

**Apar Ltd. Vs. Collector of Central Excise**

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

**Decided On :** Jan-20-1994

**Reported in :** (1994)(72)ELT561Tri(Mum.)bai

**Appellant :** Apar Ltd.

**Respondent :** Collector of Central Excise

**Judgement :**

1. The above listed Reference Application seeks to raise certain questions of law with regard to the findings given by this Bench in Para 9.4 of this Bench's Order No. 976-77/93-WRB, dated 17-6-1993 reported in 1993 (67) E.L.T. 364 (Tri.). In the appeals filed by the applicants M/s. Apar Ltd., many issues were dealt with and were finally disposed of by this Bench in the said order. One of the issues decided by this Bench relates to eligibility of MODVAT Credit of duty paid on molybdenum wire (hereinafter referred to as "Molywire") used as a core (mandrel) for winding tungsten wire and the said Molywire was removed from the coil by dipping in acid bath. This Bench in Para 9.4 of the above order held as below : 2. This Bench held the issue on merits against the applicants but allowed their appeal on the ground of time bar of the demand. The department have not filed any Cross Objection to the application moved by the assessee. Hence we are to confine ourselves to the questions proposed by the applicants M/s. Apar Ltd. 3. The facts of the case are that the applicants are manufacturing electric lighting bulbs. They bring in various inputs under Rule 57A of the Central Excise Rules, 1944 and take MODVAT Credit of the duty paid on these inputs as per the declaration filed by them in terms

of Rule 57G of the Central Excise Rules. Objection was taken with regard to the claim of the applicants in regard to certain inputs alleging that they cannot come within the purview of the eligible inputs under Rule 57A and hence adjudication was done by the Collector, wherein the Collector confirmed the demand for reversal of MODVAT Credit in respect of those inputs. On an appeal filed by the applicants, this Bench went into the merits of the claim of the applicants in the case of each input and held on merits only in the case of molywire against the applicants observing that it can be regarded as a mechanical appliance for coiling tungsten wire and hence gets hit by the exclusion clause in Rule 57A of the Central Excise Rules. However, despite these findings on merits, this Bench held that the demand in regard to reversal of MODVAT Credit for Molywire is time barred. Thus the entire appeal was allowed. The present application has been moved, in terms of Section 35G of the Central Excises and Salt Act, 1944, requesting this Bench to refer certain points of law only in regard to adverse findings against the applicants holding that Molywire is not an input eligible for MODVAT Credit.

"(a) Whether on a true and proper interpretation of Rule 57A and the explanation thereto, the expression "appliance" is to be understood as defined in various dictionaries, signifying capability of repeat use or even a component part can be regarded as an appliance (b) Whether, it is open to the Hon'ble Tribunal to proceed to reject the claim of a product for consideration as input under the MODVAT scheme on a ground never disclosed in the show cause notice and not even averted to in the impugned order (c) Whether on a true and proper interpretation of Rule 57A, two distinct expressions 'Tool' and 'appliance' are to be regarded as synonymous and interchangeable with each other or distinct meaning is required to be given to each expression (d) Whether it is open for excise authorities, including the Hon'ble Tribunal, to go into the reasons for use of a particular product in the manufacture of a final product or it is sufficient to demonstrate that goods are used in or in relation to the manufacture of final product and are not covered by the exclusion clause ?" 5. Heard the arguments of Shri C.S. Lodha, the Id. Advocate for the applicants and the reply by Shri K.M. Mondal, the Id. SDR for the Department.

5.1 The main thrust of the argument of Shri C.S. Lodha are the following :- (i) 'Molywire' is no doubt used only for coiling tungsten wire. In some cases, 'Molywire' so used is retained as a support in the coil fitted to the electric lighting bulb and forms a component, in which case no objection can be taken for extending MODVAT Credit. Merely because, in the disputed case, such molywire used as a core for coiling tungsten wire is removed, it cannot be held to be an appliance. It has to be construed as a component used in or in relation to the manufacture of final product, viewed in the context of the decision of the Supreme Court in Eastend Paper Industries -1989 (43) E.L.T. 201 (SC) and Ballarpur Paper Industries -1989 (43) E.L.T. 804 (SC). Hence there appears to be an error in appreciating the legal provisions in construing the exclusion clause of Rule 75A.

