Supersun Laminations and Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-06-1995

Reported in : (1995)(77)ELT119TriDel

Appellant : Supersun Laminations and

Respondent : C.C.E.

Judgement :
1. As both the appeals from the same issue they are taken up together for disposal as per law.

2. E/863/93-C : This appeal arises from order-in-appeal dated 2-2-1993.

The Id. Collector has phased his own ruling given in his order dated 8-1-1993, wherein it has been held that as the appellants had availed credit of excise duty on plastic granules, the rate of duty applicable on the final product i.e. Bags and Sacks manufactured by them was leviable to discharge duty @ 30% Adv. instead of at 20% Adv. as per Notification No. 53/88, dated 1-3-1988 as amended vide Notification No.148/90-C.E., dated 20-9-1990.

3. E/864/93-C: This appeal is directed against the order-in-appeal dated 8-1-1993 denying the appellants the benefit of the Notification No. 53/88, dated 1-3-1988 as amended on Bags and Sacks manufactured and cleared by them.

"I have considered the submissions made by the appellant.

Notification No. 53/88-CE as amended prescribed at the rate of 20% ad valorem for Bags and Sacks made out of fabrics, whether or not coated, covered or laminated with any other material, woven from strips or tapes of plastics and fabrics for making such bags or sacks subject to the condition that no credit of duty paid on the inputs used in the manufacture of such bags, sacks or fabrics has been used in the manufacture of such bags, sacks or fabrics has been availed under Rule 57A. In this connection, it is observed that the appellant use plastic granules to manufacture sacks and bags. The appellants themselves admit that they availed credit of excise duty on plastic granules because H.D.P.E. Tapes and Fabrics are merely intermediate products in terms of Rule 57D. They have also declared HDPE Tapes and HDPE Fabrics as intermediate products in their declaration filed under Rule 57G. The effect of this is that plastic granules becomes an input directly used in the manufacture of Fabrics with HDPE tape as an intermediate product and also for the manufacture of bags and sacks, with both HDPE Tapes and Fabrics, as two intermediate products. As such the appellants had fulfilled the condition envisaged in Column 5 of the Table annexed to Notification No. 53/88 that no credit should have been taken on the inputs if the concessional rate of duty at 20% adv. is claimed in respect of bags and sacks of fabrics. In the circumstances, the appellant's reliance on various judgments stipulating that there should not be in any intendment or importation of unnecessary words to interpret a notification is misplaced. Similarly, there is no force in their contention that the Asstt. Collector had not issued any show cause notice proposing to change the already approved classification list wherein the duty at the rate of 20% ad valorem had been allowed and the duty at most could be realised for the period subsequent to the show cause notice is not acceptable. Hon'ble Customs Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as the Tribunal) have held in the case of Collector of Central Excise, Bombay-Ill v. National Organic Chemical Industries Ltd. 1990 (28) ECC 372 (SB) that even in cases where duty has been paid in terms of approved classification list, demand of duty can be raised under Section 11A for a period of six months or for a period of 5 years where there is fraud, collusion, wilful statement or mis-statement on the part of assessee prior to the show cause notice.

In the circumstances, it is held that the appellant were not entitled to claim the duty rate of 20% ad valorem but should have paid the duty at the rate of 30% ad valorem as B.E.D. as prescribed in the Notification No. 53/88 read with Notification No. 148/90 dated 20-9-1990." The appellants being aggrieved by these orders have filed these appeals.

5. The Id. Counsel submitted that plastic granules were used in the manufacture of HDPE Tapes. HDPE Tapes were in turn used in the manufacture of HDPE fabrics which were used in the manufacture of HDPE Sacks. He submitted that credit taken on plastics granules was utilized towards payment of excise duty on HDPE sacks. HDPE Tapes were used as input in the manufacture of HDPE Fabrics and HDPE Fabrics were used in the manufacture of HDPE Sacks. Therefore, the appellant had not taken credit of duty on HDPE Tapes and HDPE Fabrics which were used in the manufacture of Sacks. Therefore, he argued that the Id. Collector has wrongly interpreted Notification to deny the benefit of the Notification. He pointed out to the words in Column 5 of the Notification which reads: "If no credit of the duty paid on the inputs used in the manufacture of such bags, sacks or fabrics has been availed of under Rule 57A of the said Rules" and submitted that the words employed are "used in the manufacture of such bags". Therefore, it follows that the inputs in this case namely tapes and fabrics had not suffered duty and hence credit of duty has not been utilised. Therefore, the Id.

