A M/S. MARUTI SUZUKI INDIA LTD.

v.

COMMNR. OF CENTRAL EXCISE, NEW DELHI

B (Civil Appeal No. 8190 of 2003)

MARCH 12, 2015

[A. K. SIKRI AND R. F. NARIMAN, JJ.]

C *Central Excise Rules, 1944 – r. 57F – Levy of duty – On the products (spare parts of motor vehicles i.e. bumpers and grills) – After their processing i.e. Electro Deposition (ED) Coating – On the ground that the process of ED Coating led* D *to value addition – Held: In order to attract the charging section i.e. s. 3 of Central Excise Act, there must be 'manufacture' – The 'input' that was removed from the factory for home consumption i.e. 'bumpers' and 'grills' continue to remain the same 'inputs' even after its processing i.e. ED* E *Coating – Thus, the processing of the inputs would not amount to 'manufacture' – Mere value addition would not amount to 'manufacture' – In such cases proviso to r. 57F (ii) would apply – Therefore demand of differential duty on the products was not correct – Central Excise Act, 1944 – ss. 3* F *and 4.*

Disposing of the appeal, the Court

HELD: 1.1 It is clear, as is apparent from the G **opening words of Section 4 of the Central Excise Act, 1944, that there must first be manufacture in order to attract the charging section, namely Section 3 of the Central Excise Act, 1944 before one comes to valuation of goods under Section 4 of the 1944 Act. [Para 19] [195-** H **G-H]**

1.2 On the facts of the present case, it is found that for the purposes of the proviso to Rule 57F(ii), the inputs that were not ultimately used in the final product but were removed from the factory for home consumption remain the same despite ED coating and consequent value addition. On account of mere value addition without more, it would be hazardous to say that manufacture has taken place, when in fact, it has not. It is clear, therefore, that the inputs procured by the appellants in the present case, continue to be the same inputs even after ED coating and that Rule 57F(ii) proviso would therefore apply when such inputs are removed from the factory for home consumption, the duty of excise payable being the amount of credit that has been availed in respect of such inputs under Rule 57A. [Para 20] [196-A-E]

1.3 Thus, on the true construction of Rule 57F(1) of Central excise Rules, 1944, it would be clear that the "input" that is removed from the factory for home consumption were bumpers, grills, etc., being spare parts of motor vehicles procured by the appellant. ED coating which would increase the shelf life of the spare parts and provide anti-rust treatment to the same would not convert these bumpers, etc., into a new commodity known to the market as such, merely on account of value addition. [Para 9] [188-G-H]

Union of India v. Delhi Cloth and General Mills Co. Ltd. **1977 (1) E.L.T. 199;** *Commissioner of Central Excise, New Delhi v. S.R.Tissues Pvt. Ltd.* **2005 (186) E.L.T. 385;** *Union of India v. J.G. Glass Industries Ltd.* **1998 (97) E.L.T. 5 – relied on.**

Siddhartha Tubes Ltd. v. Commissioner of Customs &

A *Central Excise, Indore (M.P.)* **(2005) 13 SCC 559: 2005 (5) Suppl. SCR 851;** *Brakes India Limited v. Superintendent of Central Excise and Ors.* **1 9 9 7 (10) SCC 717 – distinguished.**

B *Sidhartha Tubes Limited v. Collector of Central Excise* **2000 (10) SCC 194 – referred to.**

2. It is not correct to say that the drift of the rules 57F(3) and (3A) shows that where inputs are removed to
C **a place outside the factory when they are only partially processed, then when they come back after the process, the value addition made on account of such processing would be chargeable to duty under sub-Rule 3A. Such interpretation would be adding words to Rule 57F(1) to**
D **the effect that value additions made to inputs covered by sub-rule (ii) would also suffer duty even if there is no manufacture. Further, sub-rule (3) and (3A) apply to an entirely different factual scenario, and it is only after all the conditions under the said sub-rules are met, that duty**
E **attributable to inputs contained in partially processed inputs, would then become dutiable. [Para 22 and 23] [198-G; 199-A-B]**

Case Law Reference

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1977 (1) E.L.T. 199	**relied on.**	**Para 10**
2000 (10) SCC 194	**referred to.**	**Para 11**
2005 (186) E.L.T. 385	**relied on.**	**Para 13**
G **1998 (97) E.L.T. 5**	**relied on.**	**Para 14**
1997 (10) SCC 717	**distinguished.**	**Para 17**
2005 (5) Suppl. SCR 851	**distinguished.**	**Para 18**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8190 of 2003

From the Judgment and Order dated 12.12.2002 of the Custom Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1825/2002-A

V. Lakshmikumaran, M. P. Devanath, R. Ramachandran, Ms. L. Charanaya, Aditya Bhattacharya, Prashanth S. Shivadass, Rajesh Kumar for the Appellant.

