

CASE NO.:
Appeal (civil) 1878-1880 of 2004

PETITIONER:
The Commissioner of Central Excise, New Delhi

RESPONDENT:
M/s Hari Chand Shri Gopal etc.

DATE OF JUDGMENT: 03/10/2005

BENCH:
S.N. VARIAVA, Dr. AR. LAKSHMANAN & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

KAPADIA, J.

The short question of law involved in this matter is whether irrespective of the assessee having not followed or substantially followed Chapter X procedure under the Central Excise Rules, 1944, they would still be entitled to the benefit of notification no.121/94-CE dated 11.8.1994 as held in the case of Thermax Private Ltd. v. Collector of Customs reported in 1992 (61) ELT 352, which is to the effect that, the benefit of concession should be given when intended use of material can be established by other evidence.

This case is a sequel to the case of the assessee in civil appeal nos.5747-5749 of 2000 decided by this court on 30.9.2005 and, therefore, we are not required to restate the facts. Suffice it to state that the assessee-firms were manufacturer of branded chewing tobacco (final product) from "additive mixture" (kimam). The said "kimam" was manufactured by the units of the assessee in Delhi and the said kimam was stock transferred to the assessee's units in UP and HP. We have held in our judgment in civil appeal nos.5747-5749 of 2000 that this kimam was excisable and classifiable under sub-heading 2404.49/2404.40 of Central Excise Tariff Act, 1985. Admittedly, the existence of assessee's units in Delhi, where kimam was manufactured, was not disclosed to the department, these units were not registered and they were unlicensed units. The three assessee however urged that there was no intention to evade duty as the said kimam was captively consumed in the manufacture of branded chewing tobacco and they were entitled to input relief under notification no.121/94-CE dated 11.8.1994. In this connection, the assessee contended before the tribunal in the present case that they had maintained stock register, transfer challans and form-IV register in their units in UP and HP, where the final product was manufactured and which registers indicated receipt and utilization of kimam in the manufacture of branded chewing tobacco and consequently, there was substantial compliance of exemption notification no.121/94-CE. This contention of the assessee has been accepted by the tribunal placing reliance on the judgments of this court in the case of Thermax Private Ltd. (supra) and Collector of Central Excise, Jaipur v. J.K. Synthetics reported in 2000 (120) ELT 54. Being aggrieved by the decision of the tribunal, the department has come to this court by way of these civil appeals.

We quote hereinbelow the exemption notification no.121/94-CE, which deals with input relief in respect of goods

used for special industrial purposes subject to the assessee complying with chapter X procedure.

INPUT RELIEF

Exemption to specified intermediate goods if captively consumed or used in the manufacture of specified final products consequent to extension of Modvat Scheme to goods earlier covered under Proforma Credit Procedure: In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), read with sub-section (3) of section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) (hereinafter referred to as the said Special Importance Act), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts goods falling under heading numbers or sub-heading numbers of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the said Tariff Act), specified in column (4) of the Table hereto annexed (hereinafter referred to as "inputs") manufactured in a factory and used within the factory of production in or in relation to the manufacture of corresponding final products of the description specified in column (2) of the said Table and falling under heading numbers or sub-heading numbers of the Schedule to the said Tariff Act, specified in the corresponding entry in column (3) of the said Table, from the whole of the duty of excise and additional duty of excise leviable thereon, which is specified in the respective Schedules to the said Tariff Act and the said Special Importance Act:

Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products (other than those cleared either to a unit in a Free Trade Zone or to a 100% Export-Oriented Unit or to a unit in Electronic Hardware Technology Park or Software Technology Parks), which are exempt from the whole of the duty of excise leviable thereon or are chargeable to 'Nil' rate of duty:

Provided further that where such use of inputs is in a factory of a manufacturer, different from his factory where the goods have been produced, the exemption contained in this notification shall be allowable subject to the observance of the procedure set out in Chapter X of the Central Excise Rules, 1944.

