**Escorts Ltd. Vs. Cce**

**Escorts Ltd. Vs. Cce**

**SooperKanoon Citation** : sooperkanoon.com/8478

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

**Decided On :** May-30-1995

**Reported in** : (1995)(60)LC236Tri(Delhi)

**Judge** : G Agarwal, K D Shiben

**Appellant** : Escorts Ltd.

**Respondent** : Cce

**Judgement** :

1. This application seeks waiver of pre-de-posit of duty of Rs. 1,44,52,690/- and stay of recovery proceedings thereof.

1.2. The issue for determination falls within a narrow compass: admissibility or otherwise of Modvat Credit in case inputs are used in the manufacture of products declared as final products which in turn are cleared without duty by availing exemption subject to procedure under Chapter-X being followed.

2. The appellant is a Limited Company and, according to Ld. Advocate, have various divisions in various premises of Faridabad. Separate Central Excise Licences have however been obtained in respect of each premises and Show Cause Notices were issued to the appellants alleging that the appellants were availing the benefit of Modvat Credit under Rule 57-A of Central Excise Rules after filing Modvat declaration under Rule 57-G declaring their final product as tractor parts. Since the appellants were availing exemption under Notification No. 217/86-

CE dt.

2.4.1986 and clearing goods at nil rate of duty, they were not, it was alleged, eligible to take Modvat Credit on inputs used in the manufacture of such goods since Rule 57-A of Central Excise Rules permitted utilisation of such credits only for payment of duty on final products.

3. Collector of Central Excise under his Order-in-Original No. 177/94 dt. 28.12.1994 held that in view of the provisions of Rule 57-C, the appellants were not entitled to Modvat Credit on the inputs used in or in relation to the tractor parts cleared by them as end-product at nil rate of duty under Notification No. 217/86-CE dt. 2.4.1986. He therefore, ordered reversal of Modvat Credit to the extent of Rs. 1,44,52,690/- under Rule 57-1 of Central Excise Rules, 1944. The appellants have filed an appeal against the impugned order.

4. Arguing for the appellants, the Ld. Advocate submitted that as a matter of fact it was in past their practice to pay duty on such tractor parts which however was changed because of some valuation problem. While some of the tractor parts manufactured in one Division are sold on payment of duty as replacement parts, the bulk of such parts are sent to their another Division for the manufacture of Tractors and therefore they are eligible to Modvat Credit. He submitted that in exactly similar situation West Regional Bench of the Tribunal in case of Bajaj Tempo Ltd. v. Collector of Central Excise , had held that Notification No. 217/86 stands on a different footing for consideration of facts under Rule 57C, and therefore the scope of Rule 57-C in a case like the one under consideration is to be considered in the context of Modvat Scheme and not to destroy that concept. The Tribunal therefore held that Modvat Credit was admissible in regard to such inputs which are used in the manufacture of motor-vehicles parts and I.C. engines even when such motor parts and I.C. engines are sent under Chapter-X procedure for further utilisation in the manufacture of motor-vehicles in another unit belonging to the appellants in that case.

5. When Ld. DR submitted that this question has since been decided against the appellants in the Larger Bench decision of the Tribunal in case of Kirloskar Oil Engines Ltd. v. Collector of Central Excise, Pune reported in 1994 (73) ELT 835

(T) the Ld. Advocate submitted that in case of Bajaj Tempo Ltd. (supra) Tribunal had examined their own Order in case of Kirloskar Oil Engines Ltd. v. Collector of Central Excise which forms the subject matter of Larger Bench decision and held that in the facts and circumstances of the case Rule 57-C could not be interpreted to defeat the object of the Modvat Scheme and therefore the ratio of the Larger Bench decision in case of Kirloskar Oil Engines (supra) cannot be held against them.

6. Ld. DR submitted that the issue has been discussed in detail by the Larger Bench in case of Kirloskar Oil Engines Ltd. 1994 (73) ELT 835 (T) the Tribunal has held that Rule 57-C in clear terms mandates that no credit of duty paid on inputs used in the manufacture of final product can be given if the final product is fully exempt from duty.

