

SUPREME COURT OF INDIA

Orissa Extrusions

Vs.

Collector of Central Excise,

(S Bharucha and A Misra JJ.)

03.11.1999

ORDER

S.P. BHARUCHA AND A.P. MISRA, JJ.

1. The appellants manufacture aluminium extrusions of various kinds, including aluminium pipes. An exemption notification (No. 180 of 1988 dated 13th May, 1988), as amended from time to time applied to such products. Item 16 thereof dealt with aluminium pipes conforming to the standards laid down therein. These were liable to nil rate of duty subject to the condition : "(I)f the Assistant Collector of Central Excise is satisfied that such pipes are intended for use in the manufacture of sprinkler equipment for agricultural irrigation purposes." The second proviso to the said notification stated:

Provided further that in respect of goods mentioned against SI. Nos. 1, 5, 6, 7, 10, 11, 12, 14 and 15 of the said Table, the exemption contained in this notification shall not apply if credit of the duty paid on the goods used in their manufacture has been availed under Rule 56A or Rule 57 A of the Central Excise Rules, 1944.

2. The appellants had availed of the exemption under the said Item 16 in regard to pipes that were intended for use in the manufacture of sprinkler equipment for agricultural irrigation purposes. They were issued with a notice to show cause why they should not be made liable in this behalf on the ground that before effecting clearances of such aluminium pipes, they had not reversed the Moved credit amounting to Rs. 29,59,084.15 P. taken on the inputs therein in contravention of provisions of Rule 57A, 57C and 57F of the Central Excise Rules, 1944. Moreover, they had utilised the credit while clearing other products.

3. The show cause notice having been made absolute and an appeal rejected, the appellants moved

the Tribunal.

4. The Tribunal, in dealing with the said notification, said that the scope of such an exemption notification had been set out in a trade notice issued by the Chandigarh Collectorate [1990 (55) E.L.T. T49], which explained the legal position, with which it agreed. It then said that the fact that the said Item 16 did not figure in the second proviso to the notification could only mean that the availment of exemption for such goods is not optional and once the exemption is available, the Moved credit will be subject to the provisions of Rule 57C. In the present case, the appellants have availed the exemption and cleared Aluminium pipes for agricultural purposes. The credit of duty taken in respect of the inputs used by them in their manufacture had been utilised by them for payment of duty on other goods cleared by them on payment of duty. This is what has been objected to by the department....In the present case, as has been discussed, the inputs were utilised for the manufactured final products cleared free of duty. Credit of duty in respect of the said inputs used for such manufacture of products cleared duty free for home consumption has been utilised by them for payment of duty on other non-exempted goods. This is not in accordance with the facility provided under this particular provision, apart from the availment of exemption attracting the sting of Rule 57C.

5. The Tribunal has not applied itself to the terms of the second proviso. The second proviso specifically makes reference to items 1, 5, 6, 7, 10, 11, 12, 14 and 15 and says that in respect of all the goods covered by these Items the exemption given by the notification would not apply if the credit of the duty paid on the inputs had been availed, inter alia, under Rule 57A. Necessarily, it must follow that in respect of goods covered by other items in the Table of the notification, the exemption would be available despite the fact that credit had been taken on the input thereof. What the Tribunal meant by saying that the fact that said Item 16 did not figure in the second proviso could only mean that availment of exemption for goods covered thereby was not optional is not understandable.

6. Learned Counsel for the Revenue drew our attention to Rule 57C, which states that no credit shall be allowed for duty paid on inputs used in the manufacture of final products which are exempt from the whole of the excise duty leviable thereon or are chargeable to nil rate of duty. It would appear that it is for this reason that the said proviso was included in the notification so that the provisions of Rule 57C would not apply in respect of goods not covered by the Items specifically mentioned therein. The exemption notification must be assumed to have been consciously so worded and due effect must be given to the assessee thereunder. It cannot be held that the exemption notification will be inapplicable insofar as it is not in accordance with Rule 57C.

7. In the result, the civil appeals are allowed. The judgment and order under appeal is set aside. Consequential relief will be given to the appellants.

8. No order as to costs.