

**Balkrishna Industries Ltd. Vs. Cce**

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**SooperKanoon Citation :** [sooperkanoon.com/45666](http://sooperkanoon.com/45666)

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

**Decided On :** Jun-15-2007

**Reported in :** (2007)(121)ECC110

**Judge :** N T C.N.B., P Das

**Appellant :** Balkrishna Industries Ltd.

**Respondent :** Cce

**Judgement :**

1. The issue raised in these three appeals filed by M/s Balkrishana Industries Ltd. is the same. Therefore, we have called Appeal No.E/669/06 also today even though only the other two appeals are listed for hearing today. As the issue involved is the same, all the appeals shall remain disposed of under this common order.

2. The appellant is a manufacturer of tyres, more specifically, tyres for earth movers and other industrial equipments, for exports. While it manufactures the tyres in its factory, the inner tubes and flaps for the tyres are procured from outside. Tyres are cleared from the factory after fixing the inner tubes and flaps into/on to the tyres.

3. Bulk of the produce of the appellant is exported and the appellant is entitled to rebate of excise duty paid on the tyres. The appellant is also availing of credit of duty on the inputs going into the manufacture of the tyres including on the inner

tubes and flaps procured from other manufacturers.

4. The dispute raised is as to whether credit is available in regard to inner tubes and flaps. Under the impugned order, the credits have been denied (and penalty imposed) on the ground that flaps and tubes are not inputs used in the manufacture of tyres. The specific finding is that tyres and tubes, being separate products (from tyres) are not "used in or in relation to the manufacture of tyres". The finding relies on the definition of 'inputs' under Cenvat Credit Rule 2(k).

5. The appellant's contention all through was that the definition of inputs under the Rule is a very broad one and specifically covers "accessories". It is also being contended that the terms "all goods...used in or in relation to the manufacture" takes in "accessories" used in the manufacture also, particularly, in view of the inclusion of "accessories" of the final products cleared along with the final product" in the definition. The Id. Counsel for the appellant also points out that the value of these inner tubes and flaps remained included in the price/value of tyres and, therefore, availing credit is Revenue neutral.

6. The Id. Counsel would submit that this dispute remains covered in favour of the assessee by the judgment of the Hon'ble Supreme Court in the case of Siddhartha Tubes Ltd. v. Commissioner of Central Excise, Indore 7. The Id. SDR would reiterate the findings in the impugned order that tyres and tubes are entirely different products and, therefore, one cannot be treated as input in the manufacture of the other. He would also point out that, from the record, it is not clear, as to whether the value of tubes and flaps were forming part of the assessable value of the tyre/'set pack' at the time of their clearance from the factory.

8. We agree with the assessee. The tyres in question are not tubeless tyres. They required inner tubes as an essential item for functioning.

The flaps are also useful and make the functioning of the tyres more convenient and trouble free. Therefore, while tubes can as well find place as part or component of tyre, the flap will clearly be an accessory as pointed out by the Id. Counsel for the appellant.

9. The view taken in the order is also contrary to the plain terms of the definition. We may read that definition for the case of discussion: (i) all goods, except light diesel oil, high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final product whether directly or indirectly and whether contained in the final product or not and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used in or in relation to manufacture of final products or for any other purpose, within the factory of production; (ii) all goods, except light diesel oil, high speed diesel oil, motor spirit, commonly known as petrol and motor vehicles, used for providing any output service; The position cannot be stated more clearly. Input "includes accessories of the final products cleared along with the final product". The scope of "input" remains expanded to the extent of taking in accessories of final products cleared along with the final product. And there cannot be any doubt that inner tube and flap are certainly accessories of the variety of tyre under clearance. The broad sweep of "inputs" under the definition is also clear from the terms used, like "all goods" used...in or in relation to manufacture "whether directly or indirectly", "whether contained in the final product or not". The very narrow construction placed by the Commissioner shrinks the definition to an extent that it excludes situations specifically covered by the definition.

