

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL No. 1571 of 2001

Commissioner of Central Excise, Delhi

Appellant (s)

Versus

M/s. N.M. Nagpal (P) Ltd.

Respondent (s)

(with office report)

with  
CA No. 7785/2001(With appl(s) for c/delay in filing appeal, stay with office report)

CA No. 1702/2002 (with office report)

CA No. 652/2003 (With appl(s) for stay and office report)

CA Nos. 604-606/2004 (With appl(s) for stay and office report)

C.A Nos. 4957-4959/2004 (With appl(s) for stay and office report)

C.A. Nos. 1666-1668/2005 (With appl(s) for c/delay in refiling appeal with office report)

Date: 03/05/2006 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE DR. JUSTICE AR.LAKSHMANAN

For Appellant(s) Mr. K. Radhakrishnan, Sr. Adv.  
in all matters Mr. T.A. Khan, Adv. for  
except CA 1666- Mr. P. Parmeswaran, Adv..  
1668/05 and for Mr. Shreekant N. Terdal, Adv.  
respondent in  
CA 1666-1668/2005

For Respondent(s) Mr. V. Lakshmikumar, Adv.  
Mr. Alok Yadav, Adv.  
Ms. Muskan Bedi, Adv. for  
Mr. V. Balachandran, Adv.(in CA 1571, 4988/01 & 1702/02)  
Mr. M.P. Devanath, Adv.(in CA 652/03)  
Mr. Rajesh Kumar, Adv.(in CA4957-4959/2004)  
Mr. Rajan Narain, Adv.(in CA 604-606/2004)

and for appellant(s)

in CA 1666-1668/05

in CA 7785/2001

Ms. B. Vijayalakshmi Menon, Adv.  
Ms. Sunita Ojha, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

CA Nos. 1571 & 7785 of 2001 and CA No.1702/2002

Delay condoned in CA No. 7785/2001.

The Appeals are allowed and the matter is remitted back to the Tribunal for a fresh decision in accordance with law. Parties shall bear their own costs.

CA No. 652/2003

The Appeal is dismissed. No costs.

List the remaining cases as part-heard.

(J.S. Rawat)  
AR-cum-PS

(Parveen Kr. Chawla)  
Court Master

(Khushi Ram)  
Court Master

[Signed Orders are placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1571 OF 2001

Commissioner of Central Excise, Delhi

..Appellant

Versus

M/s N.M.Nagpal (P) Ltd.

..Respondent

WITH

CIVIL APPEAL NOS.7785/2001 & 1702/2002

O R D E R

Delay in Civil Appeal No. 7785 of 2001 is condoned.

This order shall dispose of three appeals as the point involved in the appeals is the same. For the sake of convenience, the facts are taken from Civil Appeal No. 1571 of 2001.

This is a Statutory Appeal filed under Section 35L(b) of the Central Excise

Act, 1944 (for short 'the Act') against the final Order Nos.1424/2000-B dated 20.9.2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal) in Appeal No. E/228/2000-B.

Respondent-assessee manufacturer Cellular Sheets falling under heading 3921.00, Helmet inserts falling under heading 6501.90, Styrene Monomer falling under heading 2902.00, Polystyrene Beads falling under heading 3903.00, Polystyrene Expandable in Powder form and Reclaimed Plastics containers, both falling under heading 3903.00 in addition to Cellular articles for the conveyance or packing of the articles of plastics falling under headings 3923.90 and 3924.90.

Government of India issued Notification No. 5/98-CE dated 2nd June, 1998 providing therein the exemption from payment of duty on articles falling under headings 3923.90 and 3924.90 with the condition:

"10. The manufacturer does not avail of credit of duty paid under rule 57-A or 57-B on the products mentioned in column (2) or on any other products manufactured in the same factory."

Respondent was issued a Show Cause Notice dated 25th February, 1999, inter alia, alleging as under:

"..3. Whereas, on going through the said exemption Notification, it appears that at Sl. No.69 of the said Notification, full exemption upto clearance of Rs. 85 lacs w.e.f. 2.6.1998 is allowed for goods other than goods of polyurathanes, insulted(sic) ware and bags or socks made out of fabrics falling under H.Nos.39.23,39.24 or 39.26 subject to condotion No.10 of the annexure to the said notification. The said condition No.10, provides that the Manufacturer does not avail of credit of duty paid under Rule 57A or 57-B on the products mentioned in column (2) or on any other product manufactured in the same factory. Whereas the party had been manufacturing and clearing both exempted and dutiable goods in and from the same registered factory premises and have been

simultaneously availing MODVAT facility for the remaining goods. The exemption notification under condition at Sl. No.10, restricts the manufacturer from availing of MODVAT facility in respect of even any other products being manufactured in the same

factory."

The Show Cause Notice was made absolute.

Aggrieved against the order passed by the authority-in-original, respondent

filed the appeal before the Tribunal which has been accepted by passing the impugned order. The order-in-original has been set aside. Tribunal has held that the assessee was entitled to the exemption from payment of duty under notification 5/98-CE.