Guru Krishna Kumar, Sr. Adv., P. Mullick, Ms. Rashmi Malhotra, B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

R. F. NARIMAN, J. 1. Vide a show cause notice dated 30.08.2001 that was served upon the appellant M/s. Maruti Suzuki India Limited (then known as M/s Maruti Udyog Limited), the Department gathered, by way of intelligence, that the appellant had cleared inputs/ spares after processing, but duty was only paid equivalent to the MODVAT credit taken on these inputs before processing, and hence a substantial increase in the value of these inputs has escaped payment of duty on account of value addition in such inputs after processing. More specifically, what was alleged was that various spare parts relatable to motor vehicles that were manufactured by the appellant and were procured by it in the form of bumpers, grills, etc., on which the process of Electro Deposition Coating, namely, EDC took place (which was in the nature of anti-rust so that the shelf life of the said bumpers, grills, etc., would be generally increased) have escaped duty on account of the value addition of EDC.

2. The show cause demanded by way of differential duty a sum of Rs.2,00,20,310.14/-. Since the period covered

A relates to August, 1996, to March, 2001, we need to see the provisions of Rule 57F of the Central Excise Rules, 1944 (hereinafter referred to as 'Rules') as it existed in three different periods. For the purposes of this appeal, however, there is no material change made post 20.02.1997 or post
B 31.03.2000 when this rule was twice amended. For the period in question, the said rule together with its amendments is set as hereinbelow: -

Rule for the period August 1996 to 28.2.1997

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"57F(1) The inputs in respect of which a credit of duty has been allowed under rule 57A-

(i) may be used in or in relation to the manufacture of
D final products for which such inputs have been brought into the factory; or

(ii) shall be removed, after intimating the Assistant Commissioner of Central Excise having jurisdiction
E over factory and obtaining a dated acknowledgment of the same, from the factory for home consumption or for export under bond.

Provided that where the inputs are removed from
F the factory for home consumption on payment of duty of excise, such duty of excise shall be the amount of credit that has been availed in respect of such inputs under rule 57A."

G Rule for the period 1.3.97 to 31.3.2000

"57F(1) The inputs on which credit has been taken may be used in or in relation to the manufacture of final products.

H (2) The inputs may be removed, after intimating

the Assistant Commissioner of Central Excise concerned, in writing, for home consumption or for export under bond.

(3) All removals of inputs for home consumption shall be made -

(a) on payment of duty equal to the amount of credit availed in respect of such inputs; and

(b) under the cover of invoice prescribed under rule 52A."

Rules for the period 1.4.2000 to 28.2.2001

"Explanation - When inputs or capital goods are removed from the factory, the manufacturer of the final products shall pay the appropriate duty of excise leviable thereon as if such inputs or capital goods have been manufactured in the said factory, and such removal shall be made under the cover of an invoice prescribed under rule 52A."

3. By their reply to the show cause notice, the appellant stated that there was no manufacture as understood in law, but only the process of ED coating which did not, in any manner, bring into being a new marketable commodity as such. The bumpers, grills, etc., continued to be bumpers, grills, etc., even after the process of ED Coating.

4. The learned Commissioner of Central Excise by its order dated 28.02.2002 set out the show cause notice and the reply in some detail and ultimately came to the conclusion that on account of certain deductions, the duty that was evaded by the appellants herein was Rs.1,68,07,499/- instead of Rs.2,00,20,310/- as stated in the show cause

notice. As a result, it proceeded to state in its order that the duty evaded was Rs.1,68,07,499/- and proceeded also to impose an equivalent penalty of the same amount with the caveat that 25 per cent of the penalty amount would be payable if it is paid within 30 days of the date of communication of the order.