Collector has wrongly presumed the utilization of credit of duty paid on granules as duty paid on the intermediate product. He submitted that even going by the Collector's reasonings, the intermediate products were independent goods and they were entitled for utilizing the credit of duty paid thereon or if no credit had been utilised then to take the benefit of this notification. He submitted that they could not take the credit of duty on HOPE Tapes and HOPE Fabrics, as they had been cleared at Nil rate of duty for captive use and therefore the credit available on plastic granules were not to be considered as credit available for HDPE Tapes and Fabrics. He submitted that the plastic granules were used in the manufacture of tapes and not in the fabrics or sacks and therefore by strictly applying the terms of the Notification, the benefit of the same has to be extended to them. In this context, he relied on the ruling rendered by Supreme Court in the case of Hemraj

Gordhandas v. ACC as reported in 1978 (2) E.L.T. (J350). The next argument of the Id Advocate is that the show cause notice has been issued by the Superintendent and therefore, extended period cannot be invoked. He further submitted that he filed the classification list and there was no suppression of any material and therefore, the question of invoking larger period is unsustainable. He further submitted that the show cause notice has invoked Rule 173Q. There were several other sub-clauses under this Rule and there was no specific mention of the same and therefore, the penalty imposed under this Rule without mentioning the sub-clause is unsustainable; in the light of the clearances being not clandestine or of surreptitious removals. He pointed out that the show cause notice is vague and invalid and hence penalty of Rs. 10,000/- is unsustainable. In this context, he relied on the ruling in the case of Indian Cardboard Industries Ltd. as reported in 1992 (58) E.L.T. 508 wherein the Hon'ble High Court had followed the ruling of the Supreme Court rendered in the case of Collector of Central Excise v. Park Exports (P) Ltd., as reported in 1988 (38) E.L.T. 741. He further submitted that Department had invoked Rule 9(2) which deals about clandestine removal, which is not the situation in the present case. As the case had arisen after the filing of the classification list and that there was also no indication as to whether the classification list has been approved or not; as he was not having the copies of the classification list filed by the party. He submitted that there is no concious and deliberate evasion of duty by the party and therefore, penalty cannot be imposed in any case.

In this connection, he relied on ruling rendered by Supreme Court in the case of Hindustan Steel Ltd. as reported in 1978 (2) E.L.T. 159 and that of Akbar Badruddin Jiwani v. Collector of Customs, as reported in 1990 (47) E.L.T. 161 and that of Delhi High Court in the case of Commercial Refrigeration Corpn. v. Union of India, as reported in 1989 (42) E.L.T. 534.

6. Countering the argument of Id. Advocate, Id. JDR submitted that the order of the Id. Collector is sustainable as the party had availed the credit of duty paid on plastic granules. He submitted that the appellants had not indicated about utilization of Modvat on HDPE Sacks in the classification list and hence it amounted to suppression of fact and therefore, the invokation of larger period is

sustainable. He submitted that the show cause notice is still pending for finalization and therefore, there was also no question of invoking of larger period and this is supported by the ruling rendered by the Supreme Court in the case of Samrat International (P) Ltd. v. CCE, as reported in 1992 (58) E.L.T. 561.

On merits Id. JDR submitted that the ratio of ruling rendered in the case of Collector of Central Excise, Allahabad v. Hindustan Aluminium Corpn. (Tribunal) by Final Order No. E/252/94-D, dt. 29-4-1994 could apply the facts of the present case; as the Tribunal dealt with the similar issue arising the Notification No. 201/79 where similar words were used and therefore, the appeal on merits is required to be upheld in the Department's favour.

7. Ld. Advocate replying to the Id. JDR arguments, submitted that the clearances being provisional is not clear as this issue was not raised at any time. He submitted that the words in the Column 5 were clear and thus more cannot be read into the same. It could be a case of ambiguous drafting of the notification but the benefit has to be given to the party. Referring to the unreported judgment relied by the JDR in the case of Hindustan Aluminium Corpn., the Id. Advocate submitted that the ratio pertained to Modvat and does not apply to the facts of the present case.

