A ELSON MACHINES (P) LTD.

v.

COLLECTOR OF CENTRAL EXCISE

NOVEMBER 15, 1988

B [R.S. PATHAK, CJ AND RANGANATH MISRA, J.]

Central Excise Rules, 1944—R. 8(1) —Exemption from duty granted under Notification No. 80/80/†C.E. dated 19-6-1980—Whether captive consumption of specified goods within the factory for manufacture of specified goods falling under a different item can be excluded while determining the clearance value.

C

As a measure of concession to small-scale manufacturers, Notification No. 80/80-C.E. dated 19-6-1980 issued under r. 8(1) of the Central Excise Rules, 1944 exempted from duty certain excisable goods and, paragraph 2 thereof stipulated *inter alia* that the concession would

D **not be available to a manufacturer if the aggregate value of clearances of the specified goods by him for home consumption during the preceding financial year had exceeded Rs.15 lakhs. Explanation V thereto provided that where any specified goods were used within the factory of production for further manufacture of any other specified goods and, where both the former and the latter categories of specified goods fell**

E **under the same item of the First Schedule to the Central Excises and Salt Act, 1944, the clearances of the former category of specified goods shall not be taken into account for calculating the aggregate value of clearance under the notification.**

The appellant which was engaged in the business of manufactur-

F **ing and selling electric motors, availed of the aforesaid exemption for the periods 1-4-1980 to 30-11-1980 and 1-4-1981 to 30-9-1981. The Excise Authority issued a demand for payment of duty on the ground that its clearance exceeded the limit of Rs.15 lakhs. On appeal, the demand for the period 1-4-1980 to 30-11-1980 was set aside but the demand for the period 1-4-1981 to 30-9-1981 was sustained. On further**

G **appeal, the Appellate Tribunal observed that for the year 1980-81 the appellant had disclosed a clearance of Rs.13,43,443.55 on account of electric motors for home consumption and Rs.6,51,138.50 on account of electric motors "for captive consumption" in the manufacture of monoblock pumps. The Tribunal held that while electric motors were mentioned under Tariff Item 30, power driven pumps were specified**

H **under Tariff Item 30-A, and therefore, the electric motors captively**

consumed as inputs in the manufacture of power driven pumps could not be excluded. The further contention that the appellant had mistakenly stated that electric motors had been used for monoblock pumps whereas only rotors and stators which were integral components of monoblock pumps had been used and therefore the same Tariff Item was attracted entitling it to the concession was also rejected by the Tribunal.

Dismissing the appeal,

HELD: The contention that the goods in question could not be said to have been cleared from the factory since they were employed in the manufacture of monoblock pumps within the factory itself has no force. As soon as the manufacture of the goods was completed they must be regarded as goods available for clearance from the factory, and there is nothing to show that when fitted into monoblock pumps they were not removed to another part of the factory for that purpose. The process of manufacture of those goods is distinct, separate and complete in itself and at the end of the manufacturing process, the goods in question represent a completed product. [882E-F]

Whether the goods in question were rotors and stators and whether they formed integral components of monoblock motors is a question of fact considered and concluded by the Tribunal and it cannot be entertained at this stage. [882B]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 603 of 1985.

From the Judgment and Order dated 27.8.1984 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 1711/83-B in Order No. 643/84-B.

Dushyant Dave, R. Karanjawala and Mrs. Manik Karanjawala for the Appellant.

G. Ramaswami, Additional Solicitor General, N.S. Das Bahl and Ms. S. Relan for the Respondent.

The Judgment of the Court was delivered by

PATHAK, CJ. This appeal is directed against the judgment and order of the Customs, Excise and Gold Control Appellate

A Tribunal on the question whether the appellant is disentitled to the concession granted by Notification No. 80/80-C.E. dated 19 June 1980 to small scale manufacturers in the matter of Central Excise duty.

The appellant is a private limited company. It has its registered office and factory in the State of Gujarat. It is engaged in the business B of manufacturing and selling electric motors.

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government issued Notification No. 80/80-C.E. dated 19 June 1980, which, as it stood during the relevant period, exempted from duty excisable goods falling under certain Item Numbers of the First Schedule to the Central Excises and C Salt Act, 1944 as specified in the Table annexed to the Notification and of the particular description set forth in that Table. But paragraph 2 of the Notification declared:

> "Nothing contained in this notification shall apply to a D manufacturer,—
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> (i) if the aggregate value of clearances of all excisable goods by him or on his behalf, for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs,
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> E
>
> (ii) if the aggregate value of clearances of the specified goods by him or on his behalf, for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees fifteen lakhs."

