

Collector of Central Excise Vs. Modi Rubber Ltd.

Collector of Central Excise Vs. Modi Rubber Ltd.

SooperKanoon Citation : sooperkanoon.com/7333

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-1994

Reported in : (1994)(54)LC125Tri(Delhi)

Judge : G Agarwal, K T P.K.

Appellant : Collector of Central Excise

Respondent : Modi Rubber Ltd.

Judgement :

1. This is an Appeal against the Order passed by the Collector (Appeals), Central Excise, Ghaziabad. Briefly stated the facts of the case are that the Respondents are engaged in the manufacture of tyres, tubes and flaps. They filed two refund claims for Rs. 62,53,022.92/- and 5,64,235.79/- for the period 1.3.1984 to 14.3.1986 and November, 1984 to February, 1986 respectively, on the grounds that as per Notfn.

No. 95/83 dt. 1.3.1983 and 201/79 dt. 4.6.1979 credit taken on inputs was not required to be reversed when the final products were cleared at 'Nil' rate of duty. The Asstt. Collector rejected the refund claim vide his Order dt. 18.12.1989. Being aggrieved with the Order passed by the Asstt. Collector the Respondents filed an Appeal before the Collector (Appeals) who relying upon the Tribunal's Order in the case of Vikrant Tyres v. Collector of Central Excise, Bangalore held that as per Notfn. Nos. 95/83 dt. 1.3.1985 and 201/79 dt. 4.6.1979 reversal of credit of duty on inputs used in the manufacture of final product cleared at 'Nil' rate of duty as

O.E.Parts under Chapter X procedure was not required.

2. Appearing on behalf of the Revenue, Shri Sharad Bhansali, the Ld.

SDR stated that in the decision in the case of Vikrant Tyre v. Collector of Central Excise, Bangalore Notfn. Nos. 95/79 and 201/79 came up for interpretation whereas in the present case Notfn. No. 95/83 was relevant. He argued that set-off on inputs, in terms of Notfn. No. 201/79 dt. 4.6.1979 was not admissible, since the inputs were used in relation to the manufacture of final products which attracted 'Nil' rate of duty. He stated that the requirement in Proviso (ii) to the Notification No. 95/83 dated 1.3.1983 that the procedure set out in Rule 56-A was to be followed, implied that Notification No. 95/83 was to be read along with Rule 56-A of the Central Excise Rules, 1944. He contended that under these circumstances in terms of the said Rule, no credit of duty was admissible in respect of any material or component parts which were used in the manufacture of finished excisable goods which were chargeable to 'Nil' rate of duty. He added that no credit could be availed by the Respondents since tyres, and tubes cleared by the Respondents being O.E. Parts attracted 'Nil' rate of duty. He also pointed out that Notfn. No. 95/83 dt. 1.3.1983 exempted final products from so much of duty of excise, as was equivalent to the duty of excise that was leviable on the inputs, and as such it was essential that the final products should have been chargeable to some duty.

3. Appearing on behalf of the Respondents, Shri Ravinder Narain, the Ld. Senior Advocate stated that the matter was fully covered in favour of the Respondents by the Tribunal's decision in the case of Vikrant Tyres v. Collector of Central Excise, Bangalore and the judgment of the Bombay High Court in the case of Jaysynth Dychem Pvt. Ltd. v. Union of India . He submitted that the Appellants' case was based on the minority view expressed in the Tribunal's decision in the case of Vikrant Tyre which apart from being overruled would even otherwise not be relevant in view of the fact that Proviso (ii) to Notfn. No. 95/79 was omitted in Notfn. No. 95/83 which superseded the Notfn. No. 95/79.

In support of his case, Shri Ravinder Narain also cited the Tribunal's decision in the case of Collector of Central Excise, Bangalore v. Wipro Information

Technology 4. We have examined the records of the case and considered the submissions made on behalf of both sides. The only question that arises for consideration in this case is whether the Proviso (ii) to Notfn.

