _____ details _____ are _____ as under: _____

Invoice No. & Dt./57E R.G. 23A Part-II Credit availedNo. Cert. and date E. No. & Date

Rs. _____

57E Cert. No. 1/95 dtd.

229 43,068.00 13.12.1995 21.12.1995 (out of this Rs. cleared vide GP1 A. 14,356/- reversed No. 03 dtd. 12.12.1993 vide Entry No. 336 dtd. 20.3.1996)2.

57E Cert. No. 2/95 dtd.

230 69,735.00 13.12.1995 cleared 21.12.19953.

57E Cert. No. 3/95 dtd.

230 32,388.00 13.12.1995 cleared 21.12.1995 As per assessment statement received from Range Supdt. I/c M/s.

KIOCL, the duty assessed at Sr. No. 1 is portion of Basic Customs duty. In case of Sr. No. 2 and 3, the original invoices are not proper duty paying documents in terms of Rule 57G(2) and hence provision of Rule 57E will also not apply to such invoices.

ii. they have received the same inputs from said 100% EOU and availed the credit of entire duty paid overlooking purposely and wilfully the restrictive clause of the said Notification. The details are as under:_____

Invoice No. & Dt.

R.G.	23A	Part-II	Credit	availed	No.	E.	No.	&	Date
Rs.	_____								

12 54 -22/04/96 49,24,719/- 23/3/1996 iii. they have received the short quantity than shown in the documents i.e. invoice/AR1A, but instead of taking the proportionate credit of duty, they have availed full credit, the detail of which are as under:_____

Invoice No. & Dt.

Qty. on which Actual loaded qty. asNo. duty has been shown in in- paid voice/ARIA1.

12 58,000 M.T. 57,365 M.T. 23/3/1996 It is also more or less repetition of what has stated in the previous show cause notice. In the show cause notice dated 8th July, 1996 in paragraphs 4, 5, 6 it is stated as follows: 4. The assessee manufacture product called Hot Briquetted Iron (HBI) more commonly and popularly known as Sponge Iron. Inter alia, manufacture of such Sponge Iron requires use of Iron Ore Pellets, as an important raw material. The said Iron Ore Pellets are either indigenously manufactured or are also imported. The duty of excise on the manufacture of Pellets by a 100% E.O.U. and allowed to be sold in India is levied and collected under Section 3 of Central Excise and Salt Act, 1944. As per the first proviso to the said Section, such duty of excise shall be an amount equal to the aggregate of duties of Customs which would be leviable under Section 12 of the Customs Act, 1962, on like goods produced or manufactured outside India if

imported into India. Further as a matter of further concessional benefits, the rate in operation on the sale of Iron Ore Pellets manufactured by E.O.U. and allowed to be sold in Domestic Tariff Area was 50% of the tariff rate on the import of such goods as far as basic customs duty as well as additional (Customs) duty (C.V.D.) was concerned in terms of Notification No. 2/95-CE dated 4.1.1995 (or earlier similar Notification). Thus according to concessional rate the assessee herein was entitled to take modvat credit to the extent of 50% of the Additional (Customs) duty leviable on the import of such product and which was actually paid by the manufacturer of Iron Ore Pellets as excise duty.

5. As per the first proviso to the Notification No. 5/94-CE(NT) dated 1.3.1994 issued under Rule 57A of the said Rules, the credit of specified duty in respect of any inputs produced or manufactured by a 100% E.O.U. and used in the manufacture of final products in any place in India is restricted to extent of duty which is equal to additional duty leviable on like goods under Section 3 of the Customs Tariff Act, 1975, paid on such inputs. In other words the restrictive clause provides that the recipient of the goods cleared by 100% E.O.U. will be entitled to avail of the modvat credit of duty of excise paid, subject, however, to the condition that the said credit shall be restricted to the extent of duty which is equal to the Additional (Customs) Duty representing the duty of excise actually paid on such inputs. Therefore, it is evident that modvat credit in respect of goods cleared by 100% EOU would be available only to the extent of the countervailing duty component of excise duty which has actually been paid by the EOU and part of duty represented by Basic Customs Duty component is not admissible as modvat credit under Rule 57A and Notification issued thereunder.

