

SUPREME COURT OF INDIA

M/s. Amco Batteries Ltd, Bangalore

Vs.

Collector of Central Excise, Bangalore

C.A.Nos.5941 of 1999

(M.B. Shah and D.M. Dharmadhikari JJ.)

26.02.2003

JUDGMENT

M.B. Shah, J.

1. It is apparent that in taxation matters, amendments, clarifications, exemption notifications, or their withdrawal play an important role in increasing litigation. Repeatedly, it is stated that law and procedure thereunder is required to be streamlined and simplified, yet clarifications, amendments and notifications are issued creating confusion and leaving Judges and Lawyers to search for their exact meaning. In such a state of affairs, in some cases, it is difficult to draw inference of fraud, wilful concealment or suppression of facts so as to attract penal consequences.

2. Short facts of the case are that appellant is engaged in manufacture of lead acid electric storage batteries and parts thereof falling under Tariff Heading 85.07 in its two factories, one at Hebbal and other at Mysore Road plant. Lead in the form of ingots is the main raw material required for manufacture of the batteries. During the course of manufacture of the parts, certain quantities of waste and scrap is sent to the job workers who manufacture ingots out of that and return its ingots to the appellant who use the same in the manufacture of their final products. The question is with regard to payment of excise duty on waste and scrap sent to the job workers. After issuance of show cause notice and adjudicating the matter, the authority confirmed demand of duty and imposed penalty for the period from 1st March, 1986 to 13th August, 1989. That order was challenged before the Tribunal.

3. Admittedly, appellant obtains lead ingots from following four sources:-

- 1) imports by appellant on payment of additional duty of customs.
- 2) Duty-paid lead ingots obtained through MMTC.
- 3) Ingots purchased from refiners.

4) Ingots received from job workers to whom waste & scrap of lead was sent without payment of duty to convert them into leading ingots.

4. For the purchase of ingots from first and second source, there is no dispute. With regard to the third source, namely, ingots purchased from refineries, it is exempted under Notification 37/81-CE. The relevant part of the said notification which is quoted by the Tribunal is as under:-

"The Central Government hereby exempts lead unwrought, falling under heading No. 78.01 of the Schedule to the *Central Excise Tariff Act, 1985* (5 of 1986), if such lead unwrought is produced out of one or more of the following materials, from the whole of the duty of excise leviable thereon, namely :-

(a) old scrap of lead;

(b) scrap obtained from lead unwrought on which appropriate amount of duty of excise, or, as the case may be, the additional duty leviable under Section 3 of the *Customs Tariff Act, 1975* (51 of 1975) has been paid;

(c) lead waste and scrap, falling under heading No. 78.02 on which appropriate amount of duty of exercise, or, as the case may be, the additional duty leviable under section 3 of the *Customs Tariff Act, 1975* (51 of 1975), has been paid;

(d) lead ash, lead slag lead residues."

5. Thereafter, scrap was exempted under notification No. 186/84-CE, dated 1.8.1984. Relevant part of the Notification is as under:-

"The Central Government hereby exempts wastes and scrap of lead, falling under sub-heading No. 7802.00 of the Schedule to the *Central Excise Tariff Act, 1985* (5 of 1986) from the whole of the duty of excise leviable thereon under section 3 of the *Central Excise and Salt Act, 1944* (1 of 1944) :

Provided that such waste and scrap –

(i) are manufactured from goods, falling under the Heading Nos. 78.01 to 78.05 of the said Schedule on which the duty of excise leviable under the said section 3 of the additional duty leviable under the *Customs Tariff Act, 1975* (51 of 1975), as the case may be, has already been paid, or

(ii) arise from goods, falling under any Heading or sub-heading No. of the same Schedule other than Heading Nos. 78.01 to 78.05 thereof manufactured or produced in India.

Explanation :- For the purpose of this notification all stocks of lead and products thereof in the country, except such stocks as are clearly recognizable as being non-duty-paid, shall be deemed to be lead and products thereof on which the duty has already been paid."

6. Further, by notification 246/87-CE dated 2.11.1987, 2nd proviso to the notification 186/84-CE (as amended) was added immediately before the existing Explanation. Said proviso is also reproduced below:-

"Provided further that the exemption contained in this notification shall apply only if :-

No credit has been taken on the input from which such scrap has been generated under rule 57A of the Central Excise Rules, 1944; or

(ii) an amount equivalent to the credit taken, if any, on the input from which such scrap has been generated, has been debited back in the RG 23A account or the current account maintained by the assessee."

7. At the time of hearing of these appeals, learned counsel for the appellant has only submitted that there was no wilful suppression on the part of the appellant and hence, extended period under proviso to sub-section (1) of Section 11A of the Central Excise Act (hereinafter referred to as "the Act") ought not to have been invoked.

8. It is admitted that during the manufacture of batteries from the ingots received by first and second source, waste and scrap of lead emerges. Such scrap is removed by the appellant and sent to the job workers which are small units engaged in recovery/reclaiming of metal from the scrap. The recovered metal in the form of lead ingots is returned by the job workers to the appellant and the appellant uses the same for manufacture of batteries. Admittedly, there is no sale of scrap by the appellant to the job workers. The entire movement of the scrap to the job workers and receipt of the ingots from the job workers is recorded in the regular books of accounts and proper documentation is maintained in the form of delivery challans.

9. It has also been pointed out that lead ingots, scrap and batteries are all covered by the MODVAT scheme even during the relevant period. Since the scrap is ultimately used in the manufacture of batteries, even if any duty is paid/payable on the scrap, the same is available as MODVAT credit to the appellant. Thus the exercise of payment of excise duty was entirely revenue neutral.

10. From the facts stated above, particularly the fact that entire movement of waste and scrap to the job workers and receipt of ingots manufactured by the job workers is recorded in regular books of accounts and proper documentation is maintained in form of delivery challan and that there was no reason for the appellant to suppress as it was entitled to have facility of MODVAT Scheme, it would be difficult to hold that there was any wilful suppression on the part of the appellant which would empower the authorities to invoke extended period of limitation under proviso to section 11A(1) of the Act. This has been made

clear repeatedly by this Court. In *M/s. Padmini Products v. Collector of Central Excise, Bangalore*¹ this Court held that something positive other than mere inaction or failure on the part of the manufacturer or producer of conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established before it is saddled with any liability beyond the period of six months. The Court pertinently observed that mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act.

11. In the present case also, there is no material on record from which it could be inferred or established that duty of exercise was not levied or paid by reason of any fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or the Rules made thereunder with intent to evade payment of duty. It was a bona fide belief on the part of the appellant that scrap and waste, which was recovered while manufacturing batteries, was exempt from levy of excise duty. Further, appellant was entitled to get benefit of MODVAT scheme, therefore, there was no justifiable reason for the appellant to suppress any fact.

12. In the result, the appeals are partly allowed. The matters are remitted to the Adjudicating Authority to modify the demand by confining it to the period of six months prior to issue of show cause notice and pass consequential orders.

13. Ordered accordingly. There shall be no order as to costs.
Appeals partly allowed.

¹(1989) 4 SCC 275