(ii) This Bench, while taking into account, the Mcgraw Hill Dictionary meaning of 'Mandrel' for treating Molywire used as mandrel as an appliance, has not taken into account the meaning given the 'appliance' in the same dictionary. Viewed in the context of definition of 'appliance' given in the same dictionary, Molywire cannot be construed to be an electrical appliance for performing any specified task. It is only a wire, used as a core for coiling tungsten wires in the process of manufacture of electric lighting bulb.

(iii) While the allegation by the lower authorities was that Molywire is a tool, the Tribunal gave an adverse finding against the applicant, holding it as an 'appliance'. It is not open for the Tribunal to treat both terms as synonymous and bring out a new allegation, which they had no occasion to deal with.

(iv) It is not open to go into the use of the input for a particular item for interpreting the terms used in the exclusion clause of Rule 57A of the Central Excise Rules. It would suffice, if the item is established to have been used in or in relation to the manufacture of the final product.

(i) The findings of the Tribunal with regard to eligibility of MODVAT Credit in respect of duty paid on Molywire are based on factual appreciation, having regard to the technical literature produced by the applicants themselves, the usage of the wire as a mandrel (which is a mechanical appliance) for coiling tungsten wire.

It is not the applicants' case that in the case, Molywire goes as a component providing support to the tungsten coil in the electric lighting bulb. Hence no question of law can arise in such a case.

(ii) The terms used in the exclusion clause are to be construed in the context, in which the items claimed as inputs are used. If the item is used as an appliance or tool, it is to be regarded as an appliance and would get hit by exclusion clause of Rule 57A. If the same item is used as a component, it can be given MODVAT Credit.

Hence usage of the item in the context of manufacture of the final product is to be appreciated, especially, when we are to deal with the exclusion clause of Rule 57A. There can be no doubt on the aspect, calling for a reference, as urged by Id. Advocate.

(iii) Tool' and 'Appliance' are devices for performing specified work and they are not to be regarded as distinct. Hence, the Tribunal is justified in holding Molywire as an appliance.

(iv) The decisions of the Apex Court in Eastend Paper Industries & Ballarpur Paper Industries are not in the context of exclusion clause of Rule 57A. While he does not dispute that Molywire, in the case, is used in or in relation to the manufacture of final product, he would point out that Rule 57A does not allow MODVAT benefit in regard to all items going in the manufacturing stream and certain items for valid policy considerations, have been deliberately excluded in the exclusion clause of Explanation to Rule 57A. The Apex Court, in the above cases had no occasion to consider this exclusion clause. He also referred to the decision of the Apex Court in Star Paper Mills -1993 (43) E.L.T. 178 (SC) wherein that court upheld the eligibility of set off benefit provided under Notification No. 201/79 only in respect of 'paper core' going as a component in the case of paper packed in the form of reels but not in the case of paper cleared in the form of sheets. Hence, the arguments of the Ld. advocate that usage of the item cannot be considered, do not appear to find favour with the Apex Court in the above case.

6.1 After considering the above arguments, we find that the facts are not disputed. 'Molywire' is used as a core (mandrel) for coiling tungsten wire to make filament and 'Molywire' is removed by dipping the coil in acid bath. Its function is only limited to usage as a core, for winding tungsten wire to obtain 'tungsten filament', which only goes as a component in the electric lighting bulb. We, no doubt, agree that under Rule 57A, physical presence of the item used as input, in the final product is not envisaged. An input is one which is used in or in relation to the manufacture of the final product. We would have allowed MODVAT benefit for Molywire, if there had been no exclusion clause denying MODVAT benefit to certain categories of inputs used in or in relation to the manufacture of final product.

"machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final product." The exclusion clause extracted above, by itself, indicates that all these items are used in or in relation to production or processing of final product or to bring out any change in any substance in the manufacturing stream. All the same, they are excluded from MODVAT benefit on policy considerations. But for the specific exclusion clause, they would have otherwise been eligible for MODVAT benefit. In view of this, we felt it necessary to go into the usage of 'molywire' used as a mandrel for coiling tungsten wire, which is removed, after coiling and does not go as a part of the coil. Shri Lodha, contends that it is not open for us to go into usage citing the judgment of the Apex Court in the case of Eastend Paper Industries & Ballarpur Paper Industries. We find that in both the cases, the Apex Court laid down the general proposition that anything which goes into the manufacturing stream upto the stage of marketing the final product could be construed as raw material or component. Viewed in the context of these two judgments, we would have held the issue in favour of the applicants but for the fact that in those judgments, the Apex Court did not consider the question whether certain items used as equipment, tool or appliance, specifically excluded from input duty benefit, could also be construed as component eligible for the benefit. The Apex Court, have not considered the exclusion clause as is found in Rule 57A, but was not present in Notification No. 201 /79. Hence, we held the view that while there cannot be any dispute on the

