

A M/S. ICHALKARANJI MACHINE CENTRE PVT. LIMITED.

v.

COLLECTOR OF CENTRAL EXCISE, PUNE

DECEMBER 10, 2004

B [S.N. VARIAVA, DR. AR. LAKSHMANAN  
AND S.H. KAPADIA, JJ.]

*Central Excise and Salt Act, 1944 :*

C *Section 11A—Rule 92 of the Central Excise Rules, 1944—Appellant  
opted for MODVAT scheme—Without opting out—Inputs used exempt from  
duty—Cleared final products on concessional rate of duty—Wilful suppression—  
Extended period, invoking of—Demand of differential Excise duty,  
penalty and confiscation—Held, valid and justified—Notification No. 175  
/CE dated 1.3.1986.*

D **Appellant, manufacturer *inter alia* of gear boxes and gear box covers, opted for MODVAT scheme for the year 1986-1987 and took credits for input duty on products falling under Chapter 7209, 7203 and 7203.20 as inputs. They continued to avail the MODVAT facility for the**  
E **year 1987-1988. After getting the classification list approved at concessional rate of duty, cleared the final products under sub-heading 90.24 and under sub-heading 84.23 on paying duty at concessional rate, as approved. Show-cause notice under Section 11A, invoking extended period, demanding differential duty was issued for clearing at**  
F **concessional rate of duty final products made from items which were exempt from duty. Not satisfied with the reply filed by the appellant, the Additional collector of Central Excise imposed with penalty and confiscation of goods subject to redemption on payment of fine stipulated. The CEGAT refused to interfere with the order. Hence this appeal.**

G **It was contended by the appellant that they had availed of the MODVAT credit as they had not withdrawn the declaration filed by them and there was no wilful suppression as the department was aware, on the basis of their accounts, that they were not availing the MODVAT**  
H **credit and as such the department erred in invoking the extended period**

**for demanding excise duty.**

A

**Dismissing the appeal, the court**

**HELD : 1.1. The input being exempt from duty MODVAT credit was inadmissible and having not availed the MODVAT credit on the input steel bars, the appellant were not entitled to clear final products at concessional rate of duty. [864-D]**

B

**1.2. The appellant partly cleared the final product 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. The demand of differential Excise duty, penalty and confiscation subject to payment of redemption fine valid and justified. [864-G-H; 865-A]**

C

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2431 of 1999.**

D

**From the Judgment and Order dated 17.9.98 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in F.O. No. E/1863/98-B1 in A. No. E/829 of 1992-B1.**

E

**Santosh Paul, Rajeev Sharma, Sandeep Chhabra and M.J. Paul for the Appellant.**

**G.E. Vahanvati, Solicitor General, A. Subba Rao, Devadatt Kamat and B. Krishna Prasad for the Respondent.**

F

**The Judgment of the Court was delivered by**

**KAPADIA, J. : This is an appeal by the assesseees under section 35L(b) of the Central Excise and Salt Act, 1944, against the final judgment and order No. E/1863/98-B1 dated 17.9.1998 passed in Appeal No. E/829/92-B1 by the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi, imposing *inter alia* duty amounting to Rs. 3.15 lacs and denying exemption under Notification No. 175/86/CE dated 1.3.1986.**

G

**Briefly stated, the facts are as follows :**

H

**A** The appellants are the manufacturers of components of machinery falling under chapter 9024.90. They also manufacture gear boxes and gear box covers falling under chapter 8483.00 of the schedule annexed to the Central Excise Tariff Act, 1985. In order to manufacture the aforesaid items, the appellants use iron and steel products falling under chapter 7209, 7203 and 7203.20 as inputs. The appellants are having permanent small scale industry registration granted by D.I.C., Kolhapur.

Being a small scale industry, the appellants were entitled to the benefit of Central Excise Notification No. 175/86-CE dated 1.3.1986.

**C** For the financial year 1986-87, the appellants had opted for the Modvat Scheme and took credit of input duty on iron and steel products falling under continued to 7209, 7203 and 7203.20 as inputs. They continued to avail the modvat facility for the next financial year 1987-88.

**D** On 5.4.1988, the appellants had filed classification list claiming concessional rate of duty w.e.f. 1.4.1988 This concessional rate of duty was 10% less of the effective rate, as provided for under part 1(a)(i) of the notification No. 175/86/CE dated 1.3.1986. On approval of the classification list, the appellants had cleared final products under sub-heading 90.24 and under sub-heading 84.23, after paying duty at the effective rate less 10%, as approved in their classification list.

**E** On 26.10.1990, a show-cause notice was issued to the appellants to show-cause why differential duty of Rs. 3.15 lacs should not be recovered from them under Section 11A of Central Excises and Salt Act, 1944 read with rule 92 of the Central Excise Rules, 1944. By the said show cause notice, the proviso to section 11A relating to the extended period for demanding excise duty was invoked. By reply dated 24.2.1991, the appellants contended that they had not withdrawn their declaration filed under rule 57G; that the assessment officer was aware that the appellants had not availed of the modvat credit during the financial year 1988-89 and, therefore, invocation of the proviso to section 11A was improper and not justified.