Hence the relevant records and documents were taken over for investigation from the premises of M/s. Vikram Ispat, Salav, Tal.

Murud, Dist. Raigad.

a) M/s. Vikram Ispat have taken the credit of Basic Customs duty component to the tune of Rs. 1,93,93,685/- during the period from 1.1.1994 to 20.3.1995 which is not permitted under the aforesaid Notifications and utilised the same towards the payment of duty of excise on the clearances of their final product. The details are

given in Annexure A to this Notice. They have availed such wrong credit purposely and wilfully overlooking the restrictive clause of the said Notifications.

b) they have also received the short quantity than shown in the documents i.e. GP1A/Invoice/ARIA but instead of taking the proportionate credit of C.V.D. they have availed the full credit.

The excess C.V.D. credit availed on this count is Rs. 3,75,326/-.

This fact is very evident from the GP1A/Invoices and AR1A's (Exhibit I) received from the said EOU which has also been corroborated by Range Supdt. I/c of the said EOU the commercial invoices and the internal records of the said assessee. The details of such excess credit availed by the assessee are given in Annexure B to this notice.

c) Upto 29.11.1994, they have availed the credit of that portion of duty which represented the Additional (Customs) Duty (CVD Portion) but on 30.11.1994 (Exhibit-II) they availed of the credit of Basic Customs Duty portion amounting to Rs. 80,13,155.53 on the same duty paying documents and that too some times after the lapse of six months. (The details are given in Annexure C to this Notice). This shows that they were knowing the correct statutory provisions for availment of such credit, but with a guilty mind and with an intention to evade payment of duty, they have deliberately and wilfully resorted to such act by availing the credit of Basic Customs duty under the guise of Central Excise duty. This also shows their intention to defraud the Government revenue.

d) they have taken the credit of duty on the invoices which have been issued under Rule 100E of Central Excise Rules, 1944 and which have not been prescribed as proper duty paying documents in terms of Rule 57G(2) of the said Rules. The said invoices issued under Rule 100E are not prescribed as proper duty paying documents for availing mod-vat credit under Rule 57G. The AR1A's accompanying the said invoices show only the excise duty equal to Basic Customs duty paid on such inputs and excise duty equal to Additional (Customs) duty is shown as Nil. Therefore the credit equal to Basic Customs Duty is not all admissible to the assessee as per the above referred restrictive provisions. Taking

into account the inadmissible credit as discussed in the Annexure A to this Notice, the remaining inadmissible credit taken on the improper documents is to the extent of Rs. 1,31,30,807/-. The details of such wrong modvat credit availed on improper documents is shown in Annexure D to this show cause notice.

The demand has been raised in this case for Rs. 3,28,98,818/-. The said notice is also issued against the officials as well as the officials of the assessee as well as the department. The arguments of Shri Lodha have to be looked into. He states that the restriction provided in the Notification 2/95 duty of excise to be paid would be less than the duty required to be paid by a domestic manufacturer. From the reading of the Notifications it will be very clear that in terms of Notification 5/94 the credit of duty shall be restricted to the extent of duty which is equivalent to additional duty leviable on goods on like goods under Section 3 of the Customs Tariff Act equivalent to the duties of excise specified under Central Excise Act and Additional Duties of Excise on Textiles and Customs Articles Act, 1978 paid on such inputs notwithstanding the effect of term paid on such inputs. The Western Electronics case, Order No. 766/94, CEGAT, Delhi, the facts of that case are the appellants were engaged in the manufacture of colour TV sets in their factory at New Delhi. They also had an EOU at Dehradun.

They cleared the picture tubes to their DTA at Okhla after paying excise duty equivalent to 50% of the Customs Duty in terms of 97/91.