F The appellant availed of exemption under the Notification for the periods 1 April 1980 to 30 November 1980 and 1 April 1981 to 30 September 1981 claiming that the clearances during the preceding years were confined to the stipulated limit. The Excise Authority, in the belief that the appellant had wrongly availed of exemption as its clearances exceeded the limit of 15 lakhs, issued notice to the appel- G lant to show cause against an assessment of the differential duty for those periods. The appellant attempted to show cause, but the Assistant Collector of Excise did not accept the case set up by the appellant and imposed the demand. On appeal the Collector of Central Excise (Appeals) set aside the demand for the period 1 April 1980 to 30 November 1980, but he upheld the demand for the period 1 H April 1981 to 30 September 1981. In the further appeal before the

Customs, Excise and Gold Control Appellate Tribunal the entire question was whether the appellant had exceeded the limit of Rs. 15 lakhs when effecting clearances during the financial year 1980-1981 and was, therefore, not entitled to exemption for the period 1 April 1981 to 30 September 1981.

For the financial year 1 April 1980 to 31 March 1981 the appellant had disclosed a clearance value of Rs.13,43,443.55 on account of electric motors for home consumption and a clearance value of Rs.6,51,138.50 on account of electric motors "for captive consumption" in the manufacture of monoblock pumps. It was contended by the appellant that the electric motors used for making monoblock pumps could not be taken into consideration when calculating the clearances eligible under the Notification. According to the appellant the captive consumption did not amount to clearance. The claim was disputed by the Department, which relied on Explanation V to the aforesaid Notification dated 19 June 1980. The Explanation declared:

> "Explanation V—Where any specified goods (hereinafter referred to as inputs) are used for further manufacture of specified goods (hereinafter referred to as finished goods) within the factory of production of inputs and where such inputs and finished goods fall under the same item of the said First Schedule to the said Act, the clearances of such inputs for such use shall not be taken into account for the purposes of calculating the aggregate value of clearances under this notification."

The Appellate Tribunal observed that in terms of the Explanation the clearances of inputs could not be taken into account for calculating the aggregate value of clearances only when the inputs and finished products fall under the same item of the First Schedule to the Act. It pointed out that while electric motors were mentioned under Tariff Item 30, power driven pumps were specified under Tarrif Item 30-A. It said that consequently the electric motors captively consumed as inputs in the manufacture of power driven pumps could not be excluded when determining the appellant's clearances. The appellant urged that the appellant had mistakenly stated that electric motors had been used for monoblock pumps whereas only rotors and stators which were integral components of monoblock pumps had been used, and that, therefore, the same Tariff Item was attracted, thus entitling the appellants to the concession. The submission was rejected by the Appellate Tribunal. Accordingly, it found that the appellant had

A exceeded the limit stipulated by Notification No. 80/80-C.E. dated 19 June, 1980, and was, therefore, disentitled to the concession.

It is contended before us that the Appellate Tribunal erred in rejecting the submission of the appellant that the goods manufactured by the appellant did not entitle it to the benefit of Explanation V of the B Notification. It is urged that the goods in question were rotors and stators, that they were integral components of monoblock motors and could not be considered as components of general purpose Motors and therefore fell within the same Tariff Item as monoblock pumps. The question has been considered by the Appellate Tribunal. It is a question of fact and we do not propose to entertain it at this stage.

C It is then urged that stators and rotors should be considered under Tariff Item 68, which is a residuary item. The Appellate Tribunal has proceeded on the basis that what was manufactured by the appellant were electric motors. It is only in the alternative that it considered the submission of the appellant that the goods should be D regarded as rotors and stators. In the circumstances recourse cannot be had to Tariff Item 68 by the appellant.

The next contention is that the goods in question cannot be said to have been cleared from the factory and therefore could not be included within the value of the clearances from the factory. The sub- E mission is that the goods were employed in the manufacture of monoblock pumps within the factory itself. We are not impressed by this contention. As soon as the manufacture of the goods was completed they must be regarded as goods available for clearance from the factory, and there is nothing to show that when fitted into monoblock pumps they were not removed to another part of the factory for that F purpose. The process of manufacture of those goods is distinct, separate and complete in itself and at the end of the manufacturing process, the goods in question represent a completed product.

The next submission on behalf of the appellant is that the Classification Lists had been approved earlier and the Excise Authority was G estopped from taking a different view. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law and, therefore, this contention must be rejected.

Finally it is pointed out by counsel for the appellant that no H recovery has been made by the appellant from its constituents and

therefore, it is said, the demand should be set aside. Reference is made to *Collector of Customs and Central Excise and Anr.* v. *Oriental Timber Industries.*, [1985] 20 E.L.T. 202 (SC). We have perused the facts of that case and we find that the order made by the court there, so far as this aspect is concerned, was made on a concession of counsel for the Union of India and on the footing that the Union of India was not concerned with the collection of additional duty for earlier years but was merely concerned with the question of law involved in the case. We are also not satisfied that the facts upon which relief was granted in that case arise before us in this case.

In the result the appeal is dismissed with costs.

H.L.C. Appeal dismissed.