**F** By order dated 16.12.1991, the Additional Collector of Central Excise found that the appellants had opted for the modvat scheme when it was introduced in 1987-88; that the scheme, the appellants were required to pay

**H**

duty on steel bars (inputs) used in the manufacture of gear boxes and gear box covers (final products) for taking modvat credit; that the appellants falsely made the department believe of having taken the modvat credit on inputs by not withdrawing the declaration filed earlier under rule 57G; that the appellants cleared the final products by payment of duty at concessional rate which they were not entitled to do as the final products were made from items which were exempted under relevant notifications and in the circumstances, the Additional Collector imposed the differential duty of Rs. 3.15 lacs with penalty of Rs. 30,000 on the assesseees. By the said order dated 16.12.1991, the Additional Collector confiscated the goods subject to redemption on payment of fine of Rs. 10,000.

Being aggrieved, the appellants preferred appeal bearing No. E/829/92-B1 before the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal). By impugned judgment and order dated 17.9.1998, the Tribunal found that the appellants had received cast iron and castings (inputs) in their factory, which were exempt from duty and consequently, it was impermissible for the appellants to take modvat credit in respect thereof. That, as regards the steel bars, which were used as inputs by the appellants, the Tribunal found that the appellants had taken the benefit of concessional exemption without taking the modvat credit and utilizing it in the payment of duty on the final products. In the circumstances, the Tribunal found that the appellants had wrongly cleared the final products by paying concessional rate of duty in breach of the conditions in the notification No. 175/86/CE dated 1.3.1986 (as amended). The Tribunal further found that the appellants had wilfully suppressed above facts to enable their customers, who were their sister concern, to take higher credit to duty in respect of the final products of the appellants, which the sister concern used as its inputs. Under the above circumstances, the Tribunal refused to interfere with the order passed by the Additional Collector of Central Excise, on 16.12.1991.

Modvat is basically a duty-collecting procedure, which aims at allowing relief to manufacture 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 taken instant credit to 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

A 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 57I referred to consequence of taking credit wrongly.

C The object of the modvat scheme was to reduce cost to final product by taking credit for the duty paid on the inputs.

The short point which arises for determination in the present case is — Whether the appellants went on paying concessional rate of duty wilfully without availing of modvat credit with intent to misutilize the modvat scheme?

D In order to answer the aforesaid point, we reproduce hereinbelow the relevant part of notification No. 175/86/CE dated 1.3.1986, as amended :

E “In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 85/85-Central Excises, dated the 17th March, 1985, the Central Government hereby exempts the excisable goods of the description specified in the Annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) hereinafter referred to as the “specified goods”) and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from one or more factories,—

F (a) in the case of first clearances of the specified goods up to an aggregate value not exceeding rupees thirty lakhs—

G (i) in a case where a manufacturer avails of the credits of the duty paid on inputs used in the manufacture of the specified goods cleared for home consumption under rule 57A of the said Rules or sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944),

H

from so much of the duty of excise leviable thereon which is specified in the said Schedule read with any relevant notification issued under sub-rule (1) of rule 8, of the said Rules or sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944), and in force for the time being as is equivalent to an amount calculated at the rate of 10 per cent *ad valorem*;

- (ii) in any other case from the whole of the duty of excise leviable thereon :

Provided that the aggregate value of clearances of the specified goods under sub-clause (ii) of this clause in respect of any one Chapter of the said Schedule, shall not exceed rupees fifteen lakhs;

- (b) in the case of clearances (being the clearances of the specified goods of an aggregate value not exceeding rupees sixty lakhs) immediately following the said clearances of the value specified in clause (a) from so much of the duty of excise leviable thereon which is specified in the said Schedule read with any relevant notification issued under sub-rule (1) of rule 8 of the said Rules or sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) as is equivalent to an amount calculated to the rate of 10 per cent *ad valorem* :

*Provided* that the amount of duty of excise payable on the specified goods under sub-clause (i) of clause (a), or in the case may be, under this clause, shall not be less than an amount calculated at the rate of 5 per cent *ad valorem* :

*Provided* further that the aggregate value of clearances of the specified goods in terms of clause (a) and clause (b) of this paragraph taken together, shall not exceed rupees seventy-five lakhs."

The above notifications envisaged total and partial exemption; it also categorized the clearances into first clearances and subsequent clearances;

A 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 those 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  
B 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 entitled to concessional exemption only, while those who did not avail such credit could get total  
C 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.

In the present case, as found by the Adjudicating Authority and the  
D 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,  
E 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).

F 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 wilful 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 relation to the extended period for demanding excise  
G 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 products and partly on the basis of credit which was not admissible. It is important to note that the underlying object behind the  
H 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. A

Accordingly, we answer the above question in the affirmative i.e. in favour of the department and against the appellants.

Before concluding, we may clarify that our judgment is confined to the notification No. 175/86/CE, as it stood at the relevant time. B

For the aforesaid reasons, we do not find any reason to interfere in this appeal, which is, accordingly, dismissed, with no order as to costs. C

B.K.

Appeal dismissed.