

**Cce Vs. Escorts Ltd.**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Apr-07-2000

**Reported in :** (2001)(94)LC71Tri(Delhi)

**Judge :** S T G.R., a Unni

**Appellant :** Cce

**Respondent :** Escorts Ltd.

**Judgement :**

1. Revenue has filed the above application for making a reference to the Hon'ble Punjab & Haryana High Court on the ground that a point of law arises out of Tribunal's Final Order No. A/898/98-NB dt. 9.10.1998.

The point of law has been formulated as under: 1. Whether Modvat credit can be availed under Rule 57A on the inputs used in the manufacture of Hydraulic Assemblies transferred to their other unit under Chapter X Procedure for use in the manufacture of exempted tractors.

2. Whether Rule 57C prohibits availment of Modvat credit on the inputs cleared under Chapter X Procedure without payment of duty and used in the manufacture of final product which is also exempted from duty.

2. Arguing the case Shri S.K. Das, Ld. JDR submits that the respondents herein manufactured tractors. They have got two units. In one unit Hydraulic Assemblies are manufactured. These hydraulic assemblies are then transferred to their other

unit under Chapter X Procedure. These hydraulic assemblies are used in the manufacture of tractors of 1800 cc and less which are exempt in terms of Notification No. 217/96-CE (sic) dt. 2.4.1986 as amended by Notification No. 97/89 dt. 1.3.1989. He submits that since tractors of 1800 cc and less are exempted, therefore, Modvat credit taken on inputs used in the manufacture of hydraulic assemblies was wrongly taken by the appellant. He submits that the final product in the instant case was tractor and since tractors were exempted, therefore, no Modvat credit should have been taken on the inputs used in the manufacture of hydraulic assemblies.

He, therefore, submits that the above two points of law arise out of the order of the Tribunal as the Tribunal has not allowed them the benefit and therefore, prays that a reference may be made to Hon'ble Punjab & Haryana High Court.

3. Ms. Samita Ekka, Manager, Law, appearing for the respondents submits that in their case hydraulic assemblies were being manufactured in one unit of the company; that hydraulic assemblies were dutiable; that credit of duty was taken on the inputs that were being used for manufacture of hydraulic assembly; that the hydraulic assemblies were being sent to other unit by following the Chapter X Procedure; that whenever hydraulic assemblies were being used in the manufacture of tractors which were exempt, Modvat credit taken on the inputs was being reversed. She submits that there was no point of law arising and therefore, prays that the reference application may be rejected.

4. We have heard the rival submissions. We find that in the instant case, Modvat credit was taken on the inputs used in the manufacture of hydraulic assemblies and when these hydraulic assemblies were used in the manufacture of tractors of 1800 cc or less Modvat credit taken was being reversed. Thus the credit taken in respect of the inputs was not being availed but was being reversed. Thus the first question reading as 'whether Modvat credit can be availed under Rule 57A on the inputs used in the manufacture of hydraulic assemblies transferred to their other unit under Chapter X Procedure for use in the manufacture of exempted tractors' does not arise out of the disputed Tribunal's order.

5. The second question also does not arise out of the Tribunal's order in as much as the inputs on which credit of duty was taken under the Modvat scheme were used in the manufacture of hydraulic assemblies which was not an exempted item. In this view of the matter, the reference application is rejected.

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