SUPREME COURT OF INDIA

H.M.M. Limited

Vs.

Collector of Central Excise,

(B Reddy and S C Sen JJ.)

11.10.1996

JUDGMENT

B.P. JEEVAN REDDY.J.

This appeal preferred against the judgment of the CEGAT involves the interpretation of Notification No.210 of 1979- CE dated 4.6.1979, issued by the Central Government under Rule 8 of the Central Excise Rules. The appellant-assessee is engaged in the manufacture, inter alia, of "Horlicks" falling under Tariff item 1-B of the Schedule to the Central Excises and Salt Act. It has a factory at Rajahmundry (Bommur) for manufacturing "Horlicks". The entire stock of Horlicks manufactured at Rajahmundry is, however, not cleared/removed after paying the duty at Rajahmundry. Only a portion of the production is put in unit containers/packages and cleared at Rajahmundry after paying the duty while the bulk of the production is sent to the appellant's factories situated at different places in India in bulk containers. There, the Horlicks is put in unit containers/packages and cleared after paying the duty.

For the purpose of manufacturing Horlicks, the appellant purchases barley malt which was dutiable under Tariff Items 68.

On June 4, 1979, the Central Government issued the aforesaid notification (No.201 of 1979) exempting "all excisable goods .....on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No.68 of the First Schedule to the Central Excises and Salt Act, 1944 have been used, as raw materials or component parts (hereinafter referred as "the inputs") from so mush of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs." Controversy has arisen with respect to the application of the said notification and it is this: the appellant says that it is entitled to take credit of the entire duty paid on barley malt against the duty payable on the Horlicks cleared at Rajahmundry, notwithstanding the fact that the entire quantity of Horlicks manufactured out of the said barley malt is not cleared/removed at Rajahmundry by paying the duty. On the other hand, the Revenue says that the appellant is entitled to take credit at Rajahmundry only of the portion of duty paid on inputs (barley malt) as is proportionate to the Horlicks cleared on paying the duty vis-a-vis the total quantity of Horlicks manufactured out of the said barley malt. The Revenue further says that there is no provision and the appellant is not entitled to transfer the credit to its other factories from where the goods are

cleared on payment of duty. The controversy between the parties can be best understood by taking an illustration (unrelated to the actual facts of the case): the manufacture (respondent) purchases 100 tons of barley malt on which the duty paid is Rs.10,000/-. By using the said 100 tons of barley malt, the respondent manufactures one thousand tons of Horlicks. Out of this one thousand tons, it clears 250 tons of Horlicks from the Rajahmundry factory on paying duty. The remaining 750 tons is sent to the factory situated at Bangalore without paying duty under a bond. The 750 tons is put in unit containers and packages at the Bangalore factory and cleared from there on payment of excise duty. According to the appellant, he is entitled to take credit for the entire duty of Rs.10,000/- (paid on 100 tons of barley malt) from out of the duty payable on 250 tons of Horlicks cleared from Rajahmundry factory, whereas according to the Revenue, since the quantity cleared at Rajahmundry on payment of duty is only 1/4th of the total quantity manufactured using 100 tons of barley malt, the appellant is entitled to take credit of only Rs.2,500/- against the duty payable at Rajahmundry. Revenue also says that the respondent is not entitled to take credit of b balance of Rs.7,500/- (duty paid on 75 tons of barley malt) from out of the duty paid on 750 tons at Bangalore. The question is who is right? Notification No.201 of 1979, insofar as it is relevant, reads:

"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 India in the Ministry of Finance (Department of Revenue) No. 178/77- Central Excises, dated the 18th June, 1977, the Central Government hereby exempts all excisable goods (hereinafter referred as "the said goods"), on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No.68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) have been used, as raw materials or component parts (hereinafter referred as "the inputs", from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs:

Provided that the procedure set out in the Appendix to this notification is followed:

Provided further that nothing contained in this notification shall apply to the said goods which are exempted from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty: ..... APPENDIX

1. A manufacturer of the said goods shall give a declaration to the Superintendent of Central Excise having jurisdiction over his factory, indicating the full description of the said goods intended to be manufactured in his factory and the full description of the inputs intended to be used in the manufacture of each of the said goods.