8. We have carefully considered the submissions made by both the sides and have perused the records. There are two issues which are to be decided by us (1) whether the appellants were entitled to the benefit of notification in question (2) whether larger period can be invoked and penalty be imposed on the facts and circumstances of the present case. The relevant portion of the Notification appearing at S.No. 40A and the conditions given in other columns are noted herein below:---------- 1 2 3 4 5----------40A 39.23 Bags or Sacks made 20% If no credit of the duty paid on the out of fabrics (whe- inputs used in the manufacure of ther or not coated, such bags, or fabrics has been covered laminated availed of under Rule 57A of the with any other said Rules.---------- 9. The Id. Collector has held that the Tapes and Fabrics arise at the intermediate stage and

they are goods. The appellants were required to pay duty even to the said intermediate goods which are captively consumed. However, the rate of duty is Nil, in respect of these intermediate goods namely Tapes & Fabrics. The appellants have utilised these Tapes and Fabrics as inputs in the manufacture of Bags and Sacks.

They have not availed the credit of duty, as the duty is Nil in the present case. As the rate of duty is Nil and that they could not avail the credit, can it be said that they have violated the terms of the notification? The present notification does not deal with the question of granting benefit to the intemediate products namely Tapes and Fabrics. There is no proviso in the notification that if the inputs carry nil rate of duty then the benefit is not to be extended. The notification grants benefit to bags or sacks made out of 20% Fabrics (whether or not coated, covered or laminated with any other material) Woven from strips or tapes of plastics and fabrics for making such bags or sacks. There is no dispute on this aspect of the matter. The only dispute is as to whether the appellants had availed credit of duty paid on the inputs. The answer is that the inputs were carrying Nil rate of duty and hene the question of utilising the credit of duty did not arise. Therefore, it follows that they have not violated the terms of col. 5 of the notification. We have to make a plain reading of the words in the notification. By such a reasonable interpretation to the notification, we have to hold that the benefit at concessional rate of duty is available to the appellants. Ld. JDR has relied on the ruling of Tribunal rendered in the case of CCE v. Hindustan Aluminium Corpn.

(supra). In this case, the assessees were manufacturing aluminium products. They brought in their factory Hard Pitch, Soft and Coaltar Pitch after payment of duty on the same under T.I. 68 and use the same to manufacture cathodes and anodes, which are used in the electrolytic pot cells and availed set-off of duty paid on pitch while clearing aluminium and its manufacture as provided in Notification No. 201 /79, dt. 4-9-1979. The department issued show cause notice alleging wrong availment of set-off because hard pitch, soft pitch and Coaltar Pitch were used in the manufacture of cathodes and anodes which fall under T.I. 68 and were exempted from payment of duty vide Notification 118/75 when consumed captively. The Tribunal considered the question of eligibility of benefit of

Notification 201/79 for set-off in respect of materials Hard, Soft and Coaltar Pitch, as inputs in the nature of raw materials or component parts used in the manufacture of aluminium. The Tribunal observed that the arising of intermediate product is not material, as they were used in the integrated process of manufacture as raw material for manufacture of the end product. This observation arose after noting the manufacturing process, wherein it is seen that these three kinds of pitch were utilised as essential inputs for the manufacture of aluminium and therefore, the Tribunal held that aluminium cannot be manufactured without them. Therefore, it follows that the Tribunal had not considered the question of intermediate goods being dutiable. Further, here in the present case the terms of the notification are also different, and hence the citation referred is clearly distinguishable and not applicable to the facts of the present case. The simple question as already stated is as to whether the assessee has taken credit of the duty paid on the inputs, the answer is that they have not taken the credit and therefore, the assessees have not violated col. 5 of the notification. Hence, they are entitled to the benefit of concessional rate of duty as provided in column 3 of the Notification.

10. As regards the time bar, the arguments raised by the Id. Advocate is also having force and they are required to be accepted. There is no question of suppression of any facts in the present case, and this is not a case of clandestine removal also. The show cause notice has proceeded in this case by invoking Rule 9(2), which is not at all applicable to the facts of the present case, as the case has arisen after the filing of the classification list. Further, the show cause notice has been issued by the Supdt. and therefore, only six months duty could have be confirmed. The Id. Advocate's arguments pertaining on the imposition of penalty in the present case is also acceptable as penalty can be imposed only if there is deliberate suppression or clandestine removal with mala fide intention to evade duty. This is not so in the present case, as this case has arisen on the basis of interpretation of the terms of the notification. The facts of the case were fully within the knowledge of the deptt. In that view of the matter, the second issue is also answered in the assessee's favour.