THE TABLE

S. No.	Description of final products	Chapter or Heading number or sub-heading number of final products	Chapter or Heading number or sub-heading number of inputs
-----------	-------------------------------	--	--

(1)
(2)
(3)
(4)

1.

- (a) Cigarettes
- (b) Snuff
- (c) Preparation, containing snuff of tobacco in any proportion.

2403.11

2404.50

2404.60

2404.13

2404.50

2404.50

2.

Chewing tobacco including preparations commonly known as "Khara Masala", "Kimam", "Dokta", "Zarda", "Sukha" and "Surti".

2404.41

2404.49

3.

Fabrics of cotton, whether processed or not.

52

52

4.

Fabrics of man-made fibres and filament yarn, whether processed or not.

54, 55

54, 55

We also quote hereinbelow rules 173B, 173G, 174, 192 and 196 of 1944 Rules:

"Rule 173B. Assessee to file declaration of goods produced or manufactured in the factory.\027 (1)

Every assessee, shall file with the Superintendent of Central Excise, having jurisdiction over the factory, a declaration (in quadruplicate) showing, -

(a) the full description of \026

(i) all excisable goods produced or manufactured by him,

(ii) all other goods produced or manufactured by him and intended to be removed from his factory, and

(iii) all the excisable goods already deposited or likely to be deposited from time to time without payment of duty in his warehouse;

(b) the Chapter, heading No. and sub-heading No., if any, of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) under which each goods fall;

(c) the rate of duty leviable on each such goods;

(d) the exemption notification availed or

proposed to be availed, if any; and

(e) such other particulars as the Commissioner may direct,

and obtain a dated acknowledgement of the said declaration :

Provided that such declaration shall be filed on or before the 15th May, 1995 or such extended period as the Assistant Commissioner of Central Excise may permit.

Provided further that an assessee producing or manufacturing excisable goods for the first time shall be required to submit the said declaration within thirty days of commencing the production of such excisable goods.

(2) If in the declaration so filed under sub-rule (1), any alteration becomes necessary in respect of any goods because of -

(a) the assessee commencing production, manufacture or warehousing of goods not mentioned in that declaration, or

(b) the assessee intending to remove from his factory any non-excisable goods not mentioned in that declaration, or

(c) a change in the rate of rates of duty in respect of the goods mentioned in that declaration or, by reason of any amendment to the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), a change in the Chapter, heading No. or sub-heading No.,

the assessee shall likewise file a fresh declaration or an amendment of the declaration already filed within thirty days of any alteration mentioned above, in the same manner as is provided in sub-rule (1).

(3) The proper officer, duly empowered by the Central Government under section 14 of the Act, may, where he considers it necessary during the course of any enquiry in connection with the declaration filed under sub-rule (1) by an assessee, -

(a) require any person to produce or deliver any document or thing relevant to the enquiry; and

(b) examine any person acquainted with the facts and circumstances of the particulars given in the declaration or other records, in the manner provided in section 14 of the Act.

(4) The proper officer may after such further enquiry as he may consider necessary, reassess the correct amount of duty payable following the provisions of section 11A of the Act

and the assessee shall pay the deficiency, if any.

Rule 173G. Procedure to be followed by the assessee.\027 (1) Every assessee shall keep an account-current with the Commissioner separately for each excisable goods falling under different Chapters of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), in such form and manner as the Commissioner may require, of the duties payable on the excisable goods and in particular such account (and also the account in Form R. G. 23, if the assessee is availing of the procedure prescribed in rule 173K) shall be maintained in triplicate by using indelible pencil and double-sided carbon, and the assessee shall periodically make credit in such account-current, by cash payment into the treasury [so as to keep the balance, in such account-current], sufficient to cover the duty due on the goods intended to be removed at any time; and every such assessee shall pay the duty determined by him for each consignment by debit to such account-current before removal of the goods:

Provided that\027

(i) the duty due on the goods consumed within the factory in a continuous process may be so paid at the end of the factory day, except that in the case of cellulosic spun yarn and cotton yarn in respect of which duty is payable in accordance with the provisions of sub-rule (1) of rule 49A, the duty due may be paid by the manufacturer in accordance with the provisions of the said rule;

(ii) an assessee who has removed more than 3000 consignments in the previous year may, after intimating the proper officer, make a consolidated debit in the account current at the end of the day towards payment of the duty;

(iia) the proper officer may allow an assessee who manufactures one or more of the declared excisable goods, irrespective of the number of consignments removed by him in the previous calendar year, to make consolidated debit in the account-current at the end of the day towards payment of duty;

(iii) in respect of clearances of any excisable goods as samples in such small quantities as the Commissioner may approve in respect of any commodity and clearly marked as such on the invoice, the assessee may pay the duty on all such samples cleared during a month by a single debit to his account-current on the last working

day of the month;

(iv) the Commissioner may, in circumstances of an exceptional nature, by an order in writing, require an assessee or class of assessee's manufacturing or warehousing goods to which provisions of Chapter VII-A have been made applicable, to determine the duty and debit the account-current in such manner as may be specified by him in such order;

Provided further that where any assessee manufactures or warehouses excisable goods falling under two or more Chapters of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), he may opt to maintain a single Account current for payment of duty due on all such goods after intimating the proper officer.

Provided also that where an assessee maintains separately accounts-current for each excisable goods he may, in the event of an insufficient balance in any of the accounts-current, transfer, subject to such conditions as the Commissioner may specify in this behalf, an amount to such account-current from another account-current which has enough balance on date of such transfer.

(1A) Where an assessee keeping an account-current under sub-rule (1) makes an application to the Commissioner for withdrawing an amount from such account-current, the Commissioner may, for reasons to be recorded in writing, permit such assessee to withdraw the amount in accordance with such procedure as the Commissioner may specify in this behalf.

(2) Notwithstanding the provisions of sub-rule (1) of rule 224 but subject to the other provisions of that rule and the provisions of rule 173FF, every assessee shall except as otherwise expressly provided in these rules, forthwith remove the goods on which duty has been determined and paid; every such removal shall take place under an invoice or invoices in accordance with the provisions of rule 52A but without the proper officer's countersignature, and such invoice or invoices shall also show the rate and the amount of duty paid on such goods and the time of actual removal of the goods from the factory :

Provided that -

(i) a single invoice may be issued at the end of the factory day to cover removal of goods consumed within the factory in a continuous process;

(ii) the Commissioner may, having regard to the nature of the goods manufactured or frequency of removals permit an assessee or a class of assessee's not to enter the rate and/or

the amount of duty on the invoices under which such goods are removed from the factory;

(iii) \005\005 Omitted.

(iv) in respect of removal of any goods after 6 O'clock in the afternoon on the day preceding the date appointed for the presentation of the annual or any Supplementary Budget of the Central Government to Parliament or for the introduction in the House of the People of any Finance Bill or any Bill for the imposition or increase of any duty, the provisions of sub-rule (1) of rule 224, shall apply.

(v) \005. Omitted.

(vi) where any correction, other than one relating to the date or the time of removal of the goods or to the description of the goods (including the variety of goods, the number and description of packages and the identification marks thereon), becomes necessary in any invoice before removal of the goods, such correction may be made by the assessee provided this is done neatly and over his dated signature in all copies of the invoice; and

(vii) where the assessee, after he has debited the duty due on the goods in the account-current referred to in sub-rule (1), finds it necessary to cancel any invoice, he shall send an intimation thereof in writing to the proper officer not later than the working day next following the day on which such invoice is cancelled, and may thereupon take credit of the duty in that account;

(2A) Every assessee shall file with the proper officer the triplicate copies of the invoices or like documents issued,

(a) during first ten days of a month, on or before the twelfth day of the same month;

(b) during the next ten days of the month, on or before the twenty-second day of the same month; and

(c) during the remaining days of that month, on or before the fifth day of the following month,

along with a covering list showing the serial number of such invoices as well as opening balance, credit, debit and closing balance in his

account-current and in his account maintained in Form R.G. 23A, Part II and Form R.G. 23C Part II.

