

M/S. UTTAM INDUSTRIES

v.

COMMNR. OF CENTRAL EXCISE, HARYANA
(Civil Appeal Nos.3727-3728 of 2005)

FEBRUARY 21, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Central Excise Act, 1944:

Notification no. 180/88-CE dated 13.5.1988 as amended by the Notification no. 135/94-CE dated 27.10.1994 and Notification no. 1/39 dated 28.02.1993 – Entitlement to exemption under – Held: Not available if assessee availed the Modvat Credit of duty paid on the inputs – In the instant case, the assessee was availing modvat credit in respect of inputs used in the manufacture of the aluminum circles – Consequently, assessee was not entitled to avail the benefit of the said Notification – Interpretation of statutes.

Interpretation of statutes: Exemption notification – Held: Has to be construed strictly and there has to be strict interpretation of the same by reading the same literally.

The appellants-assessee was engaged in the manufacture of aluminium circles and utensils. It claimed benefit of exemption under Notification no.180/88-CE as amended by Notification no.135/94-CE. The department denied the benefit of Exemption Notification on the ground that the assessee did not fulfil conditions of the Notification. The appellate authority and the Tribunal held that the assessee was availing MODVAT credit and, therefore, not entitled to the exemption Notification. The instant appeals were filed challenging the decision of the Tribunal.

A Dismissing the appeals, the Court

HELD: 1.1 The order-in-original, the orders passed by the appellate authority and as also by the Tribunal concurrently held that admittedly the assessee-appellants were availing Modvat Credit in respect of inputs used in the manufacture of the aluminum circles. Consequently, the appellants were not entitled to avail the benefit of Notification granting exemption inasmuch as for availing such benefit under the said notification the pre-condition was that the aluminum circles were to be cleared for intended use in the manufacture of utensils and no credit of duty paid on inputs has been taken in respect of the inputs used in the manufacture of the aluminum circles. Such finding having become final, it was not open to the appellants to challenge the same.

D The appellants failed to bring any evidence on record that the appellants were not availing of Modvat Credit on the same goods in respect of which they were also claiming benefit of exemption under Notification. [Para 8] [1117-C-F]

E 1.2 It is by now a settled law that the exemption notification has to be construed strictly and there has to be strict interpretation of the same by reading the same literally. The finding recorded by the Tribunal and the two authorities below were findings of fact and such findings in absence of evidence on record to the contrary is not subject to interference. In order to get benefit of such notification granting exemption the claimant has to show that he satisfies the eligibility criteria. Since the Tribunal and the authorities below categorically held that the appellants did not satisfy the eligibility criteria on the basis of the evidence on record, therefore, the said exemption Notification is not applicable to the case of the assessees. [Para 10] [1117-G; 1118-A-C]

H *Collector of Customs (Preventive), Amritsar vs. Malwa*

Industries Limited (2009) 12 SCC 735; Kartar Rolling Mills vs. Commissioner of Central Excise, New Delhi (2006) 4 SCC 772 – relied on. A

Case Law Reference:

(2009) 12 SCC 735 relied on Para 10 B

(2006) 4 SCC 772 relied on Para 10

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3727-3728 of 2005. C

Form the Judgment & Order dated 10.03.2004 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi in Appeal No. E/1537-38/03-NBC.

S. Sunil, Neeru Vaid for the Appellant. D

Harish Chandra, T.A. Khan, B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

DR. MUKUNDAKAM SHARMA, J. 1. The issue that falls for consideration in these appeals is to the entitlement or otherwise of the appellants to the benefit of Notification No. 180/88 CE dated 13.05.1988 as amended by notification No. 135/94-CE dated 27.10.1994 whereunder exemption available was made conditional to the non-availment of Modvat Credit of the duty paid on the inputs. E F

2. In order to record a definite finding on the aforesaid issue it would be necessary to set out certain facts leading to filing of the present appeals. G

3. The appellants are engaged in the manufacture of aluminum circles and utensils. The appellants filed classification list with effect from 27.10.1994 whereby the appellants claimed benefit of Notification No. 1/93 dated 28.02.1993 as well as H

A benefit of Notification No. 135/94-CE dated 27.10.1994. A show cause notice was issued to the appellants on 18.01.1995 contending inter alia that the benefit of Notification dated 27.10.1994 was not available to the appellants. Subsequent to the same a demand of Rs. 5,18,652/- was confirmed by way of denial of the aforesaid benefits of Notifications vide order passed on 01.11.1995.