Thus, the appeals are allowed.

11. With due respects to Hon. Member (J) my views and orders in the matter are as follows :- 12. I observe that according to the appellants themselves the Classification List was yet to be approved by the proper officer.

Indeed they have gone to the extent of claiming that 'the demand of differential duty is premature because approval of C/L is pending' as apparent from their application dated 23rd March, 1993 and the grounds mentioned therein. They have also filed a copy of the unapproved Classification List filed by them. In view of this admitted position, the question of time bar does not arise.

13. Further in view of this position the Show Cause Notice remains valid and its issue by the Superintendent for showing cause to the Assistant Collector does not materially affect or change the position.

14. It may be noted in this connection that the Notice (s) issued by the proper officer for finalisation of a Classification List with proposed modification is in a different category from the shbw cause notice (s) issued after the finalisation of classification by the proper officer and the case law applicable to the second category does not automatically become applicable to the first category. In the present case since the classification list was pending approval, the Superintendent (or any other authorised officer declared as proper officer for the purpose) could issue a notice containing proposed amendments and giving time and opportunity to the assessee to contest the proposal before the appropriate adjudicating authority.

14A. In so far as the merits are concerned, I find that the Notification No. 53/88 contains two entries relevant for our purpose namely 40A and 40B which are reproduced below :----------(1) (2) (3) (4) (5)----------40A 39.23& Bags or Sacks made out of fabrics 20% ad If no credit of the duty 39.26 (whether or not coated, covered valorem paid on the inputs laminated with any other material) used in the manufac- woven from strips or tapes of plas- ture of such bags, tics; and fabrics for making such sacks or fabrics has bags or sacks.

been availed of under Rule 57A of the said40B 39.23 Bags or Sacks made out of fabrics 20% ad - - 39.26 (whether or not coated, covered valorem laminated with any other material)----------
15. A reading of these entries clearly shows that entry 40A takes note of the fabric woven from strips or tapes and used for making bags or sacks as well as such bags and sacks themselves. The condition in col.

5 regarding availing of the modvat credit has to be seen in the light of these wordings. Therefore, once admitedly modvat credit had been taken with reference to the inputs used for making fabrics which are further used for making the bags and sacks, the benefit of lower rate of 20% could not be claimed and they would automatically fall under the entry 40B. It is in this context immaterial whether fabrics arise as an intermediate product or not because both situations are covered. In fact if the fabric itself was cleared at 'NIL' rate of duty then Modvat credit could not have been taken or availed of with reference to that quantity; if on the other hand the fabric itself was cleared on payment of duty then that would only mean that bag or sack stage had not yet arisen.

16. In case of bags or sacks made out of fabrics woven from strips or tapes since Modvat credit has been admittedly taken on HDPE Granules which were used as input in the process of manufacture which culminated in the final product as bags and sacks, obviously the entry 40B was attracted (and the benefit of 40A barred because of the condition prescribed in Col. 5).

17. The argument that the strips or tapes or fabrics had come into existence at intermediate stage does not in this case make any difference whatsoever because of the language used in Col. 3 which refers to all these and yet introduces a condition with reference to 57A in respect of bags, sacks as well as fabric.

18. Even otherwise the strips or tapes and fabric merely arises as an in-process materials at intermediate stage and the process of manufacture starts from HDPE Granules as inputs and ends as bags and sacks as final product.

19. The case law cited by appellant therefore does not help their cause. The case cited by Ld. D.R. namely M/s. Hindustan Aluminium Corp.

is however relevant to the extent of observing that, arising of intermediate product is not material in an integrated process of manufacture of the final product. In other words taking or not taking of credit with reference to initial inputs which constitute the starting point was material and the whole chain could be taken note of and availability of the set-off or modvat etc. could be considered in that light.

20. The Assistant Collector was therefore right in modifying the proposed classification list and approving it after necessary modification and confirming the demand accordingly and the Collector (Appeals) was right in rejecting the appeal in so far as the demand is concerned.

21. However, in so far as the penalty aspect is concerned, since the proposed classification list submitted by the appellant was still under consideration before propoer officer and the appellants had taken clearance as per declared position 'pending approval by proper officer' therefore there was no cause for charging them with clandestine removal and imposing penalty at this stage. I, therefore, agree with Hon'ble Member (J) in so far as penalty aspect is concerned.