7. We have given careful consideration to the submissions made by both the sides. West Regional Bench of the Tribunal in case of Kirloskar Oil Engines Ltd. 1993 (63) ELT 412 : 1993 (48) ECR 303 (T) had referred this question in following terms to the Larger Bench of the Tribunal: Whether, in the context of the provisions of Rule 57-C vis-a-vis Rule 57F(3)(i) of the Central Excise Rules, Modvat Credit of duty paid on inputs used in the manufacture of declared final products, part of which are cleared free of the whole of duty of excise leviable thereon, in terms of an exemption Notification, could be disallowed by way of reversal of credit of duty on such inputs, which have been used in the manufacture of final products cleared free of duty? 8. The Larger Bench examined this question in the light of a number of decisions such as: Geoffrey Manners & Co. Ltd. v. Union of India and Ors. reported in 1980 Cen-Cus 419D (Bom.): 1980 ELT 7 (Bom.) The Tribunal held that Rule 57-C in very clear terms mandates that no credit of duty paid on the inputs used in the manufacture of final product shall be given if final product is fully exempted from duty or if chargeable to nil rate of duty. The question of utilisation of credit would obviously arise as a second step after allowing credit on duty paid inputs. If there is a bar to allowing credit on the inputs for certain reasons, the question of its utilisation after having taken a wrong credit does not arise. The Tribunal thereafter concluded that the appellants were not entitled to Modvat Credit in terms of Rule 57-C in respect of such inputs which

have been used by them in the manufacture of final product fully exempted from duty.

9. West Regional Bench of the Tribunal in case of Bajaj Tempo Ltd. (supra) to which the Ld. Advocate referred, drew support from the citations of Apex Court in case of AIR 1992 SC 1846 and AIR 1986 SC 1499 which relied upon following principles of law enunciated by Lord Denning that the Judge must set to work on the constructive task of finding the intention of parliament and he must do this, not only from the language of the statute, but also from a construction of social conditions, which gave rise to it and of the mischief, which it was passed to remedy and then he must supplement the written word so as to give force and life to the intention of the legislature.

A Judge should not alter the material of which the Act is woven but he can and should iron out the creases.

Following this principle it was held that even if a view is taken as urged by the Ld. JDR that an exception is to be provided for in Rule 57-C for removals in terms of Notification No. 217/86, absence thereof has to be construed as leaving the situation ambiguous. Hence, a harmonious construction to further the objective of both the Modvat Scheme and Notification No. 217/86 is called for.

9.2. It had been contended in case of Bajaj Tempo Ltd. (supra) before the Bench that Hon'ble Apex Court had approved Lord Denning's observation in case of and .

10. These cases, however, in our view, are distinguishable. In case of Administrator, Municipal Corporation, Bilaspur v. Dattatraya Dhankar and Anr.

property tax and concerned interpretation of expression "annual letting value of building and land not exceeding Rs. 1,800/-." It was held by Hon'ble High Court that aggregation of annual letting value of all buildings owned by a single individual could be applied only for exemption and not for taxation, since the unit of tax is a building (property) and not a person. Negativing this view, the Hon'ble Supreme Court held that even though there is no provision for taxation of a building of which the annual letting value is upto Rs. 1,800/- but when the aggregation of annual

letting value of all buildings and land is permitted, then, all such buildings and lands have to be taken as a one unit for purposes of taxation, since any other construction would render the proviso negative and defeat the object of the Act. The Legislature could not have intended that all buildings or lands owned by a single individual should get exemption from taxation even if their total letting value exceeds rupees eighteen hundred.Mis. Girdhari Lal & Sons v.Balbir Nath Mathur and Ors. . This case relates to Delhi Rent Control Act, 1958 where it was held that requirement of notice of sub-tenancy may be evidenced by a single document and in that context the Court observed that to avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the Court would be well justified in departing from the so called goods rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word, if necessary.