Provided that an assessee availing of the exemption under a notification based on the value or quantity of clearances in a financial year, shall file with the proper officer the triplicate copies of the invoices or like documents issued during a quarter, on or before the fifth day of the following quarter along with a covering list showing the said number of such invoices as well as opening balance, credit, debit and closing balance in his account current and in his account maintained in Form RG 23A, Part II and Form RG 23C Part II.

(3) Within five days after the close of each month every assessee shall, in lieu of the returns prescribed under rule 54, file with the proper officer in quintuplicate a monthly return in the proper form showing the quantity of excisable goods manufactured or received under bond during the month, the quantity (if any) used within the factory for the manufacture of another commodity, the quantity removed on payment of duty from the place or premises specified under rule 9 or from the store-room or other place of storage approved by the Commissioner under rule 47, duty paid on such quantity, particulars of invoices or like documents under which such quantity was removed; the quantity removed without payment of duty for export or otherwise and such other particulars as may be elsewhere prescribed or as the Commissioner may, by general or special order, require, and where so required by the Commissioner, by written notice, shall submit a similar return in the proper form showing all the other products manufactured in and issued from the factory during the same month. Every such return in respect of excisable goods shall be accompanied by\027

(a) \005.. Omitted.

(b) receipted treasury challans on which deposits in the account-current were made by payment into the Government treasury; and

(c) original and duplicate copies of the account-current and also of the account in Form RG 23 and RG 23C, as the case may be, maintained by the assessee during the period covered by the return;

(d) any other document or documents as the Commissioner may require,

and if there was no stock, production and removal of excisable goods during the said period, the assessee shall file with the proper officer a nil return, unless otherwise directed by the Commissioner:

Provided that the Commissioner may, having

regard to the nature, variety and extent of production or manufacture or frequency of removals\027

(i) fix in relation to any assessee or class of assessee a period shorter than one month for filing the aforesaid return;

(ii) permit that the aforesaid return may be filed by the assessee within a period not exceeding 21 days after the close of each month.

(4) (a) Every assessee shall maintain such accounts, as the Commissioner may from time to time require or permit, subject to such conditions as may be specified by him of the production, manufacture, storage, delivery or disposal of the goods, including the materials received for or consumed in the manufacture of excisable goods or other goods, the goods and materials in stock with him and duty determined and paid by him.

(b) Unless specially exempted by the Commissioner by order in writing, all books of accounts maintained under clause (a) shall be sent by him, before these are brought into use, for authentication by the proper officer in such manner and at such time as the Commissioner may direct,

(c) In respect of any assessee, or class of assessee, the Commissioner may direct that all books of accounts maintained under clause (a), subject to what has been stated in clause (b), shall be deemed to be the proper form for the respective purpose.

(5) Every assessee shall furnish to the proper officer a list in duplicate of all accounts maintained and returns prepared by him (whether the same are maintained or prepared in pursuance of these rules or not) in regard to the production, manufacture, storage, delivery or disposal of the goods, including the raw materials.

(6) Every assessee shall, on demand, produce to the Central Excise Officers, or the audit parties deputed by the Commissioner or the Comptroller and Auditor General of India:-

(i) the accounts and returns (whether the same are maintained or prepared in pursuance of these rules or not); and

(ii) the cost audit reports, if any, under section 233B of the Companies Act, 1956 (1 of 1956),

for the scrutiny of the officers or audit parties, as the case may be.