22. The impugned orders are modified to this extent, they are otherwise confirmed.

23. In view of the difference of opinion between Hon'ble Member (J) and the Vice President, the matter is submitted to the Hon'ble President for refrence to third Member on the following points :- 2. Whether the appellants were entitled to the benefit of entry 40A or 40B of the Notification No. 53/88? (2) the appellants were entitled to the benefit of entry against S.No. 40A or S.No. 40B of the Notification No. 55/88-CE., dated 1-3-1988 (as amended).

25. The facts of the case have been mentioned in the separate orders proposed by the Ld. Member (Judicial) and the Ld. Vice President.

Briefly stated the appellants were using duty paid plastic granules in the manufacture of exempted HOPE tapes. These exempted HDPE tapes were captively used in the manufacture of dutiable HDPE fabrics/sacks - the final product. The Central Excise duty suffered by plastic granules was taken credit of by the appellants under the provisions of Rule 57A of the Central Excise Rules,

1944 (hereinafter referred to as the 'Rules'), and the credit so taken, was utilised towards payment of duty of excise leviable on the final product i.e. HDPE sacks. Excise duty on the final product was paid at the exempted rate which was applicable only when no credit of the duty paid on the inputs used in the manufacture of sacks had been availed of under Rule 57A of the Rules.

The HDPE tapes were exempted, and no Excise duty was paid thereon. The Ld. Member (Judicial) has proposed that the inputs in this case are not the plastic granules but the HDPE tapes, and that by the appellants taking credit of the duty paid on plastic granules and by utilising such credit under Rule 57A of the Rules towards payment of duty of excise leviable on HDPE sacks etc., it could not be said that the credit of the duty paid on the plastic granules, has been availed of under Rule 57A of the rules, in violation of the condition against S.No. 40A of the Notification No. 53/88-C.E., dated 1-3-1988 (as amended), under which reduced rate of duty was provided for bags or sacks. On time bar also he has answered the issue in favour of the assessee. The Ld. Vice President on the other hand has observed that according to the appellants themselves the classification list was yet to be approved by the proper officer and that in view of this admitted position the question of time bar did not arise. On merits he had observed as under :- "5. A reading of these entries clearly shows that entry 40A takes note of the fabric woven from strips or tapes and used for making bags or sacks as well as such bags and sacks themselves. The condition in Col. 5 regarding availing of the modvat credit has to be seen in the light of these wordings. Therefore, once admittedly modvat credit had been taken with reference to the inputs used for making fabrics which are further used for making the bags and sacks, the benefit of lower rate of 20% could not be claimed and they would automatically fall under the entry 40B. It is in this context immaterial whether fabrics arise as an intermediate product or not because both situations are covered. In fact if the fabrics itself was cleared at 'Nil' rate of duty then Modvat credit could not have been taken or availed of with reference to that quantity; if on the other hand the fabric itself was cleared on payment of duty then that would only mean that bag or sacks stage had not yet arisen." 26. The matter was heard on 1-11-1994 when Shri B.B. Gujral, Advocate appeared for the appellants. Shri V. C. Bhartiya, JDR represented the respondent.

27. Shri B.B. Gujral, the Ld. Advocate submitted that the term 'raw material' and 'input' were different and that there is no definition of inputs. He admitted that the Classification List was not formaly approved. He pleaded that the order proposed by the Member (Judicial) was correct and the appeal merited to be allowed.

28. Shri V.C. Bhartiya, the Ld. JDR submitted that the plastic granules were the inputs for the manufacture of final product, and that the tapes were an intermediate product, and that the correct Central Excise Duty applicable to the goods where credit in respect of the inputs duty has already been taken, was under S. No. 40B of the Notification, and not S.No. 40A.29. I have considered the matter. Under Rule 57A of the Rules, the provisions relating to the credit of duty paid on excisable goods used as inputs under Section AA of Chapter V of the Rules, apply to the specified finished excisable goods, and relate to allowing credit of the specified duty paid on the goods used in or in relation to the manufacture of the above specified finished excisable goods. The credit so allowed, can be utilised towards payment of duty of excise leviable on the said finished excisable goods. Under Rule 57C it has been provided that "no credit of the specified duty paid on the inputs used in the manufacture of a final product (other than those cleared either to a unit in a free trade zone or to a 100% export oriented unit) shall be allowed if the final product is exempted from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. Thus if the final product is taken as exempted HOPE tapes, and not the dutiable HOPE fabrics/sacks then no credit of the duty paid on plastic granules, was admissible. The credit is, however allowable when the inputs are used in the final product through the exempted intermediate product. Under Sub-rule (2) of Rule 57D, it has been provided as under :- "Credit of specified duty allowed in respect of any inputs shall not be denied or varied on the ground that any intermediate products have come into existence during the course of manufacture of the final product and that such intermediate products are for the time being exempt from the whole of the duty of excise leviable thereon (or chargeable to nil rate of duty): (a) used within the factory of production in the manufacture of final products on which the duty of excise is leviable whether in whole or in part; and (b) specified as inputs or as final products under a notification issued under Rule 57A." 30. These provisions make it clear that credit of duty paid on the HDPE granules (inputs) used in the

