

C. C. E. Vs. AshwIn Vanaspati Industries Pvt.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Aug-16-1994

Reported in : (1995)LC130Tri(Mum.)bai

Appellant : C. C. E.

Respondent : AshwIn Vanaspati Industries Pvt.

Judgement :

1. Reference Application has been moved by the Revenue in respect of the order passed by the Larger Bench vide Order No. 2507/93, dated 2-12-1993. The issue considered by the Larger Bench was whether MODVAT Credit was admissible in respect of tin plates /sheets which were converted into metal containers without aid of power in the Respondents' factory and such containers were utilised in the packing of Vanaspati manufactured by them. Larger Bench decided the issue on merits in favour of the Respondents. The Revenue has raised the following points of law to be referred to the High Court of Gujarat: - "(i) Whether Modvat Credit can be availed in respect of the duty paid on tin sheets/plates used first in the manufacture of tin containers and then used for packing of final product i.e Vanaspati.

(ii) Whether metal containers manufactured from tin sheets/plates used for packing Vanaspati can be considered to be "intermediate products" under Rule 57D of the Central Excise Rules, 1944." 2. Shri K.P. Mishra, the Ld. SDR, mainly pleads that metal containers are independent final products, which are exempted from duty if manufactured without aid of power. They cannot be considered intermediate

product in the manufacture of vanaspati. In the case of Ponds (India) Ltd., the Madras High Court has extended MODVAT benefit in respect of plastic granules used in the manufacture of plastic jars and bottles for packing cosmetics, mainly because of the fact that in the case of Cosmetics and Toilet Preparations, Chapter Note (4) of Chapter 33 includes packing, repacking and putting the product in the containers. He therefore pleads that similar note is not available in the case of Chapter 15, under which Vanaspati is classifiable. He also pleads that in any case metal container cannot be considered to be intermediate product attracting provisions of Rule 57D and this is also a point of law required to be referred to the High Court.

3. After hearing both the sides, we find that the decision of the Larger Bench was mainly based on the decision of the Madras High Court in the case of Ponds (India) Ltd. - reported in 1993 (63) E.L.T. 3 (Mad.), wherein the High Court, on a point of reference, decided that plastic granules received by the cosmetic manufacturers, which first converted into plastic jars, which are exempted and used in the packing of cosmetics, should be eligible for MODVAT Credit. The issue dealt with by the Madras High Court and the issue dealt with by the Larger Bench in this case, is identifiable, excepting the materials being different. In the case dealt with by the Madras High Court the materials are plastic granules whereas in the case of Respondents before us, it is tin plates/sheets. In both the cases, the input materials, are first converted into an exempted product namely plastic jar/metal container. They were used for packing the final product. When the Madras High Court have considered the plastic jars manufactured out of plastic granules as an intermediate product and allowed the benefit, the same ratio will hold good in this case also. Apart from this, the word "intermediate product" used in the context of MODVAT Scheme has to be interpreted depending on the stages of production in the factory of the manufacturer. It is not, as though every item which goes into the final product, could occur in the same stream of production line. Some of the components have to be turned out in a different line and brought to the assembling line. Hence we are not able to appreciate the argument of the Ld. SDR that metal container cannot be construed to be an intermediate product. So long as it is admittedly used for packing the final product and such packing materials have to be independently converted for packing the final product, the

packaging containers have to be considered as an intermediate product in the line of manufacture of the final product. This is what has been held by the Madras High Court and followed by the Larger Bench.

4. As regards the distinction sought to be made on the basis of Chapter Note to Chapter 33, which is not available in the case of Chapter 15, we find Vanaspati is a consumer product, which cannot be marketed without packing, when it leaves the factory, irrespective of whether there is a Chapter note in Chapter 15 or otherwise. Note 4 to Chapter 33 is mainly intended to bring those units engaged in repacking and putting the product in container under excise control. That cannot be said to cause a distinction as made out by the Revenue. Even otherwise, Section 2(f) clearly includes all processes incidental or ancillary to the completion of manufacture of the product. Hence, even otherwise, packing falls within the purview of the definition of Section 2(f) as a process incidental or ancillary to the completion of manufacture of Vanaspati. In the circumstances, the Reference Application is misplaced and therefore, is rejected.

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