

CASE NO.:
Appeal (civil) 1627 of 1994

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, NEW DELHI

RESPONDENT:
HINDUSTAN SANITARYWARE & INDUSTRIES

DATE OF JUDGMENT: 10/09/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & S.N. VARIAVA

JUDGMENT:
JUDGMENT

2002 Supp(2) SCR 224

The following Order of the Court was delivered by

These two appeals arise from the judgments of the Customs, Excise and Gold (Control) Appellate Tribunal in Order No. 304/91-C in E/Appeal No. 3841/90-C dated April 1, 1991 and in Order No. 600/91-C in E/Appeal No. 2031/91-C dated July 19, 1991. The judgment in Order No. 304/91-C in E/Appeal No. 3841/90-C dated April 1, 1991 is followed in Order No. 600/91-C in E/Appeal No. 2031/91-C dated July 19, 1991.

The respondent, a manufacturer of sanitary ware, uses plaster of paris as inputs for the final product of sanitary ware. The process involves making of moulds from plaster of paris which are in turn used as inputs for manufacture of sanitaryware. The respondent claimed the benefit of exemption under Notification No. 217/86 (as amended by Notification No. 82/87-CE.)

In these cases, though the Excise authorities declined to grant the benefit of exemption, the Customs, Excise and Gold (Control) Appellate Tribunal set aside their orders and held that the exemption would apply to the respondent.

Mr. R.P. Bhatt, learned senior counsel appearing for the revenue, contends that as the moulds of plaster of paris are goods classified under the Central Excise Tariff Act, 1985 they cannot be treated as inputs; they must be treated as the final product and as they are exempted, the respondent is not entitled to the benefit of exemption under Notification No. 217/86.

We are afraid, we cannot accept the contention of the learned senior counsel.

The said Notification reads as follows:

"SPECIFIED GOODS USED WITHIN THE FACTORY OF PRODUCTION IN THE MANUFACTURE OF FINISHED GOODS.

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods specified in column (2) 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 final products specified in column (3) of the said Table, from the whole of the duty of excise leviable thereon, which is specified in the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) :

Provided that nothing contained in this Notification shall apply to inputs used in or in relation to the manufacture of final products which are

exempts from the whole of duty of excise leviable thereon or is chargeable to nil rate of duty.

Explanation : For the purposes of this notification, "inputs" does not include -

(i) to (iv)

THE TABLE

S.No. Description of Inputs

Description of final products

1. Goods classifiable under any headings of chapters 28,29, 30, 32, 33, 34, 35, 36, 37, 38, 39,40, 48, 70, 72, 73, 74, 75, 76, 78, 79, 80,81,82,83,84,85,86, 87,88,89,0,91,92,93, 94, 95, or 96

(other than those falling under Heading Nos. 36.03 or 37.05) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)

Goods classifiable under any headings of chapters 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 39, 40, 70, 72, 73, 74, 75, 76, 78, 79, 80, 81,82,83,84,85,86,87, 88,89,90,91,92,93,94, 95, or 96

(other than those falling under Heading Nos. 36.03 or 37.05) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)

The Notification, extracted above, was amended by Notification No. 82/87-CE which is as under :

"Exemption to captive consumption of MODVAT items - In exercise of the powers conferred by sub-rule (I) of Rule 8 of the Central Excise Rule, 1944, the Central Government hereby makes the following further amendment in the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 217/86-Central Excise, dated the 2nd April, 1986, namely :

In the said notification for the Table, the following Table shall be substituted, namely :

THE TABLE

S.No.	Description of Inputs	Description of final products
1.	Goods classifiable under any headings of chapters.....25.....(other than those falling under Heading Nos. 36.05 or 37.06) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)	Goods classifiable under any headings of chapters.....69.....(other than those falling under Heading Nos. 36, 05 or 37.06) of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986)

A perusal of the Notification as amended by Notification No. 82/87, extracted above, shows that the description of inputs given in column (2) under Chapter 25, would be 'plaster of pans' and the final product given in column (3) under Chapter 69 would be 'ceramic goods'.

The proviso postulates a situation where the final product itself is exempted in which case alone the exemption of plaster of paris under Notification No. 217/86 cannot be availed. It is nobody's case that the sanitaryware falling under Chapter 69 has been exempted by the Central Government. What is exempted is plastic moulds but they are only inputs and not final product in this case. This fact is further clarified by the Central Government in Notification No. 221/86, as amended by Notification

No. 89/ 89. Item 6 thereof clearly mentions that plaster of paris moulds are input for ceramic products.

From the above discussion, it follows that plaster of paris which is used as inputs in relation to the manufacture of sanitaryware (final product), is exempt under Notification No. 217/86 dated April 2, 1986, as amended.

In this view of the matter, we do not find any illegality in the orders under challenge.

The appeals are, therefore, dismissed, but in the circumstances of these, there shall be no order as to costs.

JUDIS