manufacture of sacks (final products) made out of strips or tapes of plastics (intermediate product) is available. There is further no doubt that the appellants have taken credit of the duty paid on HDPE granules, and have utilised such credit towards payment of duty of excise leviable on the sacks. As the tapes enjoyed exemption from duty, there could be no situation when duty paid on raw material (granules) for exempted goods, tapes could be taken credit of unless the benefit is extended beyond the intermediate stage of exempted tapes and is extended to the stage of finished goods that is sacks. In such a situation while utilising the credit for paying the duty at the stage of dutiable sacks, it could not be said that HDPE granules were not the inputs for sacks but for exempted tapes only.

Such a construction will result in inequitable results, and will be incongrous, which had to be avoided (refer Supreme Court decision - para 3 in the case of Union of India v. Wood Papers Ltd., 1990 (47) E.L.T. 500 (S.C.).

31. Notification No. 53/88-CE., dated 1-3-1988 (as amended) was issued in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Rules. The exemption notification has to be construed strictly. The Hon'ble Supreme Court in the case of Novopan India Ltd. v. C.C.E. and Customs, Hyderabad, 1994 (73) E.L.T. 769 (S.C.) in para 18 have held as under :- 18. We are, however, of the opinion that, on principle, the decision of this Court in Mangalore-Chemicals - and in Union of India v. Wood Papers referred to therein - represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is goods and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansrj Gordhandas v. H.H. Dave 1969 (2) S.C.R. 253) that such a Notification has to be interpreted in the light of the words

employed by it and not on any other basis.

This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e. by the plain terms of the exemption.

The Hon'ble Supreme Court had followed this decision in their recent judgment in the case of Liberty Oil Mills (P) Ltd. v. C.C.E., Bombay 1995 (6) RLT 121 (SC). Para 7 from this judgment is reproduced below :- 7. Appellants' counsel submitted that if due stress is given to the conditions, what the notification means is, that exemption is available to the entire quantity of admixture of the vegetable product, produced out of rice bran oil the only condition being that the content of rice bran oil should be more than 1% of the total, in any consignment, and such interpretation of the notification is equally possible. We are of the view that such a construction is not possible. Even assuming that it is so, in the case of an ambiguity or doubt regarding an exemption provision in a fiscal statute, the ambiguity or doubt will be resolved in favour of the revenue and not in favour of the assessee. The matter is concluded by a recent decision of a three-member Bench of this Court in M/s. Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad - 1994 (6) JT SC 80. On this ground as well, the appellant is not entitled to any relief. The appeals are dismissed with costs.

32. If the plea of the appellant were to be accepted then the provisions of Notification No. 53/88-C.E., dated 1-3-1988 (as amended) with regard to S. No. 40A of the Table annexed to that notification will become redundant, as there was no duty on HOPE tapes and thus there could be no occasion for any credit of duty.

33. In the case of CCE v. Mahendra Engineering Works -1993 (67) E.L.T 134 (Tri.), the Tribunal had held that the parts of parts of power driven pump, were parts of power driven pump.

34. On the question of limitation, in the case of Samrat International Pvt. Ltd. v. CCE -1992 (58) E.L.T. 561 (S.C.), the Hon'ble Supreme Court have held that the clearances made under Classification/price list submitted by an asses-see but

approved by AC after sometime, were to be deemed as provisional even if B-13 Bond was not executed.

35. Taking all the relevant considerations into account, and in the light of the above discussion, I agree with the order proposed by the Ld. Vice President Shri S.K. Bhatnagar.

36. In view of majority of opinion the impugned orders are modified to the extent indicated in the order of the Vice President, they are otherwise confirmed.