(7) Notwithstanding the provisions of sub-rules (1) and (3), an assessee manufacturing excisable goods specified in this behalf by the Central Government by notification in the Official

Gazette, whose duty liability in the preceding financial year did not exceed five hundred rupees or who being a new assessee does not expect to be liable to pay more than five hundred rupees as duty in the relevant financial year, may, after informing the proper officer in writing, pay duty in respect of each separate consignment at the time of removal instead of keeping an account-current with the Commissioner, and may also file the return prescribed in sub-rule (3) for a quarter within seven days after the close of every quarter instead of filing the monthly return.

(8) In respect of a manufacturer availing of the exemption under a notification based on the value or quantity of clearances in a financial year, the provisions of this rule shall have effect in that financial year as if for the word "month", wherever it occurs, the word "quarter", and for the word "monthly", wherever it occurs, the word "quarterly" were substituted.

(9) Every assessee shall preserve the book of accounts, documents and floppies where any document is generated on computer, for such periods and in such manner as may be specified by the Commissioner.

Rule 174. Registration of certain persons.\027

(1) Every person, who cures, produces, manufactures, carries on trade, deals as a broker or commission agent, holds private store-room or warehouse or otherwise uses excisable goods or a person who issues invoice or invoices under rule 57G or, as the case may be, Rule 57T shall get registered and shall not engage in the curing, production, manufacture, trade, dealing as broker or commission agent, storing in private store-room or warehouse or use excisable goods without having applied for such registration to the jurisdictional range officer or such officer in such forms as may be specified by the Board.

(2) The Central Board of Excise and Customs, may, by notification in the Official Gazette, and subject to such conditions or limitations as may be specified in such notification, specify person or class of persons from amongst the persons specified in sub-rule (1) who need not obtain such registration.

(3) If there are more than one premises requiring registration he shall obtain separate registration certificate for each of the premises.

(4) Every registration certificate granted shall be in the specified form and shall be valid only for the premises specified in such certificate.

(5) Where a registered person transfers his business to another person the transferee shall obtain a fresh certificate.

(6) Where a registered person is a firm or a company or association of persons, any change in

the constitution of such a firm, company or association of persons, shall be intimated to the Central Excise Officer within thirty days of such a change for incorporation in the certificate.

(7) In case a registered person desires to manufacture a new product, he shall get the product endorsed on his registration certificate.

(8) Every registered person, who ceases to carry out the operation or operations he is registered for, shall surrender his registration certificate immediately.

(9) The proper officer shall proceed to grant a Registration Certificate under this rule within thirty days of the receipt of an application. If registration certificate is not granted within the said period, the registration applied for shall be deemed to have been granted.

(10) Every registered person shall exhibit his registration certificate (or a certified copy thereof) in a conspicuous part of the registered premises.

(11) Any registration certificate granted under this rule may be revoked or suspended by the proper officer, if the holder or any person his employ, is found to have committed a breach of any conditions of the Act or these rules or has been convicted of an offence under section 161, read with section 109 or with section 116 of the Indian Penal Code (45 of 1860).

Rule 192. Application for concession. \027 Where the Central Government has, by notification under rule 8 or section 5A of the Act, as the case may be, sanctioned the remission of duty on excisable goods other than salt, used in a specified industrial process, any person wishing to obtain remission of duty on such goods, shall make application to the Commissioner in the proper Form stating the estimated annual quantity of the excisable goods required and the purpose for and the manner in which it is intended to use them and declaring that the goods will be used for such purpose and in such manner. If the Commissioner is satisfied that the applicant is a person to whom the concession can be granted without danger to the revenue, and if he is satisfied, either by personal inspection or by that of an officer subordinate to him that the premises are suitable and contain a secure store-room suitable for the storage of the goods, and if the applicant agrees to bear the cost of such establishment as the Commissioner may consider necessary for supervising operation in his premises for the purposes of this Chapter, the Commissioner may grant the application, and the applicant shall then enter into a bond in the proper Form with such surety or sufficient security, in such amount and under such conditions as the Commissioner approves. Where, for this purpose, it is necessary for the applicant to obtain an Excise registration certificate, he shall submit the requisite application along with the proof for payment of registration fee

and shall then be granted a registration certificate in the proper Form. The concession shall, unless renewed by the Commissioner, cease on the expiry of the registration certificate.