5. The appeal filed before Customs, Excise & Gold (Control) Appellate Tribunal (hereinafter referred to as 'CEGAT') was unsuccessful. The CEGAT after referring to the arguments of both sides found as follows:-

> 5.1 We have considered the submissions of both the sides. The facts which are not in dispute are that the Appellants purchase inputs, avail MODVAT Credit of duty paid thereon subject them to the process of E.D. Coating and remove the same on payment of duty equivalent to the amount of MODVAT Credit availed by them initially at the time of receipt of the inputs. It is thus apparent that the inputs are removed from the factory after undertaking the process of E.D. Coating. In view of this the ratio of the decision of the Larger Bench in the case of Commissioner of Central Excise, Vadodra v. Aisa Brown Boveri Ltd., 2000 (120) ELT 228 is not applicable as the facts are different in as much as the inputs were cleared as such in the said matter. It has been emphasized by the learned counsel for the appellants that words "as such" were not mentioned in Rule 57-F at the relevant time. In our view the absence of these words does not make any difference as Rule 57-F of the Central Excise Rules deals with the "Manner of Utilization of Inputs and the Credit". The said Rules provides for the manner of use of inputs as under:
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> (i) In or in relation to the manufacture of final products for

which such inputs have been brought into the factory; or

(ii) Removed from the factory for home consumption or for export under bond.

5.2 Proviso to Rule 57-F(1) or subsequently Sub-rule (3) of Rule 57- F provided that where the inputs are removed for home consumption on payment of duty, such duty of excise shall be the amount of credit that has been availed in respect of such inputs. It is thus apparent that the Rule 57-F is in respect of "such inputs" only. Further Rule 57 AB of the Central Excise Rule provides for the removal of inputs as such. We, therefore, hold that as the Appellants have removed the inputs after subjecting them to the process of E.D. Coating, mere reversal of the MODVAT Credit availed in respect of those inputs would not be payment of appropriate amount of duty. The duty of excise has to be discharged on the intrinsic value of the goods as held by the Supreme Court in the case of Sidhartha Tubes Ltd., Supra. Accordingly, the Appellants have to discharge the duty liability after including the cost of E.D. Coating in the value of the goods. The Appellants, however, would be eligible to take the MODVAT Credit of duty paid on coating material subject to the satisfaction of the jurisdictional Excise Authority. In view of the facts and circumstances of the present matter, no penalty is imposable on the Appellants. We accordingly, set aside the penalty imposed on the Appellants."

6. Shri V. Lakshmikumaran, learned counsel appearing for the appellant, argued before us that CEGAT has lost sight of the most fundamental aspect of the reply to the show cause notice, namely, that ED coating did not lead to "manufacture". It is only after there is "manufacture"

A that the input that is mentioned in Rule 57F(1) ceases to be an input covered by the proviso to sub-rule (ii) thereof. It is his short submission that the "inputs" being bumpers, grills, etc., continued to be the same inputs for the purpose of the proviso despite the fact that there may be value addition on account
B of ED coating. He cited various judgments in support of his submissions which will be adverted to a little later in this judgment.

7. On the other hand, Shri Guru Krishna Kumar,
C learned senior counsel appearing for the Department, referred us to the show cause notice and to various judgments in order to show that the process of ED coating which led to value addition, would, in fact, amount to "manufacture" and that therefore, the "input" would not be the same input so as to
D qualify under sub-rule(ii) on a mere reversal of MODVAT duty. The duty on the value addition would also therefore have to be paid. In support of this proposition, he cited a number of judgments which will also be adverted to a little later in this
E judgment.

8. In addition, he referred us to Rule 57F (3) and Rule 57F(3A) which, according to him, would show that whenever there is a value addition to an input, the said value addition
F would also be liable to duty.

9. We have heard learned counsel for the parties. In our view, on the true construction of Rule 57F(1), it would be clear that the "input" that is removed from the factory for home
G consumption is bumpers, grills, etc., being spare parts of motor vehicles procured by the appellant before us. According to us, ED coating which would increase the shelf life of the spare parts and provide anti-rust treatment to the same would not convert these bumpers, etc., into a new commodity known
H to the market as such merely on account of value addition.

