

Vikrant Tyres Vs. C. C. E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-16-1988

Reported in : (1988)(18)LC30Tri(Delhi)

Appellant : Vikrant Tyres

Respondent : C. C. E.

Judgement :

1. The question that arises in this appeal is whether, for the purpose of Notifications 95/79-C.E. and No. 201/79-C.E. there should be a direct nexus between inputs and final products. This question arose because the appellants filed classification lists (Nos. 29,30,31 & 32) claiming proforma credit/set off of duty, in terms of Notification No.95/79-C.E. as amended by Notification No. 58/82-C.E. as well as under Notification No. 201/79-C.E. as amended in respect of tyres manufactured and cleared by them as O.E. tyres cleared under bond under Chapter X procedure. A notice was issued to the appellants proposing the denial of their claim for set off proforma credit under Notifications Nos. 95/79 & 201/79-C.E. in respect of inputs used by them in the manufacture of those tyres which were cleared without payment of duty under bond for home consumption. The Asstt. Collector after hearing the appellants extended the benefit. The Department went in appeal against the Asstt. Collector's order dated 22.6.83. The Collector allowed the appeal. As a result the Appellants approached the Tribunal through this appeal.

2. Shri Harish Salve, the Ld. Counsel for the appellants pleaded that Notification No. 95/79 has to be interpreted as it is and nothing can be added to the words to create conditions which are not there. He submitted that proviso (iii) to the notification prescribed that as a condition the procedure set out under Rule 56A Central Excise Rules should be followed. This does not mean and could never mean that all the conditions of the said Rule are applicable. He submitted that in the notification itself there is no stipulation that the inputs should go only into duty paying clearances of final products. It is enough if the inputs are used in the final products described therein.

3. As against this the Ld. JDR Shri Chakraborty argued that the provisions of Notification No. 201/79 have been interpreted by the Tribunal in their earlier order in Vikrant Tyres Ltd. v. C.C.E.Bangalore [1985 (21) ELT 620 (Tribunal)]. Insofar as Notification No.95/79 is concerned he submitted that this notification should be interpreted on its own. According to him the main body read together with the proviso shows that there should be a nexus of inputs to outputs and such nexus should be direct. The Ld. JDR argued that when the goods (outputs) are already exempt being eligible under nil rate of duty, there was no question of applying Notification No. 95/79 to the goods. Referring to the second proviso to Notification No. 201/79 to the effect that nothing contained in the said notification shall apply to the said goods (outputs) which are exempted from the whole of excise duty leviable, Shri Chakraborty argued that in the Notification No.201/79 this proviso was inserted though it was not necessary to do so.

He submitted that such a necessity did not arise because the position was so obvious but still the proviso was inserted because even so obvious a position is sometimes missed. In sum, the Ld. JDR argued that the goods appearing in column 3 to the Notification No. 95/79 should be used in the manufacture of the final products mentioned in column 5 thereof on which duty has been paid.

4. We have considered the arguments of both sides. The appellants pressed their claim only under 95/79 before us. We, therefore, do not propose to go into the scope of Notification No. 201/79.

5. We find that Notification No. 95/79 in proviso 3 makes it a condition that procedure set out under Rule 56A-CE Rules should be followed. This does not mean that all the provisions of the said Rule are applicable. It is enough if the procedure under Rule is followed.

We agree with the appellants' pleas in this regard and also note that at no stage was there any finding that the appellants did not follow the procedure. In fact the only ground on which the Collector of Central Excise (Appeals) found against the appellants was that some of the goods were cleared without payment of duty and, therefore, proforma credit cannot be extended in respect of the inputs used therein.