Provided that, in the event of death, insolvency or insufficiency of the surety, or where the amount of the bond is inadequate, the Commissioner may, in his discretion, demand a fresh bond; and may, if the security furnished for a bond is not adequate demand additional security."

Rule 196. Duty leviable on excisable goods not duly accounted for.\027 (1) If any excisable goods obtained under rule 192 are not duly account for as having been used for the purpose and in the manner stated in the application or are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during transport from the place of procurement to the applicant's premises or during handling or storage in the premises approved under rule 192, the applicant shall, on demand by the proper officer, immediately pay the duty leviable on such goods. The concession may at any time be withdrawn by the Commissioner if a breach of these rules is committed by the applicant, his agent or any person employed by him. In the event of such a breach, the Commissioner may also order the forfeiture of the security deposited under rule 192 and may also confiscate the excisable goods, and all goods manufactured from such goods, in store at the factory.

(2) Where the duty becomes chargeable in terms of sub-rule (1) on any excisable goods, the rate of duty and the tariff valuation, if any, applicable to such goods shall be the rate and valuation in force\027

(i) in the case of actual removal of goods from the premises, on the date of such removal;

(ii) in the case of loss of goods in transit during transport from the place of procurement to the applicant's premises, on the date on which the goods are received in the applicant's premises;

(iii) in the case of loss of goods while in storage or during handling in the premises approved under rule 192, on the date on which such loss is discovered by the proper officer or made known to him;

(iv) in all other cases, on the date on which the notice for demand of duty is issued or on the date on which duty is paid, whichever is earlier."

In our view, the law laid down by this Court in the aforestated two decisions in the case of Thermax Private Ltd.

(supra) and J.K. Synthetics (supra) needs reconsideration for the following reasons. Firstly, we may point out that conceptually there is a difference between "short-payment" that arises from non-levy or any mistake connected with the levy on one hand and the "short-payment" arising from the failure of the buyer/user of the goods to account for them. It is equally well settled that exemption notifications have to be read strictly so far as the eligibility is concerned; that conditions mentioned therein ought not to be ignored and that the notification has to be read on its own terms [See: Commissioner of Central Excise, Allahabad v. Ginni Filaments Ltd. reported in 2005 (181) ELT 145]. Under rule 192, the responsibility for the payment of duty on the goods cleared under concession or exemption was transferred from the manufacturing unit to the buying/receiving unit. The person wishing to obtain the remission of duty was required to apply through the proper officer in the form AL-6 and the proper officer had to grant licence to such persons in the form L-6. Under rule 196, if any excisable goods obtained under rule 192 are not duly accounted for, then the duty had to be paid by the applicant i.e. by the person who applies for an AL-6 licence. Therefore, in case of default or misuse, the liability was on the user. Therefore, as stated above, whenever there is failure on the part of the buyer/user to account for the goods received resulting in short-payment, the liability is foisted on the buyers/users. It is this type of situation which stood covered by rule 192 and rule 196. In cases of contravention of rule 192, the tribunal took the view from 1989 onwards that rule 192 was not mandatory and that sufficient compliance by the recipient/user was good defence in penal action. The question before us is whether an assessee was entitled to benefit of input relief under exemption notifications in which compliance of rule 192 was incorporated as a condition for obtaining exemption. As indicated above, non accounting of goods received/used in the factory is distinct from short-payment arising from non-levy. However, when chapter X procedure is incorporated in the exemption notification as condition then short-payment on account of non-levy and short-payment on account of the failure of the buyer/user to account gets inter-connected. This aspect has not been considered by this Court in the case of Thermax Private Ltd. (supra) and J.K. Synthetics (supra). The result is divergence of views in the judgments of the tribunal. In the case of National Aluminium Co. Ltd. v. Commissioner of Central Excise, Bhubaneswar reported in 2000 (125) ELT 519 (T), it has been held, following the judgment of this court in Thermax Private Ltd. (supra), that, even if chapter X procedure is not followed, calcined alumina manufactured in assessee's unit and transferred to another unit for manufacture of aluminium was entitled to exemption under notification no.217/86-CE as the assessee had established intended use of material by other evidence. A diametrically opposite view has been taken in the case of Kirloskar Brothers Ltd. v. Collector of Central Excise, Pune reported in 1997 (94) ELT 176 (T), in which it has been held that the procedure required under chapter X was required to be strictly followed in cases of conditional exemptions as the procedural requirements were essential pre-requisite and no exemption can be sanctioned in the absence of the required compliance of the exemption notification. Consequently, under rule 173B, an assessee was required to file declaration of goods (kimam) produced or manufactured in the factory. Under rule 173G, every assessee was required to keep a current account with the commissioner for each category of excisable goods. Under rule 174, every person manufacturing or using excisable goods was required to obtain registration and he was prohibited from producing, manufacturing, storing or