general proposition as laid down by the Apex Court in the above cases, that Court had no occasion to consider the exclusion clause, facing us in this case of MODVAT Credit Scheme. In yet another case of Star Paper Mills decided by the Supreme Court 1989 (43) E.L.T. 178 (SC), the Apex Court held that cores made of paper can be allowed set off under Notn. No. 201 /79, if paper is marketed in the form of rolls and it cannot be treated as a component for paper cleared in sheets/reams. The relevant observations of the Supreme Court are extracted below :- "usage of paper core is necessary for rewinding the paper, if it is delivered to the consumer in rolls and would come within the purview of the expression "any process incidental or ancillary to the completion of the manufactured product" used in definition of the term "manufacture" in Section 2(f) of the Act and for the same reason, paper core would also be a constituent part of paper and would thus fall within the term component part used in the Notification, in so far as manufacture of paper in rolls is concerned. Paper core, however, cannot be said to be used in the manufacture of paper in sheets as component part." 6.3 The above decision in Star Paper Mills case is also in the context of Notification No. 201/79, where the Apex Court went into the question of usage of paper core used in or in relation to the manufacture of paper marketed in various forms and held it as a component, only when such a core is physically present as a packing component of a paper roll marketed as such, but held that it is not a component when paper is marketed in reams or sheets. Hence we feel that usage of any item claimed as input for construing whether it is a component or a device or appliance cannot be ignored, even for purpose of interpreting the terms in the exclusion to Rule 57A. All the same, this is a point of law, on which an authoritative pronouncement in the context of Rule 57A, particularly with reference to the exclusion clause therein, is desirable. Hence we agree for making a reference on this point.

6.4 On the question raised, as to whether the Tribunal have gone beyond the allegation in the show cause notice and the findings of the lower authorities, we may observe as below : It is pleaded that while lower authorities have alleged and sustained that Molywire is a tool, the Tribunal has given a finding that it is an appliance. Hence it is not permissible in law. We have extracted the relevant exclusion clause in Rule 57A (vide Para 6.3 above). Even in the exclusion clause, while the terms machines, machinery, plant, equipment, apparatus are individually

mentioned, whereas in the case of tools and appliances they are referred to either or or.

We do not propose to go into the hair splitting interpretation as to whether in the context of the rule, the word "or" can be construed to be "and". Even leaving aside the manner in which the terms 'tools' and 'appliances' are referred to in the exclusion clause of Rule 57A, the dictionary meanings of the terms 'tools' and 'appliances' purport to convey similar meaning. As per Concise Oxford Dictionary, 'Appliance' is defined as 'a device or piece of equipment used for a specific task'; while 'tool' is given the meaning as 'any device or implement to carry out a mechanical function, whether manually or by machine'.

Hence, both are devices for carrying out a specific task. In this case, Molywire is found to be a device for coiling tungsten wire to form a filament either manually or by machine and was held to be a mechanical appliance. We feel that no serious prejudice would be caused to the applicants on account of this, raising a point of law to be decided by the High Court, especially when we agree for making a reference on the main issue raised. Hence we do not propose the question on this point.

7. With the consent from both the sides, we propose the only question for consideration by the Hon'ble High Court of Gujarat as below: "Whether in the facts and circumstances of the case, the Tribunal is correct in denying the MODVAT benefit in respect of duty paid on Molywire used for coiling tungsten wire to form filament, holding it as a mechanical appliance and hence hit by explanation to Rule 57A, taking into account its usage, as a mandrel for coiling tungsten wire and whether for purposes of interpreting the items figuring in the exclusion clause of Explanation to Rule 57A, it is legally permissible to go into the usage of items claimed as inputs for benefit under Rule 57A, as has been done by the Tribunal?"

8. The registry may draw up the statement of facts as above and send the papers to the Hon'ble High Court of Gujarat for favour of deciding as the point of reference as above.