10. In one of the very first important judgments on the Central Excises and Salt Act, 1944, namely Union of India v. Delhi Cloth and General Mills Co. Ltd. [1977 (1) E.L.T. 199], an important distinction was made between manufacture and processing. It was held that processing and manufacture are distinct concepts in law and only such processing as results in a transformation, namely, that a new and different article emerges having a distinct name, character or use, that excise duty, which is only on manufacture, can be levied. The relevant portion of the judgment is as hereunder: -

> "14. The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil", as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by applying to the raw material purchased by them, the processes of neutralization by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing to manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance," however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American judgment. The passage runs thus:-
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> > "Manufacture implies a change, but every change is not manufacture and yet every change of an

article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

18. These considerations of the meaning of the word "goods" provides strong support for the view that "manufacture" which is liable to exercise duty under the Central Excises and Salt Act, 1944 must be the "bringing into existence of a new substance known to the market". "But", says the learned Counsel, look at the definition of "manufacture" in the definition clause of the Act and you will find that "manufacture" is defined thus:

> Manufacture includes any process incidental or ancillary to the completion of a manufactured product." S.2(f)

19. We are unable to agree with the learned Counsel that by inserting this definition of the word "manufacture" in S.2 (f) the legislature intended to equate "processing" to "manufacture" and intended to make mere "processing" as distinct from "manufacture" in the sense of bringing into existence of a new substance known to the market liable to duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word 'manufacture' has been used to mean a process incidental to the manufacture of the article. Thus in the very Item under which the excise duty is claimed in these cases, we find the words "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The definition of 'manufacture' as in S.2(f) puts is beyond

any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material into a finished article known to the market the clause will be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available. It is only with this limited purpose that the legislature, in our opinion, inserted this definition of the word 'manufacture' in the definition section and not with a view to make the mere "processing" of goods as liable to excise duty."

11. However, to buttress his submission Shri Guru Krishna Kumar, learned senior counsel, referred us to various judgments laid down by this Court. First, he referred us to 'Sidhartha Tubes Limited v. Collector of Central Excise' [2000 (10) SCC 194]. Since this judgment was also the only judgment relied upon by CEGAT in the impugned order, it is a little important to understand what exactly was held therein. In this case, the appellant manufactured mild steel pipes and tubes. At this stage, the product was known as "black pipe". Part of the production of the black pipe was then taken to a separate shed in the appellant's factory premises and galvanised. On facts in that case, the appellants had themselves in their classification list separately declared black pipes and galvanized pipes as their products. In such a situation, this Court held that while the process of galvanisation by itself may not amount to manufacture, yet since it added to the intrinsic value of the product declared by the appellants themselves separately as galvanised pipes, the value of galvanised pipes would include the element of the cost of galvanisation.

12. From this judgment, Shri Guru Krishna Kumar, learned senior counsel, wanted us to accept as the ratio of

A the judgment that duty must be paid on value addition despite the fact that the process of galvanization would not amount to manufacture. Not only is this not the ratio of the judgment as we see it but it would, in fact, conflict with other judgments directly on the point.

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13. In *Commissioner of Central Excise, New Delhi v. S.R. Tissues Pvt. Ltd. [2005 (186) E.L.T. 385]*, the question before this Court was whether on cutting and slitting of jumbo rolls, several new products emerged, namely, table C napkins, toilet rolls, etc., and there being a value addition of 180 per cent of the new products over the jumbo roll would by itself lead to the irresistible conclusion that there is "manufacture" and not mere "processing". This was turned down by this Court stating that jumbo rolls cannot conveniently D be used as such for household or sanitary purposes. If therefore, for the sake of convenience, they are required to be cut into various shapes and sizes so that they can conveniently be used as table napkins, etc., this would not E mean that the table napkins, etc., would be a new product distinct from the jumbo roll. The end use of both jumbo rolls and toilet rolls, etc., would remain the same, namely, for household or sanitary use.

F 14. It was then held following Union of India v. J.G. Glass Industries Ltd.[1998 (97) E.L.T. 5] that there is a fundamental distinction between manufacture and processing. On an aspect not adverted to in the Delhi Cloth and General Mills Co. Ltd. case supra, this court held that where the G commodity already in existence is of no commercial use but for a super added process, then on facts, there may be manufacture.