Exemption under the notification is available subject to the conditions

specified at Sl. No.10 of the annexure to the notification. A perusal of condition No.10

shows that exemption under the notification is available subject to the condition that the

manufacturer does not avail of credit of duty (i) on the products mentioned in column 2

of Sl. No.69 of the notification or (ii) on other products manufactured in the same

factory. There is no dispute on the point that respondent had not availed of the credit of

duty paid on the products mentioned in column 2 i.e. products falling under heading

39.23, 39.24 and 39.26. Exemption has been denied to the respondent on the ground

that it was availing of MODVAT credit on the inputs under Rules 57-A or 57-B which

were used in or in relation to the manufacture of other final products manufactured by

the respondent. This is evident from the allegation made in the show cause notice as

well as the finding recorded by the authority-in-original. Tribunal accepted the appeal

by observing:

"....As it is not the case of the department that the appellants (respondent herein) have availed of credit of duty paid on any other product manufactured in the same factory, the benefit of notification No.5/1998

(Sl.No.68) cannot be denied to the impugned goods....."

Counsel for the revenue contended that the above-mentioned finding given by

the Tribunal is contrary to the record and the case put forth before the Tribunal. Mr.

V.Lakshmikumarn, learned advocate appearing for the respondent submits th at the

credit taken by the respondent under Rule 57-A and 57-B on "any o ther products

manufactured in the same factory" has been off-set by payment of the applicable/full

duty on the finished goods. No such clear cut finding has been recorded by the

Tribunal.

Since the Tribunal has not recorded any clear cut finding on this point, we

accept these appeals; set aside the orders passed by the Tribunal and remit the cases

back to the respective Tribunal for a fresh decision in accordance with law. All

contentions except the finding recorded by the Tribunal on the question of limitation

shall be open to the parties.

The Appeals are allowed in the above terms. Parties shall bear their o wn costs.

.....J.

.....  
[ASHOK BHAN]

NEW DELHI;  
.....J.

.....

MAY 03, 2006.

[Dr. AR. LAKSHMANAN]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 652 OF 2003

Commissioner of Central Excise, Delhi-III

Appellant(s)

Versus

M/s. Innovative Teck Pack Ltd.

Respondent(s)

O R D E R

The present appeal under Section 35L(b) of the Central Excise Act, 1944 [for short "the Act"] has been filed by the Revenue impugning order No. 109/02-C dated 15th April, 2002 in Appeal No. E/2509/01-C passed by the Customs, Excise and gold (Control) Appellate Tribunal, New Delhi [for short "the Tribunal"] . The Tribunal, by the impugned order, has allowed the appeal filed by the assessee and set aside the order passed by the Commissioner affirming the demand created in the show cause notice dated 2nd of March, 2001 and held that the respondent-assessee (assessee) is entitled to avail the benefit of the exemption Notification No. 5/99 dated 28th February, 1999.

Facts giving rise to the present appeal in brief are :

That the assessee has two factories - one, bearing No. 33 situated at Roz Ka Meo, Industrial Area Sohna, District Gurgaon (Haryana) and the

other bearing No. 51 situated at Roz Ka Meo, Industrial Area Sohna, District Gurgaon (Haryana) in the same name and style. The assessee is engaged in manufacturing plastic pet jars, bottles, capes etc. falling under Chapter Heading 3923.90 of the Central Excise Tariff Act, 1985. In the first factory the assessee were availing the benefit of Notification No.5/99-CE in respect of the goods manufactured therein while in the second factory the assessee were clearing the goods on payment of duty at full tariff rates and were availing the benefit of MODVAT credit of duty paid on the inputs received in this factory. Benefit of the notification was denied to the assessee on the ground that the assessee was availing the benefit of MODVAT credit in respect of the inputs of the first factory. The contention of the assessee was that the condition in the notification is in respect of the goods manufactured in the factory whereas the Revenue's case was that exemption is available to the manufacturer and not to the goods as the assessee was one and the same person, manufacturing such goods in both the units; since in one of the units owned by the assessee was availing the MODVAT credit, the exemption was not available under the Notification. As against this contention of the assessee was that in the unit where the benefit of notification is being availed, the assessee was not having any MODVAT credit in respect of any other product, therefore, the assessee was entitled to the benefit of the notification in question. Condition No.10 of the Notification No.5/99-CE dated 28th February, 1999 which is under

consideration is as under:

"10. The manufacturer does not avail of credit of duty paid under rule 57A or 57B on the products mentioned in column (2) or on any other product manufactured in the same factory."

The demand created under the Show cause notice was confirmed by the authority in original, aggrieved against which the assessee filed appeal before the Tribunal, which has been accepted by the impugned order. The

Tribunal held as under:

"8. Reading of the above condition provides that if the manufacturer has not availed the MODVAT credit in respect of the duty paid of inputs in respect of the goods mentioned in column No. 2 or any other product manufactured in the same factory benefit of notification is available in respect of the specified goods. The intention of the notification is to put restriction on the manufacturer not to avail the credit of duty on the product in respect of which the exemption is availed or on any other product manufactured in the same factory. The condition No.10 of the notification does not mention that the manufacturer could not avail the MODVAT credit in all the factories under him. ...."

We agree with the view taken by the Tribunal and find no ground

to interfere with the same. The appeal is dismissed. No costs.

.....J.  
(ASHOK BHAN)

New Delhi; .....J.  
May 03, 2006. (Dr. AR. LAKSHMANAN)