9.(a) The credit ofduty taken in respect of any inputs may be utilised towards payment of duty on any said goods for the manufacture of which such inputs were declared by the manufacturer to be brought into the factory, or where such inputs are cleared from the factory as such, on such inputs.

(b) No part of such credit shall be utilised save as provided in clause (a) or shall be refunded in cash or by cheque.

10.(a) If the manufacturer desires to discontinue availing of the exemption contained in this notification, he shall give to the proper officer seven days advance notice of his intention to do so.

(b) The proper officer shall, on receipt of such notice, ascertain the stock of the inputs in respect of

which credit has been taken and which-

(i) are lying with the manufacture, whether in the store room or in the manufacturing room, and

(ii) have been utilized in the manufacture of the said goods but such goods have not yet been removed from the factory.

(c) The total stock of inputs so ascertained shall be assessed to duty and the manufacturer shall pay the duty forthwith on receipt of a written demand from the proper officer.

11. On an application from the manufacturer of the said goods, the Collector of Central Excise may permit a manufacturer to transfer the unutilized credit in his account in Form R.B.23 in Appendix I to the Central Excise Rules, 1944 or the stock of the inputs as such or in process on account of

(i) shifting of the plant or factory, belonging to the manufacturer to another site;

(ii) merger of the factory; within another factory;

(iii) transfer of business of the manufacturer to another manufacturer;

Provided that the manufacturer is availing of the exemption granted under this notification in respect of the factory to which the credit or stock is transferred."

(emphasis added)

The first proviso to the notification lays down that the procedure set out in the Appendix to the notification will have to be followed for availing of the credit for the duty paid on the inputs. The Appendix provides that +the manufacturer will+have to give a declaration to the Superintendent of Central Excise having jurisdiction over his factory giving full description of the goods intended to be manufactured in his factory as well as full description of the inputs intended to be used in the manufacture of such goods (Rule 1). The manufacturer may take credit ofthe duty already paid on the inputs which are received by him after submitting the declaration and utilise such credit for payment of duty of excise on the said goods (Rule 2). These rules do not specifically lay down that the credit of duty taken by the manufacturer must be setoff against the duty payable on the goods actually manufactured utilising these inputs. The manufacturer is entitled to take credit of the duty already paid on the inputs as soon as he receives the inputs and submits the necessary declaration to the Excise Officer. He is, thereafter, entitled to utilise the credit for payment o duty of excise on the goods manufactured by him. The rules do not require any exact correlation between the inputs and the finished products for claiming credit for the duty paid on the inputs. It is not a condition precedent for claiming set-off that the manufacturer must prove that-

(a) the credit was taken in respect of inputs; and that

(b) these very inputs were utilised in the manufacture of the goods on which duty is payable.

Rule 2 merely provides that the manufacturer may take credit of the duty already paid on the inputs and utilise such credit for payment of duty of excise on the manufactured goods. The exact correlation of inputs with the manufacture of the goods is not contemplated by this rule. The