4. Being aggrieved by the aforesaid order passed in the order-in-original dated 01.11.1995, the appellants filed an appeal before the Commissioner Central Excise (Appeals) contending inter alia that the appellants fulfilled conditions of both the Notifications, namely, the one issued on 13.05.1988 as amended by notification dated 27.10.1994 and also of the Notification dated 28.02.1993 and since both the aforesaid notifications are independent it cannot be said that benefits under both the notifications cannot be availed by the appellants and that rather one can avail both the benefits simultaneously.

5. The Commissioner Central Excise, who was the appellate authority held that the appellants had not fulfilled the stipulated conditions laid down in Notification dated 13.05.1988, as amended as the appellants availed Modvat Credit and therefore they are not entitled to the benefit of the said Notification. It was also held by the appellate authority that the appellants did not place any material on record to show that they had fulfilled conditions of the Notifications for availing benefit of Modvat Credit.

6. Being aggrieved by the aforesaid order passed on 31.03.2003 the appellants filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal. By Judgment and Order dated 10.03.2004 the aforesaid appeal filed by the appellants was also dismissed holding inter alia that in this case it is not disputed by the appellants that they were availing the credit in respect of the inputs used in the manufacture of the aluminum circles and therefore they are not entitled to the benefit of the Notification granting exemption.

7. Still aggrieved the appellants filed the present appeals on which we heard learned counsel appearing for the parties, who had taken us through various orders passed by the different authorities and also through other connected records.

8. On going through the records it is clearly established that the appellants are availing Modvat Credit in respect of inputs used in the manufacture of aluminum circles. The order-in-original, the orders passed by the appellate authority and as also by the Tribunal concurrently held that admittedly the appellants are availing such Modvat Credit in respect inputs used in the manufacture of the aluminum circles. Consequently, the appellants are not entitled to avail the benefit of Notification granting exemption inasmuch as for availing such benefit under the said notification the pre-condition is that the aluminum circles are to be cleared for intended use in the manufacture of utensils and no credit of duty paid on inputs has been taken in respect of the inputs used in the manufacture of the aluminum circles. All the aforesaid three authorities below having held concurrently in the same manner as stated hereinabove. Such finding has become final and it is not open to the appellants to challenge the same. We also hold that the appellants failed to bring any evidence on record that the appellants were not availing of Modvat Credit on the same goods in respect of which they were also claiming benefit of exemption under Notification.

9. That being the position we are not inclined to interfere with the aforesaid finding of fact recorded by the Tribunal and the authorities below on the aforesaid issue.

10. It is by now a settled law that the exemption notification has to be construed strictly and there has to be strict interpretation of the same by reading the same literally. In this connection reference can be made to the decision of this Court in *Collector of Customs (Preventive), Amritsar vs. Malwa Industries Limited* reported at (2009) 12 SCC 735 as also to the decision in *Kartar Rolling Mills vs. Commissioner of*

- A *Central Excise, New Delhi* reported at (2006) 4 SCC 772 wherein also it was held by this Court that finding recorded by the Tribunal and the two authorities below are findings of fact and such findings in absence of evidence on record to the contrary is not subject to interference. In order to get benefit of
- B such notification granting exemption the claimant has to show that he satisfies the eligibility criteria. Since the Tribunal and the authorities below have categorically held that the appellant does not satisfy the eligibility criteria on the basis of the evidence on record, therefore, we hold that the said exemption
- C Notification is not applicable to the case of the appellants.

11. We do not find any merit in these appeals, therefore, we dismiss the same but leaving the parties to bear their own costs.

D.G.

Appeals dismissed.