15. In the present case, it is clear that bumpers and H grills are most certainly of commercial use in themselves

whether the process of ED coating is applied or not. A

16. Importantly, this Court laid down that value addition without any change in name, character or end use of goods cannot possibly constitute criteria to decide as to what is manufacture. B

This court said in this behalf: -

"21. Lastly, in the instant case, the Commissioner as an adjudicating authority has held that there was a value addition of 180%. He found that jumbo rolls of tissue papers were purchased by the assessee @ Rs.30/- to Rs.70/- per kg. and the final product i.e. the toilet tissue paper was sold by the assessee @Rs.85/- to Rs.100/- per kg. And, therefore, there was a value addition of around 180% i.e. between the range of Rs.30/- to Rs.85/- per kg. This finding of the Commissioner is erroneous. Under the Excise law, Value addition based on a process is certainly a relevant criteria to decide as to what constitutes "manufacture". Such value addition should be on account of change in the nature or characteristics of the product. In the present case, as stated above, there is no change in the nature or characteristics of the tissue paper in the jumbo roll and the nature and characteristics of the tissue paper in the table napkin, facial tissues etc. Therefore, without such change in the nature or characteristics of the tissue paper, value addition on account of transport charges, sales tax, distribution and selling expenses and trading margin cannot be an indicia to decide what is manufacture. Thus, value addition without any change in the name, character or end-use by mere cutting or slitting of jumbo rolls cannot constitute criteria to decide

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A what is "manufacture".

22. In the case of Decorative Laminates (India) Pvt. Ltd. v. Collector of Central Excise, Bangalore reported in 1996 (86) E.L.T. 186, this Court held that the
B process of application of phenol resin on duty paid plywood under 100% heat amounts to manufacture and in that connection observed that value addition and separate use are also relevant factors which the Courts should consider in deciding the applicability
C of Section 2(f) of the Act. Therefore, value addition based on price difference only without any change in the name, character or end-use is a dangerous criteria to be applied in judging what constitutes "manufacture". Lastly, the end-use in both the entries
D 4803 & 4818.90 is the same, namely, for sanitary or household purposes. In the circumstances, value addition criteria as applied by the Commissioner is erroneous."

E 17. Shri Guru Krishna Kumar, learned senior counsel, also cited two other decisions in support of the proposition that, in fact, manufacture had taken place on the facts of the present case. One such decision, namely, Brakes India
F Limited v. Superintendent of Central Excise and others [1997 (10) SCC 717] dealt with brake lining blanks. It was found on facts that these brake lining blanks purchased by the appellant could not be used as brake linings by themselves without the process of drilling, trimming and chamfering. This judgment
G has been distinguished in para 13 of the judgment which has been cited above, namely, Commissioner of Central Excise, New Delhi v. S.R. Tissues Pvt. Ltd. [2005 (186) E.L.T. 385]. Unlike the facts in the Brakes India Limited judgment, on the facts here, bumpers, grills, etc., are of
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commercial use and liable to duty as such, even without any ED coating. A

18. Shri Guru Krishna Kumar, learned senior counsel, then cited Siddhartha Tubes Ltd. v. Commissioner of Customs & Central Excise, Indore (M.P.)[(2005) 13 SCC 559]. This case again concerned manufacture of galvanised pipes. This court, in a very significant passage, stated: B

> "At the outset, we may state that value is the function of price under section 4(4)(d)(i) of the Act. The concept of "valuation" is different from the concept of "manufacture". Under section 3 of the Act, the levy is on the manufacture of the goods. However, the measure of the levy is the normal price, as defined under section 4(1)(a) of the Act. It is not disputed that galvanization as a process does not amount to manufacture. However, on facts, it has been found by the commissioner that the process of galvanization has taken place before the product is cleared from the place of removal, as defined under section 4(4)(b). Further, on facts, the commissioner has found that galvanization has added to the quality of the product. It has increased the value of the pipes. Hence, the costs incurred by the assessee for galvanization had to be loaded on to the sale price of the pipes. Therefore, the cost had to be included in the assessable value of MS galvanized pipes. We do not find any error in the reasoning of the adjudicating authority." C D E F

19. It is clear, as is apparent from the opening words of Section 4 of the Central Excise Act, 1944, that there must first be manufacture in order to attract the charging section, namely Section 3 of the Central Excise Act, 1944 before one comes to valuation of goods under Section 4. G H