11. These two cases are therefore, in our view distinguishable. Denial of Modvat Credit in case of inputs used in the manufacture of goods declared as final goods which are removed under exemption without payment of duty does not defeat the object of Modvat Scheme nor does it make the scheme meaningless but on the other hand only advances the object of the Act, that is, to give relief to the extent of duty paid on inputs for paying duty on final products. When no duty is payable no relief can be given.D.R. Venkatachalam v. Dy. Transport Commissioner and Ors. , the Hon'ble Apex Court held that what is basic for a section or a chapter in a statute is provided: firstly, by the words used in the statute itself, secondly, by the context in which a provision occurs, or, in other words, by reading the statute as a whole, thirdly, by the preamble which could supply the "key" to the meaning of the statute in cases of uncertainty or doubt; and, fourthly, where some further aid to construction may still be needed to resolve an uncertainty, by the legislative history which discloses the wider context or perspective in which a provision was made to meet a particular need or to satisfy a particular purpose.

If we start from a theory as to what the real purpose or need is or could be, the danger is that we may be injecting a subjective notion or purpose of our own into what is, after all, a legal question of construction or interpretation, according to well-recognised principles, although it may be necessary in exceptional cases, to

explain or fortify the interpretation adopted in the light of so well understood and well known a purpose or theory that we could take judicial notice of it and refer to it.

11.4. The Apex Court cautioned against "The danger of an a priori determination of the meaning of a provision based on our own pre-conceived notions of an ideological structure or scheme into which the provision to be interpreted is somehow fitted."Petron Engineering Construction Pvt. Ltd. and Anr. v.Central Board of Direct Taxes the Apex Court held that "The fulfilment of the objective of a provision of a statute, without fulfilling the condition laid down in plain and clear language will not enable one to have the benefit of the section. Not only the objectives of a provision of a statute have to be fulfilled, but also the conditions for the applicability of the provisions have also to be fulfilled."P.K. Unni v. Nirmala Industries and Ors. AIR 1990 SC 933, the Hon'ble Apex Court observed: The Court must indeed proceed on the assumption that the legislature did not make a mistake and that it intended to say what it said: See Nalinakhya By-sack v. Shyam Sunder Haldar, Assuming there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court cannot add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. 'No case can be found to authorise any Court to alter a word so as to produce a casus omissus': Per Lord Halsbury, Mersey Docks v. Henderson (1888) 13 App Cas 595, 602) We cannot aid the legislature's defective phrasing of an Act, we cannot add and mend, and, by construction, make up deficiencies which are left there" Crawford v. Spooner (1846) 6 Moore PC. 1, 8, 9.

12. We are therefore of the view that with due respect of the WRB, requiring an assessee to reverse Modvat Credit on the inputs when he was aware that such inputs would be used in manufacturing the products declared by him as final product which in turn would be cleared without payment of duty, would not defeat the object of the Modvat Scheme and therefore this is not a case where we have to depart from the plain meaning of the statute and "iron out the creases" by applying the principles of law enunciated by Lord Denning in Seaford Court Estates Ltd. v. Asher (1949) 2 AIIER 155 (CA) p. 164.

13. As to scope of Rule 57-C and 57-A, it has been clarified by Hon'ble High Court of Andhra Pradesh in case of Ganesh Metal Processing Industries and Ors. v. Union of India and Ors. reported in 1995 (57) ECR 252 (AP).

Rule 57-C clearly and advisedly enacts an embargo against the credit of duty paid on the inputs being allowed if the resultant final product is exempt from the whole of the duty of excise leviable thereon. If the final products themselves are exempt from the duty or chargeable to nil rate, the question of payment of duty and the allowance of credit in this behalf does not arise. The Opening Rule 57-A emphasis this concept in unmistakable terms by employing the words "for using the credit so allowed towards payment of duty of excise leviable on the final products". Thus, the scheme embodied in Chapter AA of the rules is not to allow Modvat Credit, if final product is exempt. The operation of this rule does not depend upon the volition of the assessee.

14. In view of this and the ruling given by the Larger Bench in the case of Kirloskar Oil Engines 1994 (73) ELT 835 (T), we are satisfied that appellants have not succeeded in making out a prima facie case in their favour at this stage. This is also not a case involving financial hardship. We, therefore, direct the appellants to deposit the entire amount of duty within six weeks of the date of the receipt of this order and report compliance to the registry.