position is put beyond doubt by Rule 10 set out hereinabove which provides that if the manufacturer does not want to continue with the system of clearance of goods provided in the notification, he will have to give a notice to the proper officer to that effect. The proper officer will ascertain that stock of inputs in respect of which credit has been taken but were lying unutilized in the store-room or in the manufacturing room. The proper officer shall also ascertain the inputs which have been utilised in the manufacture of the goods but had not yet been cleared from the factory. The total stock of such goods has to be assessed to duty and the manufacturer will have to pay the duty forthwith on receipt of a written demand from the proper officer. This rule became necessary because it is permissible to take credit for duty paid on the inputs and make adjustment thereof against the duty payable on the goods manufactured and cleared by a manufacturer without actually utilising the inputs. A manufacturer may have taken and utilised the credit for inputs which are lying in the store-room. The manufacturer may also have utilised the inputs in manufacturing uncleared goods. In both the cases, duty will have to be paid on the inputs because the credit for the duty paid on such inputs has been availed of by setting off such credit against other goods cleared by the manufacturer. All these rules really go to show that there was no requirement of actual utilisation of the inputs in the manufacture of the goods for the purpose of claiming set-off of duty paid on the inputs against the duty payable on the goods manufactured by the manufacturer. With respect to the main controversy, the Revenue emphasises the words "all excisable goods..... on which a duty of excise is leviable and in the manufacture of which any goods falling under Item No.68.....have been used....from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs." It says that the aforesaid words mean and imply the concept o correlation. In other words, they say that only the duty paid on inputs which have been used for manufacturing the goods cleared from the factory (where the inputs were received) can be taken credit of, as explained in the illustration given hereinabove. On the other hand, the learned counsel for the appellant submits that the words in the body of the notification should be read alongwith the procedural rules mentioned in the Appendix. In particular, he relies upon clauses (9) and (10) of the Appendix. The learned counsel also relies upon the instructions issued by the Central Board of Excise and Customs on 18.6.1979 to the following effect:

"Central Excise - Simplification of procedure regarding Tariff Item 68 - Goods used as "inputs" in the manufacture of finished excisable goods.

Attention is invited to Notification No.201/79-ce, dated the 4th June, 1979 (page---) and a copy of the Press Note issued by the Board is appended. In the Press Note the need for simplifying the procedure of set-off granted in relation to Tariff Item 68 goods under notification No. 178/77-CE dated 18.6.77 has been explained.

2. The revised procedure is based on the lines of rule 56-A of the Central Excise Rules, 1944. Consequently instructions of the Board issued with reference to rule 56-A will also mutatis mutandis be applicable here unless they are inconsistent with the provisions of notification No.201/79. Attention is specification invited to the instructions contained in the Board's letter F.No.211/11-M/77-CX. 6 dated 15.11.77, (as amended) relating to issue of subsidiary gate passes.

[C.B.E. & C. F.NO.223/22/78-CX.6, dated 18.6.79.]

[Cir.No.22/79-CX.6]

PRESS NOTE

When excise duty under Tariff Item 68 was increased from 2% to 5% ad valorem in the 1977 Budget, all excisable goods manufactured out of goods falling under that item were exempted from so much of the duty of excise leviable on them as was equivalent to the duty of excise already paid under it. The exemption was restricted to the duty payable on the finished goods when the duty paid on the "inputs" was more than that on the finished goods.

2. The Trade had been earlier experiencing difficulties in availing of the set-off of duty in relation to those finished excisable goods which had not been notified under rule 56-A the Central Excise Rules. The difficulties were aggravated where innumerable varieties of finished excisable goods were being manufactured and in the manufacture of which goods falling under Tariff Item 68 were used, not necessarily in relation to any fixed formula, but in a particular ratio that can change from time to time and from variety to variety.

Some of the industries that had expressed difficulty on this account were tyres, chemicals, electrical manufactures and grinding-wheels. On account of the innumerable and products and the varying ratios, with alternative usages, manufacturers were furnish it difficult and irksome to furnish the "input" and "output" ratio that would remain constant and eacceptable to the Department.

For claiming set-off of duty paid on Tariff Item 68 furnishing on the ""input" - "output"" ratio was necessary as at the time of claiming the set-off while clearing the finished goods the manufacturers had to satisfy the Central Excise Department about the exact amount of set-off sought to be claimed with reference to the duty paying documents under which the "input" had been received.

3. Government have given considerable thought to alleviating these difficulties. And, now, as measure of facilitation the procedure for claiming this exemption has been substantially simplified. Under the revised notification No.201/79-C.E. issued on 4.6.1977, the cumbersome "set- off" procedure has been given up, and a self contained procedure for claiming the exemption has been prescribed. This procedure is basically on the lines of the perform Credit System prescribed under rule 56-A of the Central Excise Rules, 1944."

(emphasis added)

With a view to explain the procedure obtaining under Rule 36-A, the learned counsel for the appellant brought to our notice Clause (VI) of sub-rule (3) of Rule 56-A of the Central Excise Rules, as it obtained prior to 1973 and as it obtains now i.e., as substituted by the 1973 Amendment: Before Amendment?