Additional Duty i.e. CVDT portion otherwise exempt on this picture tubes. Duty paid by the EOU was in fact excise duty but equivalent to 50% of like goods if imported into India. To put it differently it is stated in the said Judgment that no duty amount is payable by the 100% EOU for the purpose of granting modvat credit deemed has to be allowed the amount payable on like goods when imported into India. This is the only way to put DTA unit obtaining goods from 100% EOU as also imported from abroad on same footing. It was held by the Tribunal at paragraph 13 as follows: 13. We have considered the above submissions. We observed that we are not directly concerned with the application of Section 3 at the time of clearance except and to the extent only that along with Notification 127/84 and 97/91 (as amended by 73/93) it forms the necessary background for

interpretation and application of Notification No. 177/86 (as amended). Therefore, it is not necessary for us to enter into detailed interpretation of the above provisions except to this that Notification No. 127/84 exempts all excisable goods produced or manufactured in a 100% Export Oriented Undertaking from the whole of the Additional Duty leviable thereon under Section 3. This is necessary for our purpose since Notification No. 177/86 (as amended) makes a specific mention about it and its implication was a bearing on the issue on dispute in the case before us. In this connection we note that this notification emphasise the word "Specified duty" paid on inputs and by a proviso restricts the modvat credit of specified duty to the extent of duty which equal to the Additional Duty leviable on like goods under Section 3 of the Customs Tariff Act paid on such inputs. We take note of the repeated emphasis on the word "paid on inputs" since the payments of such duty was exempted under Notification 127/84 therefore the payment was nil and admittedly so. Hence in our opinion the amount of credit of specified duty was required to be restricted to the amount of Additional duty paid on the inputs that is Nil. In other words the Learned DR was right in pointing out that no modvat credit was available. In going through the order of the Collector, Meerut that order is not subject matter before us. The impugned order of the Collector Delhi is correct in our opinion. Hence the appeal against it is rejected.

It may be relevant to mention that a reference application was filed in the Tribunal and the Tribunal by its Order referred the question of law to the opinion of High Court, Delhi.

14. Subsequently, in another case of the same party, CCE Meerut v. Weston Electronics Ltd. 1997 (95) ELT 624 in respect of the order 92-93 the Tribunal considered this aspect. Curiously enough the Tribunal did not make any reference to the earlier Judgment and parties did not appear to have brought to the notice of the Tribunal about it. In the subsequent Judgment at paragraph 8 the Court held as follows: 8. In the normal course, the amount of duty paid as Central Excise duty is available for Modvat credit Under Rule 57A in its entirety.

However, Notification No. 177/86 issued Under Rule 57A places a restriction on the quantum of specified duty which will be eligible for credit under the Modvat

scheme on the items. A careful reading of this Notification shows that the duty collected is Central Excise duty and out of this Central Excise duty, only that portion will be eligible for credit which is equal to the additional duty leviable on like goods Under Section 3 of the CTA, 1975. Now the issue which needs clarification is whether the credit amount should be arrived at after apportioning the quantum of duty to different component namely, basic customs duty, auxiliary duty and additional duty. We observe that the notification is very clear, that we will have to find out the component of additional Central Excise duty presuming that the goods were imported. For determining this, we find that the illustration given by the Learned Counsel for the assessee is handy.

It is nowhere laid down that the additional duty should be paid or should have been paid. We have before us only the Central Excise duty so in that duty we have to find out as to what should be the quantum of presumed additional duty in the total quantity of Central Excise duty paid by a 100% EOU. Once it is known, we have to allow credit to the extent of additional duty leviable on the goods. The department has mixed up the two issues. They have contended that as no additional duty of customs equivalent to duty has been paid by the manufacturer, the assessee will not be entitled to any Modvat credit. On careful reading of the two notifications referred to above and Section 3 of the Central Excise Act, 1944, we find that credit of additional duties of customs has been permitted only for the purpose of bringing in equity in the case where the inputs were imported on payment of additional duties of customs. In the instant case we do not see any connection between the actual payment of additional duty by a 100% EOU because what is paid by a 100% EOU is Central Excise duty. If any Central Excise duty has been paid by a 100% EOU while selling the goods in domestic tariff area, customer becomes entitled to take Modvat credit and the extent of Modvat credit is determined by Notification No. 177/86. So we have to read the Notification for measuring the quantum of credit that can be taken out of the total Central Excise duty paid on such goods.

