CASE NO.:
Appeal (civil) 4891 of 2005

PETITIONER:
M/s. Amrit Paper

RESPONDENT:
Commissioner of Central Excise, Ludhiana

DATE OF JUDGMENT: 25/07/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J

Challenge in this appeal filed under Section 35L of the Central Excise Act, 1944 (in short the 'Act') is to the legality of judgment rendered by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (in short the 'Tribunal').

The controversy lies within a very narrow compass.

Appellant is engaged in the manufacture of paper and paper board falling in Chapter 48 of the Tariff. Notification No.6/2000-CE dated 1.3.2000 was issued whereby the product manufactured by the appellant was exempted from payment of duty during the month of March, 2000. Appellant availed credit as well as cleared goods under the said exemption notification. Thereafter, it suo motu reversed the credit of Rs.1,92,365/- to avail the exemption. It deposited the duty on 30.8.2000 for the month of March, 2000 and also applied for refund of the Modvat credit of Rs.1,92,365/- which was already reversed by it. The claim of refund was allowed by order dated 13.12.2001 passed by the Assistant Commissioner. Thereafter, the appellant again suo motu reversed the Modvat credit and filed the refund claim on 12.7.2001 in respect of the duty paid on 30.8.2000 for the month of March, 2000, claiming benefit under the aforesaid notification No.6/2000-CE. The claim for refund was rejected by the Assistant Commissioner. An appeal was filed before the Commissioner (Appeals) who also dismissed the appeal. An appeal was filed before the Tribunal, which was dismissed by the Tribunal by the impugned judgment.

Contention of the appellant before the Tribunal was that it had already reversed the credit taken during the month of March, 2000 and, therefore, it is entitled for the benefit of Notification and duty paid on 30.8.2000 by it was to be refunded. Reliance was placed on a decision of this Court in Orissa Extrusions v. Collector of Central Excise, Bhubaneswar (2000 (115) E.L.T. 30 (S.C.) where this Court while interpreting the provisions of the Notification no.180-CE of 1988 observed that it cannot be held that exemption notification will be inapplicable insofar as it is not in accordance with Rule 57C of the Central Excise Rules, 1944 (in short the 'Rules').

The contention of the Revenue was that the appellant during the month of March, 2000 availed the credit and also

cleared the goods at nil rate of duty under Notification No.6/2000-CE. As the appellant cleared the goods and availed the credit therefor, it is not entitled for the benefit of exemption notification. The contention of the Revenue was that thereafter the appellant reversed the credit and subsequently paid the duty for the month of March 2000 and filed the refund claim in respect of the credit reversed by it and the refund was allowed. As the appellant availed the benefit of credit in respect of the inputs for the month of March 2000, therefore, it is not entitled for benefit of Notification.

The Tribunal held that the decision relied upon by the appellant was not applicable and in any event it having claimed refund and credit which was allowed it cannot again ask for exemption from payment of duty and the claim for refund of duty was rightly rejected.

In support of the appeal, learned counsel for the appellant submitted that the Tribunal was not justified in holding that the entitlement to exemption under the Notification in question was dependent upon whether the assessee had availed Modvat credit of input duty under Rule 57A of the Rules. It is pointed out that the Notification which was issued in exercise of powers conferred by sub-section (1) of Section 5A of the Act granted exemption in respect of excisable goods of the description specified in Column (3) of the table read with concerned list appended to the Notification. The exemption was subject to relevant conditions specified in the Annexure to the Notification and referred to in the corresponding entry in Column (6) of the table. It is further pointed out that so far as the item manufactured by the appellant is concerned, the condition applicable was condition No.15 which reads as follows:

"15. (1) This exemption shall apply only to the paper and paperboard cleared for home consumption from a factory-

(a) during the period from Ist March 2000 to 31st March 2000, upto first clearances of an aggregate quantity not exceeding 210 Metric Tonnes; and

(b) on or after the Ist day of April, 2000, in any subsequent financial year, upto first clearances of an aggregate quantity not exceeding 2500 Metric Tonnes;

(2) The exemption shall not be applicable to a manufacturer of the said goods who avails of the exemption under the notification of the Government of India in the Ministry of Finance (Department of Revenue) No.8/99-Central Excise, dated the 28th February, 1999 published in the Gazette vide number G.S.R. 170(E) dated the 28th February, 1999, 9/99-Central Excise, dated the 28th February, 1999 published in the Gazette vide Number G.S.R. 171(E), dated the 28th February, 1999, published in the Gazette vide 8/2000-Central Excise, dated the Ist March, 2000 and 9/2000-Central Excise, dated the Ist March, 2000".

It is again pointed out that in certain other cases, for example, condition No.27 the entry reads as follows:

"27. If no credit of duty paid, has been taken under Rule 57A or Rule 57B or Rule 57Q of the Central Excise Rules, 1944."

Therefore, even if no credit of duty paid had been taken under Rule 57A, 57B or 57Q of the Rules, the exemption was available. Reliance is placed on a decision of this Court in Orissa Extrusions's case (supra). It was held in the said case as follows:

"Learned counsel for the Revenue drew our attention to Rule 57C, which states that no credit shall be allowed for duty paid on inputs used in the manufacture of final products which are exempt from the whole of the excise duty leviable thereon or are chargeable to nil rate of duty. It would appear that it is for this reason that the said proviso was included in the notification so that the provisions of Rule 57C would not apply in respect of goods not covered by the items specifically mentioned therein. The exemption notification must be assumed to have been consciously so worded and due effect must be given to the assessee thereunder. It cannot be held that the exemption notification will be inapplicable insofar as it is not in accordance with Rule 57C.