using such goods, without obtaining registration from the jurisdictional competent officer. Accordingly, under rule 192 of chapter X, the applicant seeking remission/concession was required to obtain 'L-6' licence as also registration certificate in the prescribed form. This has not been noticed by this court in the case of Thermax Private Ltd. (supra). The point which needs to be emphasized is that when an assessee seeks exemption under a notification, which prescribes compliance of chapter X, there is a linkage between levy of duty on one hand and the accountability of the goods received/used in the factory where final product is manufactured. Therefore, one cannot ignore strict compliance of the aforesaid rules while claiming exemption under such notification. This is particularly relevant in cases where input relief is claimed on the basis of the captive consumption. Lastly, Thermax Private Ltd. (supra) and J.K. Synthetics (supra) were cases of the supplier being an importer and that the aforesaid two decisions did not deal with cases of the present nature in which the supplier is the manufacturer.

Before concluding, we may refer to the judgment of this court in the case of Eagle Flask Industries Limited v. Commissioner of Central Excise, Pune reported in 2004 (171) ELT 296, in which one of the contentions raised on behalf of the assessee was that when the items were exempt from duty, there was consequential exemption from licensing control. It was argued on behalf of the assessee that mere lapse of non-submission of a declaration in terms of exemption notification did not disentitle the assessee from benefits otherwise available under the notification. These arguments advanced on behalf of the assessee were rejected by this court in the following terms:

"6. We find that Notification 11/88 deals with exemption from operation of Rule 174 to exempted goods. The Notification has been issued in exercise of powers conferred by Rule 174A of the Rules. Inter alia it is stated therein that, where the goods are chargeable to nil rate of duty or exempted from the whole of duty of excise leviable thereon, the goods are exempted from the operation of Rule 174 of the Rules. The goods are specified in the Schedule to the Central Excise Tariff Act, 1985 (in short 'the Tariff Act'). The proviso makes it clear that where goods are chargeable to nil rate of duty or where the exemption from the whole of the duty of excise leviable is granted on any of the six categories enumerated, the manufacturer is required to make a declaration and give an undertaking, as specified in the Form annexed while claiming exemption for the first time under this Notification and thereafter before the 15th day of April of each financial year. As found by the forums below, including CEGAT, factually, the declaration and the undertaking were not submitted by the appellants. This is not an empty formality. It is the foundation for availing the benefits under the Notification. It cannot be said that they are mere procedural requirements, with no consequences attached for non-observance. The consequences are denial of benefits under the Notification. For availing benefits under an exemption Notification, the conditions have to be strictly complied with. Therefore, CEGAT endorsed the view that the exemption from operation of Rule 174, was not available to the appellants. On the facts found, the view is on terra firma. We find no merit in this appeal, which is, accordingly, dismissed."

For the aforestated reasons, we are of the view that the matter requires consideration by a larger bench. The papers may be placed before the Hon'ble Chief Justice of India for further directions.

JUDIS