6. Both sides agreed and argued that the notification should be interpreted as it is. It is the Rule of construction that nothing can be supplied and nothing can be ignored when interpreting a statute, a notification in this context. Notification No. 95/79 exempts excisable goods specified in column 5 of the table (final products) from so much of the duty leviable thereon as is equivalent to the amount of basic duty and additional duty paid on the goods specified in the corresponding entry in column 3 of the said table (inputs) subject to 3 provisos namely :- "(i) that inputs specified in column(3) of the said Table against a particular serial number in column (1) thereof are used in the manufacture of the final products specified in the corresponding entry in Column (5) of the said Table against the said serial number; (ii) where the duty of excise leviable on any final product is less than the amount of duty of excise (including special duty of excise aforesaid) or the amount of additional duty aforesaid, as the case may be, paid on the inputs used in the manufacture of such final product, the extent of exemption shall be restricted to the duty of excise leviable on such final product; and (iii) in relation to the exemption under this notification the procedure set out in Rule 56A of the aforesaid rules is followed.

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of						the
products.						

(2) (3) (4) (5) 1. 16 Tyres and Tubes. 34B Forklift trucks & Platform trucks 2. 31 Electric Storage 34B Forklift trucks & Platform Batteries.

trucks.

Read by itself this notification does not have any condition that there should be any nexus between the inputs and outputs. The only question that can arise, while examining the question of eligibility to this notification is whether the inputs described in column 3 have been used in the outputs described in column 5. The Ld. JDR's argument that goods mentioned in column 5 (final products) are only those which pay duty is not supported by the wording of the notification. No condition regarding payment of duty is contained anywhere in the notification.

7. For these reasons the ratio of the judgments cited by the Ld. JDR is not relevant to the present proceeding. The Ld. JDR relied on the judgment of the Bombay High Court in *Someshwar Sahakari Sakhar Karkhana Ltd. and Ors. v. Union of India and Ors.* [1988 (34) E.L.T. 522 (Bom.)].

In that matter the High Court was dealing with a situation in which the question that arises was whether rebate which was in excess of the duty paid could be allowed. Holding that it could not be allowed, the High Court referred to an amendment made by the Notification No. 134/80-C.E. adding a proviso to the earlier rebate under Notification No. 108/78 and observed that the amendment merely made explicit what was implicit.

No such position prevails in the present matter.

8. We therefore hold that in terms of Notification No. 95/79 there need not be any nexus between the inputs and outputs. We are further supported in this view by a judgment of the CEGAT (SRB) (*CCE Bangalore v. Wipro Information Technology, Bangalore*) reported in 1988 (14) ECR 490 wherein it was held that proforma credit once allowed cannot be recovered subsequently even if finished goods are exempted later on, making proforma credit ineligible, since no interlinking account is provided for in Rule.

10. I have gone through the judgment recorded by brother Sh. I.J. Rao.

I am not able to persuade myself to the view taken by him. The facts in detail in the present case are set out by brother Sh. Rao. As pointed out, the issue involves the interpretation of Notification No. 95/79 with reference to the 3 provisos of the notification. So far as the proviso 1 is concerned, there is no dispute that the inputs are utilised for the specified end product listed in the notification. The issue therefore, has to be examined with reference to the provisos 2 and 3. I find that in proviso 2 to the notification (set out in judgment above), it has been specifically stated that in case the end product is leviable to less duty than the amount of duty of excise (including the special duty of excise) or the amount of additional duty of excise, which has been paid on the inputs used in the manufacture of the final product, the extent of the exemption shall be restricted to the duty of excise leviable on such final product. This means that the extent of the credit that could be taken in respect of the duty paid on the inputs shall be restricted to the duty payable on the end product if it happens to be less than the credit of duty taken on the inputs. What follows from this therefore, is that if the duty payable on the end product is nil, then the extent of exemption that will be available will also be nil or in other words, extent of credit that can be taken will also be nil.

11. In the present case, the issue is the availability in terms of the exemption notification of the set off in respect of the tyres cleared without payment of duty as original equipment. Inasmuch as, no duty in respect of these tyres has been paid, In terms of proviso 2 to the notification, the availability of the credit on the inputs in respect of these tyres will have therefore, to be nil.

12. In view of this, I hold that the credit on duty taken in respect of the inputs used in the manufacture of the tyres which have been cleared without payment of duty was not available to the appellants. In view of my findings above, I do not find it necessary to examine the issue in the context of proviso 3.

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