SUPREME COURT OF INDIA

Bharti Telecom Ltd.

Vs.

Commissioner of Customs

C.A.No.7432 of 2000

(R.P. Sethi and Y.K. Sabharwal JJ.)

07.11.2001

JUDGMENT

Y.K. Sabharwal, J.

1. The appellant imported Polypropylene under the Value Based Advance Licensing Scheme and availed of duty free clearance of the goods claiming exemption under Notification No.203/92 dated 19th May, 1992. According to the department, the appellant was not entitled to the benefit of duty free import as it had violated condition no. (V) (a) of the said notification. That condition was that the export obligation should have been discharged by exporting goods manufactured in India in respect of which no input stage credit is obtained under Rule 56A or 57A of the *Central Excise Rules, 1944*. The department by show cause notice dated 3rd September, 1997 alleged that the appellant had suppressed the fact that it had availed of modvat credit on the inputs used in the manufacture of the exported goods for wrongly availing duty free benefit against the licence. The appellant in response to the show cause notice stated that the advance licence was obtained by it on 1st June, 1993 and it had completed the export obligations by July, 1993. The appellant claimed that it had reversed the modvat credit and rectified the error in their records as far back as in January-February 1994. It was further claimed that the circular dated 3rd January, 1997 issued by the Central Board of Excise and Customs had relaxed the conditions of Notification No.203/92 in cases where the exporter reverses the modvat credit incorrectly availed of by him with payment of interest at the rate of 20% of the amount of the modvat credit. In this view, the appellant sought cancellation of the show cause notice and dropping the charges made against it in the said notice.

2. The circular dated 3rd January, 1997 was followed by Amnesty Scheme dated 10th January, 1997 providing amnesty on reversal of modvat credit and payment of interest where exports were effected under the Value Based Advance Licence before 31st January, 1997. The scheme dated 10th January, 1997 provided the formula for the quantification of the modvat credit required to be reversed to avail the benefit of the scheme. It further provides that in addition to reversal, an interest at the rate of 20% on the amount of modvat credit retained by such exporters for the period between the date of exports and the date of reversal

has to be calculated and deposited by the exporters before 31st January, 1997. It further provides that where credit has already been reversed, the exporters shall deposit the interest amount calculated in the manner prescribed before 31st January, 1997. The Commissioner found that the appellant did not fulfil the conditions of the Amnesty Scheme. The requirement of the scheme not having been fulfilled and the appellant had violated the terms of the exemption Notification No.203/92 by availing modvat credit contrary thereto, the show cause notice was confirmed imposing custom duty and also the interest and the penalty. The appeal filed by the appellant before the Customs, Excise & Gold (Control) Appellate Tribunal partially succeeded inasmuch as order of the Commissioner imposing penalty and demanding interest was set aside but it was confirmed in respect of demand of duty liability to the tune of Rs.52,41,600/-. Challenging the order of the Tribunal, learned counsel for the appellant contends that the respondent was not justified in denying the benefit of the Amnesty Scheme to its client on the ground that it had reversed the modvat credit earlier to the enforcement of the scheme. There is considerable force in the contention. The Amnesty Scheme recognises the already reversed modvat credits. The reversal of credit made by the appellant in 1994 has to be treated at par with the reversal of credits made by exporters after coming into force of the Amnesty Scheme. According to the Amnesty Scheme, the interest for the period between the date of export, and the date of reversal has to be deposited by 31st January, 1997. It was not deposited by the said date. It was deposited only on 7th February, 1997. There is no provision for relaxation or extension of time to deposit the amount of interest. Such schemes or exemption notifications have to be strictly construed. The provision in the notification dated 10th January, 1997 for deposit of interest by a specified date has to be interpreted strictly in the manner stated in the notification and on no other basis. It is well settled that in a taxing statute, there is no room for any intendment and regard must be had to the clear meaning of the words and that the matter should be governed only by the language of the notification, i.e. by the plain terms of the exemption. Learned counsel for the appellant, however, relied upon order dated 21st January, 1997 and 22nd January, 1997 passed by this Court in M/s. Raj Exports v. National Aluminium Co. & Ors. [SLP (C) No.8755/1986] wherein while disposing of the special leave petitions and connected petitions, it was directed that the petitioners in those cases shall be entitled to release of the goods imported without payment of the customs duty. Counsel contends that the said order had reversed the decision of the High Court of Orissa in *Raj Exports v. National Aluminium Co. Ltd.*[1] whereby the High Court had declined to grant relief to the exporter on account of breech of the conditions of the same exemption notification. The orders dated 21st and 22nd January, 1997 relied upon by the learned counsel were passed on the facts of the said case without settling any principle and without reversing principles laid down by the Orissa High Court. It has not been held by this Court that even in case of non-compliance of the conditions of exemption, the exporter shall be allowed to take benefit of the exemption. Further it may be noticed that in case of Raj Exports, interest had been deposited on 18th January, 1997, i.e., before the time prescribed in the Amnesty Scheme. Learned counsel for the appellant lastly contends that the appellant had not violated Notification No.203/92. The submission is that the appellant was manufacturing goods both for home consumption and also for export and it was not possible to segregate input utilized in the manufacture of the final product which was exported, therefore, it was permissible for the appellant to first avail the modvat credit and then to reverse it after export. In support, reliance is placed upon a

decision of this Court in *Chandrapur Magnet Wires (P) Ltd., Nagpur v. Collector of Central Excise, Central Excise Collectorate, Nagpur*[2] and a departmental circular taken note of in that decision. That circular reads as under:

> "3. The credit account under MODVAT rules may be maintained chapterwise. MODVAT credit is not available if the final products are exempt or chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. an end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacturer of the final products, provided that credit of duty paid on the inputs in such exempted final products."

3. Para 8 of the judgment relied upon by the learned counsel reads thus:

> "8. This circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not reasonably possible to segregate inputs utilized in manufacture of the dutiable final products from the final products which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products."

4. The appellant had at no stage took the plea that it was not reasonably possible for it to segregate inputs utilized in the manufacture of the dutiable final products from the final products which are exempted from duty. Now, the appellant cannot be permitted to raise such a new plea. For the aforesaid reasons, the appeal is dismissed with costs.

[1]*1996 (87) ELT 349 (Ori.)*
[2]*[(1996) 2 SCC 159]*