No. 95/83-CE dt. 1.3.1983 which requires that in relation to the exemption under the Notfn. the procedure set out in Rule 56A of the Central Excise Rules, 1944 should be followed, will have the effect of importing even the substantive provisions of the said Rule which bar the availment of credit of duty in respect of materials and component parts used in the manufacture of finished goods which are exempted from the whole of the duty of excise. *Vikrant Tyres v. Collector of Central Excise, Bangalore*, while interpreting Notfn. No. 95/79 which exempted specified inputs when used in the corresponding specified final products from the whole of the duty of excise leviable thereon subject inter alia to the observance of the procedure set out in Rule 56, the Tribunal had held that for the eligibility of the inputs to proforma credit under the Notification there was no condition that the final products should have been duty paying. Paras 5 to 8 of the said judgment being relevant are reproduced below: 5. We find that Notfn. 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 Notfn. 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 Notfn. 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 Proviso 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 Notfn. the procedure set out in Rule 56A of the aforesaid Rules is followed:-----Sl.

Item No.	Description of Item	No. of the inputs of the said-----	Description of final Pro-ducts	No. of the inputs of the said-----
		(1)	(2)	(3)
		(4)		(5)-----1.

16 Tyres and Tubes 34B Forkin trucks 7 Platform trucks2.

31 Electric Storage 34B Forkin trucks & Platform Batteries trucks xx xx xx xx xxxxx----- Read by itself this Notfn. 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 Notfn. 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 Notfn. No condition regarding payment of duty is contained anywhere in the Notfn..

7. For these reasons the ratio of the judgments called by the Ld.

JDR is not relevant to the present proceeding. The Ld. JDR relied on the judgment of the Bombay High Court in Someshar Sahakari Sakhar karkhana Ltd., and Ors. v. Union of India and Ors.

. 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 could not be allowed the High Court referred to an amendment made by the Notfn. No. 134/80-CE adding a Proviso to the earlier rebate under Notfn. 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 Notfn. 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) (Collector of Central Excise, 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.

6. We find that the Ld. Counsel for the Respondents has correctly pointed out that the matter is also covered against the Revenue by the judgment of the Hon'ble Bombay High Court in the case of jaysynth Dyechem Pvt. Ltd. v. Union of India, wherein while interpreting Notfn. No. 103/61, the Court has held that the requirement in relation to the exemption that the procedure set out in Rule 56A should be followed could not have the effect of importation of the substantive provisions of Rule 56A and denying the advantage of exemption under Notfn. Para 4 of the said judgment is reproduced below: 4. The result of the interpretation given by the Asstt. Collector by the impugned order makes Exemption Notfn. No. 103/61 entirely redundant. The manufacturer is entitled to exemption in respect of countervailing Customs Duty paid on imported intermediates when such imported intermediates are used while manufacturing the final product liable to payment of excise duty under T.I. No. 14D of the First Schedule. The amended Rule 56A on which the Asstt. Collector relied deprives the manufacturer of credit of countervailing duty when such countervailing duty falls under Item No. 68 of the First Schedule. It is not in dispute that the intermediates imported by the Company were liable to payment of duty under T.I. No. 68 and also countervailing duty. It is not in dispute that the intermediates imported were used as components for manufacture of dyestuff and which was liable for duty under T.I. No. 14D of the

First Schedule. The result of importing the amended proviso to Rule 56A is to defeat exemption Notification No. 103/61 and that surely was never in contemplation of the Central Govt. The Central Govt.

added proviso to Exemption Notfn. on June 19, 1980, i.e. when Rule 56A was already amended providing for withdrawal of substantive rights. The Central Govt. could have never intended to wipe out the effect of Exemption Notfn. No. 103/61 by prescribing that only procedure prescribed under Rule 56A should be applicable while availing of the exemption. In our judgment, by no stretch of imagination, the substantive provisions of Rule 56A can be imported while examining whether Company is entitled to advantage of exemption under Notfn. No. 103/61. The impugned order of the Asstt.

Collector, therefore, cannot be sustained and is required to be set aside.

7. We find that the matter is covered in favour of the Respondents by the judgments quoted above. The Appeal is, therefore, rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com