Shri Lodha mainly draw support from this judgement. As far as Shri Rao is concerned he derive support from the first Weston Electronics judgement. Shri Lodha states that the Tribunal in first Weston Electronics did not see the

Notification 127/84 which is as follows: In exercise of powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, read with Sub-section 3 of Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 57) the Central Government hereby exempts all excisable goods produced or manufactured in a hundred percent export oriented undertaking from the whole of the additional duties of excise leviable thereon under Section 3 of the said Act.

15. Shri Lodha's argument that the Tribunal in the first Weston Electronics has fallen into an error in considering the said case, the assumption is that the said Act is applicable to the instant goods is wrong. In fact 177/86 specifically mentions that it shall be restricted to amount of Additional Duty leviable on like goods received under Section 3 of the Customs Tariff Act. The assumption that 127/84 is available appears to be wrong to us to the facts of the case. In the second Weston Electronics case 1997 (95) ELT 624 in paragraph 8 above it has been held as stated therein. However, it has been specifically stated in the said paragraph as follows: It is nowhere laid down that the Additional Duties should be paid or should have been paid This in our view is also a wrong statement. In the Notification 5/94 it has been specifically stated as follows: In the Notification 2/95 even though it said specifically about being paid, 5/94 specifically mentions that. The said Judgment does not make any reference to the earlier judgement. It is very surprising thing.

When these judgements which go on opposite directions, it is necessary to make a reference to a larger Bench. No doubt Shri Lodha in his argument has invited our attention to the Judgment of the Bombay High Court in Sitaram Hari Salunke v. Lakshman Rambodh Dubey for the proposition that it need not be referred to the Larger Bench. He also referred our attention to the Judgment of Justice Sahai in the case of State of U.P. v. Synthetics and Chemicals Ltd. . In paragraph 41 of the said Judgment where he held as follows: Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words can such conclusions be considered as declaration of law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio.

"A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p. 153). In *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* the Court did not feel bound by earlier decision as it was rendered without any argument, without reference to the crucial words of the rule and without any citation of the authority. It was approved by this Court in *Municipal Corporation of Delhi v. Gurnam Kaur*. The bench held that, precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

Uniformity and consistency are core of judicial discipline. But that which escapes in the Judgment without any occasion is not ratio decidendi. In *B. Shama Rao v. Union Territory of Pondicherry* it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law.

The two judgements of the Tribunal go in opposite directions. The earlier Judgment was not referred to in subsequent judgement.

Therefore, we are of the view that the judicial discipline demands that we have to make a reference to Larger Bench to decide the issue. No doubt the Bombay High Court Judgment has been cited before us. But we feel that the said Judgment does not prohibit reference to the Larger Bench. We are therefore of the view that we refer the entire matters for consideration arising in this case to Larger Bench.

16. We have not referred to the other arguments in detail. They are not considered because we are taking a decision to refer the entire matter to the Larger Bench.

17. As far as the appeals other than E/1353/96-Bom., E/1659/96-Bom. and E/1333/97-Bom. are concerned, namely the appeals filed by Nahar, Wakade, and others, the question is whether the cases can be decided in the absence of a decision by a larger Bench. In our view those cases can be decided delinking from appeal filed by Vikram Is-pat as in those cases provisions of Rule 209A are concerned. Rule 209A provides for levy of penalty on any person who in any manner deals with the excisable goods which he know that or has reason to belief, are liable for confiscation under these rules, and such person shall be liable to penalty not exceeding three times of the value of the goods or Rs. 5,000/- whichever is greater. It is true that the provisions of Rule 209A is not criminal in nature but is only civil liability. As decided by the Madras High Court in Comex India Ltd. However, even if it may be a civil liability can we say provisions of Rule 209A is attracted in this case. Here by the Judgment rendered by the Tribunal in first Weston Electronics case order No. A/766/94-NRB dated 24.8.1994 where the Tribunal held in these circumstances of the case the assessee's case was dismissed. As against this the Tribunal in similar case for subsequent year in the case of Collector of Central Excise, Meerut v. Weston Electronics Ltd. final order No. A571-72/97 dated 6.5.1997 (95) ELT 624 decided in exactly opposite manner. The instant case in our view exactly similar to the case decided by the Tribunal in Weston Electronics case. In that view of the matter can we say that the person who has dealt with such types of goods could have knowledge or reason to belief that such goods are liable for confiscation or penalty. In our view it cannot be stated and answer must be in the negative only.

