

**SUPREME COURT OF INDIA**

International Auto Limited

Vs.

Commissioner of Central Excise, Bihar

C.A.No.176 of 2000

(C. K. Thakker, Ruma Pal and Arijit Pasayat JJ.)

17.03.2005

**JUDGMENT**

**C. K. Thakker, J.**

1. In C.A. No. 176/2000:

“The appellant is a job worker manufacturing floor plates assemblies for TELCO. These floor plate assemblies are used by TELCO in the manufacture of excavators. TELCO made available several inputs to the appellant for the purpose of manufacture Of the assemblies on which credit had been taken by TELCO. The appellant used TELCO's inputs as well as. Its own inputs in manufacturing the assemblies. It cleared the assemblies from its factories upon payment of excise duty on the completed floor plate assemblies by including the value of only the inputs put in by the appellant and adding thereto its service charges.”

2. By show cause notice dated 22-2-1994, the appellant was called upon to show cause as to why it should not be charged with short levy of excise duty for the period 28-2-1993 to 31-8-1993 on the ground that the value Of the TELCO's inputs in the assemblies should have been included in the assessable value of the assemblies.

3. The Departmental Authorities confirmed the demand and also levied penalty on the appellant's having negatived its contention that the demand was in any case barred by limitation.

4. The Tribunal upheld the finding of the Departmental Authorities on the basis of the decision of this Court in Burn Standard Company Ltd. and another v. Union of India - = but reduced the penalty to Rs. 25, 000/-.

5. Before us learned Counsel appearing on behalf of the appellant has submitted that the entire transaction between fie TELCO and the appellant was covered by Rule 57F(2)(b) of the *Central Excise Rules, 1944*. Under these Rules the assessee is the manufacturer of the

final product, in this case, excavators. The manufacturer of the final product is permitted to remove inputs to a place outside the factory for the purpose of manufacture of intermediate products so that they are returned to the factory for further use in the manufacture of final products. In such a case the credit is taken by the manufacturer of the final products on the inputs purchased by it which are made available to the intermediate product producer. Modvat credit is taken by the manufacturer of the final product on the inputs supplied by it to the manufacturer of the intermediate products which credit is reversed ultimately when the final product is removed from such manufacturers' factory. As far as the appellant, (the intermediate purchaser) is concerned, it is not liable to pay duty on the inputs supplied by TELCO since it had not taken the credit for the Modvat in respect of inputs. It is submitted that it cannot be called upon to pay the duty in respect of those inputs nor can the value of the inputs be added to the excisable value of the assemblies.

6. We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore/ be entitled not only to adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were supplied free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.

7. In this appeal as we have already noted, the final product was the excavator. According to the Modvat scheme, it is the Modvat of such final product which would have to include the cost of the inputs and in respect of which Modvat credit could be taken at the time of clearance of the final product. The Tribunal having misconstrued the provisions of Rule 57F(2)(b), its decision cannot stand. The decision of the Tribunal is accordingly set aside and the appeal is allowed. In C.A. Nos. 4086-87/2001:

8. For the reasons elaborated by us in the judgment delivered in C.A. No. 176/2000 (M/s. International Auto Ltd. v. Commissioner of Central Excise, Bihar) these appeals must be allowed. The penalty imposed on the appellant is set aside. However, it is recorded that the appellant is not claiming refund of any duty that had been paid by it pursuant to the demand which is set aside by us.

9. These appeals are accordingly allowed.