A 20. On the facts of the present case, we have first, therefore, to arrive at whether there is "manufacture" at all and only subsequently does the question arise as to if this is so, what is the valuation of the processed goods and whether duty is payable upon them. We have found on facts that for B the purposes of the proviso to Rule 57F(ii), the inputs that were not ultimately used in the final product but were removed from the factory for home consumption remain the same despite ED coating and consequent value addition. We C follow the law laid down in S.R. Tissues Pvt. Ltd.'s case and state that on account of mere value addition without more it would be hazardous to say that manufacture has taken place, when in fact, it has not. It is clear, therefore, that the inputs procured by the appellants in the present case, continue to D be the same inputs even after ED coating and that Rule 57F(ii) proviso would therefore apply when such inputs are removed from the factory for home consumption, the duty of excise payable being the amount of credit that has been availed in respect of such inputs under Rule 57A.

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21. We now, come to the second argument made by Shri Guru Krishna Kumar, learned senior counsel, namely, that from a reading of Rule 57F (3) and 57F(3A), that Rule 57F(1) should be construed in such a way that the moment F an input which falls under the said Rule has a value addition on account of processing it will cease to be an input covered by the Rule. To appreciate this argument, we set out rule 57F(3) and Rule 57F(3A) which are as follows: -

G (3) [Subject to sub-rule (3A) and notwithstanding] anything contained in sub-rule(1), manufacturer may after intimating the [Assistant Commissioner of Central Excise] having jurisdiction over the factory and obtaining dated acknowledgment of the same, remove the inputs

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as such, or after the inputs have been partially processed during the course of manufacture of final products, to a place outside the factory,-

(a) For the purposes of test, repairs, refining, re-conditioning or carrying out any other operation necessary for the manufacture of the final products and return the same to his factory, for,-

(i) further use in the manufacture of the final product; or

(ii) removing the same without payment of duty under bond for export; or

(iii) removing the same after payment of duty for home consumption.

Provided that the waste, if any, arising in the course of such operation is also returned to the said factory;

(b) for the purposes of manufacture of intermediate products necessary for the manufacture of the final products and return the said intermediate products to his factory, for,-

(i) further use in the manufacture of the final product; or

(ii) removing the same without payment of duty under bond for export; or

(iii) removing the same after payment of duty for home consumption.

Provided that the waste, if any, arising in the course of such operation is also returned to the said factory:

A Provided further that the said waste need not be returned to the said factory after the appropriate duty of excise leviable thereon has been paid.

(3A) Where a manufacturer intends to remove the inputs
B as such, or after the inputs have been partially processed during the course of manufacture of final products to a place outside the factory for the purposes specified in sub-rule(3), the manufacturer shall do so after debiting an amount equivalent to the
C amount of credit of duty attributable to such inputs or the inputs contained in such partially processed inputs;

Provided that, notwithstanding anything contained in rule 57A, the manufacturer shall be eligible to avail of the
D credit of an equivalent amount after the inputs or the processed goods, as the case may be, have been received back in the factory of the manufacturer;

Provided further that the manufacturer shall not take
E credit under this sub-rule unless the inputs or the processed goods, as the case may be, are received in the factory under the cover of the document on which such inputs or partially processed goods were removed from the factory.
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22. It was conceded by Shri Guru Krishna Kumar, learned senior counsel, that for several reasons, the said Rules would not apply to the facts here but that the drift of these rules shows that where inputs are removed to a place
G outside the factory when they are only partially processed, then when they come back after the process, the value addition made on account of such processing would be chargeable to duty under sub- Rule 3A.

H 23. This argument cannot be accepted for two basic

reasons. First, we would be adding words to Rule 57F(1) to the effect that value additions made to inputs covered by sub-rule (ii) would also suffer duty even if there is no manufacture. Second, sub-rule (3) and (3A) apply to an entirely different factual scenario, as has been conceded by learned counsel for Revenue, and it is only after all the conditions under the said sub-rules are met that duty attributable to inputs contained in partially processed inputs would then become dutiable. A B

24. In view there of, we allow this appeal, set aside the judgment of CEGAT and resultantly, the demand made in the show cause notice as reduced by the Commissioner. We hasten to add that the penalty imposed on the appellant has already been set aside by CEGAT's order which part of CEGAT's order will stand. C D

25. The appeal stands disposed of in the aforesaid terms.

Kalpana K. Tripathy Appeal disposed of. E