Even if the larger bench decision at reference, accept the pleas of the department even then it has to be held that there has been a scope for doubt. Therefore when there is scope for doubt it has been held in the case of Padmini Products v. Collector of Central Excise (43) ELT 195 : 1989 (25) ECR 289 (SC) : ECR C 1507 SC at page 200 the court has at paragraph 8 thereof. We therefore of the view that appeals filed by V.R. Nahar, Wakade and others namely appeals Nos. E/1753/96-Bom., E/1754/96-Bom., E/1755/96-Bom., E/1756/96-Bom., E/1757/96-Bom., E/1330/97-Bom., E/1331/97-Bom., E/1332/97-Bom., E/1334/97-Bom., E/1335/97-Bom., E/1336/97-Bom. and E1423/97-Bom. are allowed. The other three appeals namely E/1353/96-Bom., E/1659/96-Bom. and E/1333/97-Bom are placed before

the President for constituting a Larger Bench to decide the said appeals.

19. I would like to add the following to the order proposed by my colleague.

20. The position that now prevails is that there are two decisions of the Tribunal on this issue, each taking a point of view diametrically opposite to the one that taken in the other. It is, as has been said, somewhat surprising that the existence of the earlier order was not brought to the notice of the bench which passed the latter order.

Whether, if that decision had been brought to the notice, it would have taken a different view, is not a question that can be answered now with any degree of certainty. It is however reasonable to say that a different view might have emerged. It may no doubt be true, as Shri Lodha, advocate for the appellant says, that it is not necessary, where there are differing judgements on the same question, that a reference be made to a larger bench to decide which of the two views is correct.

He cites the decision of the Bombay High Court in *Sitaram Hari Salunke v. Lakshman Rambodh Dubey* and the concurring Judgment of Sahai J in *State of UP v. Synthetics and Chemicals Ltd.* . The view expressed by that learned judge was that any declaration or conclusion arrived at in a Judgment without application of mind is preceded with any reason cannot be deemed to be a declaration of law or authority of a general nature binding as a precedent. Such a decision passed sub silentio. It is contended that this is the position with regard to the earlier decision in *Weston Electronics v. CCE*. Shri Lodha contends that the earlier order was passed on an erroneous appreciation that what was required to be paid on inputs cleared, from a 100% Export Oriented Unit of the goods cleared to the domestic tariff area. The additional duty, and on this basis has restricted the amount of credit to the additional duty paid on the input which was nil in the case before him. This is not, in our view, the correct position. No doubt, there is a reference in the last paragraph of the order to the amount of credit of duty required to be restricted to the amount of additional duty paid on the inputs. There is also, no doubt, a reference to notification 127/84 exempts all excisable goods for manufacture of 100% export oriented unit equivalent to the duty leviable on it

under Section 3. It is true that the exemption is not to additional duty of Customs cannot be, since there is no question of payment of Customs duty on the goods manufactured in India. What it exempts is excise duty equal to the extent of additional duty payable on such goods if imported into India. These errors however appear to be mere errors in drafting than errors of substance. The Tribunal in the same paragraph has specifically referred to in the proviso to notification 177/86 of the Modvat credit to the extent of duty paid on such inputs.

21. It would therefore follow that on the identical issue two different benches have taken diametrically opposing views and having regard to the orders, it would not be possible for us to adopt one view as correct while completely disregarding the other. Therefore, the question considered in each of these orders requires to be referred to a larger bench for resolving the conflict.

22. I am in agreement with my colleague, for the reasons stated by him, that the appeals of the appellants other than M/s Vikram Ispat Ltd. are to be allowed and the orders imposing penalties on them are required to be set aside.

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