(vi) Except to the extent provided in the second proviso to sub-rule (2), the credit allowed in respect of any material or component parts shall be utilised towards payment of duty on the finished excisable goods in the manufacture of which such materials or component parts are used or on the materials or component parts themselves and no part of such credit shall be refunded in cash or by cheque. After Amendment

(vi) (a) The credit of duty allowed in respect of any material or component parts may be utilized towards payment of duty on any finished excisable goods for the manufacture of which such material or component parts were permitted to be brought into the factory under sub-rule (2) or where such material or components parts are cleared from the factory as such, on such material or

component parts.

(b) No part of such credit shall be utilised save as provided in sub- clause (a) or shall be refunded in cash or by cheque." (emphasis added)

The portions underlined by us clearly bring about the conceptual change brought about by the amendment. The correlation provided by the unamended clause (vi) has given way to a permission to utilise the credit (of duty paid on inputs) "towards payment of duty on any finished excisable goods for the manufacture of which such material....were permitted to be brought into the factory." It is significant to note that the language employed in the main body of the notification, upon which strong reliance is placed by the Revenue, is schematically different from the unamended clause (vi) of Rule 56-A(3) (as would be evident from a reading together of the two provisions) whereas the language employed in clause (9) of the Appendix to the notification is in part material with the amended clause (vi). Be that as it may, if one reads only the first para of the notification, one may possibly agree with the Revenue but if one reads the entire notification including Rules 9 and 10 of the Appendix, the contention of the appellant commends itself as the only correct understanding. Not only Rule 9, even Rule 10] indicates, as pointed out above, the absence of a correlation between the inputs and the finished goods. The instructions of the Board do explain the background to Notification 201. (We must make it clear that we are not relying upon the Board's instructions either as binding upon the Courts or as an aid to construction of the notification but only as explaining the background to the issuance of Notification 201.) The change in the language and content of clauses (vi) of sub-rule (3) of Rule 56-A in 1973 is equally relevant in this behalf. It explains why the concept of correlation - or the rule of set-off, as it is referred to in the Press-note was given up and a different method adopted. Clause (9) of appendix to Notification 201, it is significant to note, is in part material with clause (vi) of Rule 56-A(3) (as substituted in 1973). The practical difficulties in implementing the method in force prior to the issuance of Notification 201 and the object underlying the said notification (as also the amendment of clause (vi) of Rule 56-A(3) in 1973) also induce us to accept the appellant's contention in preference to the Revenue's contention.

By accepting the appellant's contention, the object underlying the enactment is in no way defeated nor is the objective underlying the notification No.201 of 1979 defeated. The object underlying the notification is to prevent the cascading effect of duties if levied both on inputs and the finish goods. With a view to make the goods available at comparatively reasonable prices to the consumer, the duty paid on the inputs is deducted out of the duty payable on the finished goods. Acceptance of the appellant's contention effectuates the said object whereas acceptance of the Revenue's contention would tend to defeat the aforesaid objective in a case like the present one. It is true that the notification provides for an exemption and has to be strictly construed but it is equally well-settled that the exemption notifications, as to be construed reasonably having due regard to the language employed. It may also be noticed that both Rule 56-A and notification No.201 of 1979 are actuated which similar considerations and provide for broadly similar concessions. Indeed, that is how the Board has understood these two provisions. Mr. Sridharan, learned counsel for the appellant-manufacturer, has made it clear that appellant is not asking for any transfer of credit to any other factory of the appellant. All that he wants is that the appellant be allowed to take credit of the entire duty paid on inputs (barely malt) received into its Rajahmundry factory as against the duty payable on the goods (Horlicks) cleared at Rajahmundry on payment of duty. This it is entitled to do. For the reasons given above, we are of the opinion that the appellant is entitled to succeed in this appeal. The appeal is accordingly allowed in the above terms. The decision of the Tribunal impugned herein is set aside. There shall be no order as to costs.