10. This is also for good reason. Excise is on manufacture and the definition of manufacture includes all processes in connection with the manufacture, including embellishment. And the value of all these processes and the items going into them go into the assessable value of the manufactured product. Thus, it is the product, as it is cleared from the factory, with all improvements, embellishment and accessories that gets assessed. Input credit rules have to be in consonance with this scheme of taxation, by treating all items including accessories, packing materials as credit eligible inputs. Therefore, the very narrow interpretation sought to be placed in the impugned order does not fit in with the scheme of excise levy or Cenvat credit.

11. The case considered by the Hon'ble Supreme Court in *Siddhartha Tubes* (supra) was also somewhat identical. The assessee was clearing excisable pipes, after fitting sockets to them so that one pipe would fit into another conveniently. Dispute arose about the valuation of the pipes and credit on the sockets. Whether the value of the sockets should form part of the assessable value of pipes and whether credit could be taken of the duty paid on the sockets and used to discharge duty on pipes. Now, we may read paras 6, 7, 8 and 10 of the judgment: on facts of this case, the adjudicating authority has found that pipes were cleared from the place of removal (factory gate) with the sockets fitted thereto. Further, the appellant had charged its customers for the said sockets. It is true that in the present case, the sockets were bought by the appellant from the market before they were fitted to the said m.s./g.i. pipes. However, the appellant had cleared the pipes fitted with the sockets and it had charged its customers for the pipes fitted with the sockets and, therefore, the department was right in loading the price of the pipes with the cost of the sockets. *Hindustan Polymers v. CCE*, this Court has held that under Section 4, the normal price for which the goods were sold at the factory gate shall be taken as the assessable value and if a manufacturer levied a charge for an item (socket in this case), which was intrinsically necessary to place the pipes on the market then the cost of such an item had to be loaded to the normal price of the pipes.

Applying the above test to the facts of the present case, we find, as stated above, that the sockets were fitted on the said m.s./g.i.

pipes before their clearance. It has been concurrently found by the Commissioner as well as by the Tribunal that the sockets were fitted on the threaded portion of the pipes. It has been found that the said sockets enabled the functioning of the pipes. It is found that the sockets were essential for functioning of the pipes. They were required for joining the pipes to each other. In the circumstances, the functional test stood fully satisfied in this case and consequently, the cost of the said sockets was includible in the assessable value of the said m.s./g.i. pipes. On behalf of the appellant, it has been contended that the test of essentiality is not the correct test. We do not find any merit in this argument. We have applied the test of essentiality in several cases, particularly in order to distinguish a component from

accessory. According to Chambers Science & Technology Dictionary 'socket' is defined as a pipe end enlarged to pass over a same-sized pipe to make a joint.

Therefore, sockets not only contributed to the functioning of the pipes, it constituted a part of m.s./g.i. pipes. As stated, the customer was charged with the price of the socket when the appellant sold the m.s./g.i. pipes with the sockets. Hence the department was right in including the cost of the sockets in the assessable value of m.s./g.i. pipes.

Before concluding, we may point out that the sockets in question were bought out items, as held by the Commissioner. The cost of the sockets was includible in the assessable value and, therefore, the appellant was entitled to take Modvat credit on the duty paid on the sockets, subject to the appellant's producing duty paid documents to the department within eight weeks from the date of receipt of the judgment. In fact, directions to that effect have been given by the Tribunal in the impugned judgment.

12. In the present case, tubes and flaps are in the position of socket.

Therefore, their value should go into the valuation of tyres cleared, as the tyres were cleared as 'set packing' i.e. along with the tubes and flaps. Similarly, the appellant will be entitled to take credit of duty paid on tubes and flaps and use that credit for payment of duty.

14. Since the Id. SDR has raised a doubt as to whether the value of tubes and flaps were included in the assessable value of 'set packs'/tyres, we leave that factual aspect to be verified. Upon verification if it is seen that the value of these items were not included in the valuation of the tyres and tubes, the appellant shall not be entitled to relief by way of Cenvat Credit on these items. On the contrary, in case value of these items remained included in the assessable value of 'set pack' cleared, the appellant shall be entitled to Canvat credit.