Therefore, it is submitted that exemption notification is applicable.

In response, Mr. A. Subba Rao, learned counsel for the respondent submitted that the decision referred to above is not applicable to the facts of the case. In any event, Rule 57C cannot be given a go by while interpreting the Notification. Otherwise the said provision will become redundant.

In order to appreciate the rival submissions, it would be appropriate to take note of the observations made by a three-Judge Bench of this Court in Ichalkaranji Machine Centre Pvt. Ltd. v. Collector of Central Excise, Pune (2004 (174) E.L.T. 417 (S.C.). It was, inter alia, held as follows:

"9. Modvat is basically a duty-collecting procedure, which aims at allowing relief to a manufacturer on the duty element borne by him in respect of the inputs used by him. It was introduced w.e.f. 1.3.1986. The said scheme was regulated under rules 57A to 57J of Central Excise Rules, 1944. Rule 57A entitled a manufacturer to take instant credit of the central excise duty paid on the inputs used by him in the manufacture of the finished product, provided that the input and the finished product were excisable commodities and fell under any of the specified chapters in the tariff schedule. Under rule 57G, every manufacturer was required to file a declaration before the jurisdictional Assistant Collector,

declaring his intention to take Modvat credit after paying duty on the inputs. The object behind rule 57A read with rule 57G and rule 57-I was utilization of credit allowed towards payment of duty on any of the final products in relation to manufacture of which such inputs were intended to be used in accordance with the declaration under Rule 57G. Rule 57-I referred to consequences of taking credit wrongly.

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13. The above notification envisaged total and partial exemption; it also categorized the clearances into first clearances and subsequent clearances; it also categorized manufacturers: into those who took Modvat credit and those who did not. Those who took Modvat credit were entitled to only concessional exemption, while whose who did not avail of Modvat credit were entitled to total exemption up to a specified limit. While individual ceiling limits on clearances were prescribed, there was an aggregate ceiling limit of Rs.75 lacs, beyond which normal duty was payable. Therefore, if a manufacturer effected first clearances of specified goods up to Rs.30 lacs, he could avail the concession on such clearances, but in respect of subsequent clearances, he will get the concession only up to Rs.45 lacs. The basic point is that those who avail of Modvat credit were entitled to concessional exemption only, while those who did not avail such credit could get total exemption up to a specified limit of Rs.15 lacs (as it stood at the relevant time). Under para (a)(i) of the notification, concession was not admissible where Modvat credit was not availed/admissible.

14. In the present case, as found by the Adjudicating Authority and the Tribunal, Modvat credit was not availed/admissible. In respect of cast iron and castings, Modvat credit was inadmissible as both these inputs were exempted, whereas in case of steel bars, the manufacturer did not avail of Modvat credit. Therefore, the appellants were not entitled to clear the final products at concessional rate of duty. Lastly, without reversing the credit, the appellants cleared the final products at the concessional rate of duty, in breach of the above notification, in favour of their sister concern and consequently, the said sister concern was not entitled to the benefit of higher credit which was admissible to manufacturers who bought goods as their inputs from small scale industrial units (appellants herein).

15. It was argued on behalf of the appellants that they had availed of the Modvat credit as they had not withdrawn the declaration filed by them with the department. That, there was

no willful suppression as the department was aware, on the basis of their accounts, about the appellants not availing the Modvat credit and, therefore, the department had erred in invoking the proviso to Section 11A in relation to the extended period for demanding excise duty. We do not find merit in the above arguments. The appellants never opted out of the Modvat scheme. They partly cleared the final products by paying duty at concessional rate without utilizing the credit in the payment of duty on final product and partly on the basis of credit which was not admissible. It is important to note that the underlying object behind the notification was to utilize the credit against payment of duty on the final product. In the circumstances, the demand for differential duty, penalty and confiscation subject to payment of redemption fine is valid and justified."

(underlined for emphasis)

As rightly submitted by learned counsel for the respondent the provisions of Rule 57C would be rendered nugatory and redundant if the interpretation as suggested by learned counsel for the appellant is accepted. It would mean that primacy has to be given to the Notification over the statutory provisions contained in Rule 57C.

Rule 57C reads as follows:

"57C. Credit of duty not to be allowed if final products are exempt. -

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 hundred per cent Export-Oriented Unit) shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty."

It provides in mandatory and categorical terms that no credit of the specified duty paid on the inputs used in the manufacture of a final product (of the enumerated categories) shall be allowed if the final product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty. Moreover on the facts of the case it is found that the manufacturer had availed of the credit at the time of the clearance of the goods and had suo moto reversed it to avail the exemption later on almost after 11 months when it claimed refund of modvat-credit, hence it was not entitled to exemption. Undisputedly factual position is so.

Moreover, on the facts of the case, it is found that the manufacturer had availed of the credit at the time of the clearance of the goods and had suo motu reversed it to avail the exemption later on almost after 15 months when it claimed refund of Modvat credit, hence it was not entitled to exemption.

Though the decision in Orissa Extrusions's case (supra) supports the stand taken by the appellant, but in view of what has been stated by a three-Judge Bench in Ichalkaranji's case (supra) the decision does not lay down the correct position in law. In that view of the matter, the present appeal is sans merit and is dismissed. No costs.