
(2003) 03 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No's. 11441-11442 of 1995

Collector of Central Excise, New Delhi

APPELLANT

Vs

Universal Electrical Industries and Another

RESPONDENT

Date of Decision : 11-03-2003

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Central Excises and Salt Act, 1944 — Section 5A(1)

Citation : AIR 2003 SC 3434 : (2003) AIRSCW 1929 : (2003) 86 ECC 281 : (2003) 108 ECR 21 : (2003) 153 ELT 266 : (2003) 3 JT 358 : (2003) 3 SCALE 198 : (2003) 4 SCC 337 : (2003) 2 SCR 920 : (2003) 2 Supreme 915

Hon'ble Judges : S. S. M. Quadri, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Anoop G. Chaudhary, Sanjiv Sen, Rajiv Shakdher and June Chaudhary, for the Appellant; V. Lakshmikumaran, Alok Yadav and V. Balachandran, for the Respondent

Final Decision : Allowed

Judgement

Syed Shah Mohammed Quadri, J.—The Revenue is in appeal, against the common order of the Customs, Excise and Gold (Control) Appellant Tribunal, New Delhi [for short, 'the Tribunal'] in Appeal Nos. E/2114/91-B and E/3349/91-B, filed by the assessee, dated 6th December, 1993.

2. For appreciating the question raised in these appeals, it will suffice to refer to the facts in the case of M/s. Universal Electrical Industries, the assessee. The assessee manufactures electric toasters, room heaters, electric fans etc. It is a small scale industry claiming benefit of Notification No. 175/1986-C.E. dated 1st March, 1986 [for short, 'the notification']. The assessee has been clearing the goods under the notification, both the inputs as well as the finished goods. On August 6, 1990, a show-cause notice was issued to the assessee calling upon it to explain as to why the benefit of the said notification should not be denied to it. After considering the reply filed by the assessee, the jurisdictional Collector took the view that Explanation III to the notification would be attracted only when the

inputs as well as the finished goods are cleared under the notification and as the finished goods were granted exemption under other notifications, he confirmed the demand of duty of Rs. 1.88 lakhs. On appeal by the assessee, the Tribunal allowed the appeal, by majority, by the order impugned in these appeals.

3. Mr. Anoop G. Chaudhary, learned senior counsel appearing for the Revenue, vehemently contends that Explanation III can be invoked only if the finished goods are cleared under the notification and inasmuch as the finished goods are exempted under a different notification and would be deemed to be cleared under that notification, the assessee cannot get the benefit of Explanation III to the notification.

4. Mr. V. Lakshmikumaran, learned counsel appearing for the assessee, on the other hand, with equal vehemence, submits that when there is a general exemption for clearance of the finished goods, that factor cannot be taken against the small scale industry, like the respondent; in computing the aggregate value for availing the benefit of the notification, submits the learned counsel, Explanation II and Explanation III have to be read together to ascertain the true intention. It would be clear from Explanation II that the clearance under different notifications granting exemption has to be excluded; so also from Explanation III, it is evident that clearance under the notification in regard to the inputs has also to be excluded.

5. To appreciate the contention of the learned counsel, it will be apt to refer to the relevant part of Notification No. 175/1986-C.E. dated 1st March, 1986:

"Exemption to first clearances of specified goods upto the value of rupees fifteen lakhs and concessional duty on subsequent clearances in the case of manufacturer having clearances not exceeding rupees one and a half crores in the preceding year.-- In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 85/85-Central Excises, dated the (sic)th March, 1985, the Central Government hereby exempts the excisable goods of the description specified in the Annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), (hereinafter referred to as the 'specified goods'), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from one or more factories,--

xx x xx Explanation II.--For the purpose of computing the aggregate value of clearances under this notification, the clearances of any excisable goods which are chargeable to nil rate of duty or, which are exempted from the whole of the duty of excise leviable thereon by any other notification (not being a notification where exemption from the whole of the duty of excise leviable thereon is granted based upon the value or quantity of clearances made in a financial year) issued under Sub-rule (1) of Rule 8 of the said Rules, 1944, or Sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) shall not be

taken into account.

Explanation III.--Where any specified goods (hereinafter referred to as inputs) are used for further manufacture of specified goods within the factory of production of inputs, the clearances of such inputs for such use shall not be taken into account for the purposes of calculating the aggregate value of clearances under this notification."

6. A plain reading of the notification shows that the Government of India, in exercise of the powers conferred under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 (for short, 'the Rules'), has exempted excisable goods of the description specified in the annexure thereto and falling under the Schedule to the Central Excise Tariff Act, 1985 [hereinafter referred to as 'the specified goods'].

7. It is not in dispute that the inputs as well as the finished goods manufactured by the assessee answer the description of the 'specified goods'. The short question that remains to be resolved is, for the purposes of claiming exemption under the notification, how should the aggregate value be arrived at? It is in that context that a reference to Explanation II would be relevant. It says that for the purposes of computing the aggregate value of clearances under the notification, the clearances of excisable good which are chargeable to 'nil' rate of duty or which are exempted from the whole of duty of excise leviable thereon by any notification issued under Sub-rule (1) of Rule 8 of the Rules shall not be taken into consideration. In this case, as the finished goods are, admittedly, exempted under Notification Nos. 155/1986, 160/1986 and 124/1988, the value of the exempted finished goods will have to be excluded in arriving at the aggregate value for the purposes of the notification.

8. Now, coming to Explanation III, it provides that where inputs which are specified goods, are used within the factory of production for further manufacture of finished goods which are also specified goods, the clearance of such inputs for such use shall not be taken into account for the purpose of calculating the aggregate value of clearances under this notification. There appears to be a rationale behind this Explanation; firstly, when the value of the finished goods, which are exempted under different notifications, is to be excluded, having regard to the wording of Explanation II, on the same analogy, the value of inputs which are being used for manufacture of finished goods are also excluded as both are specified goods, subject, of course, to the limit of the notification. Secondly, the notification provides relief to small scale industries; when the inputs which enjoys the exemption under the notification have already been dealt with, there is no reason why the value of the same inputs again be added for the purposes of aggregate value. It follows that the assessee would be entitled to the benefit of Explanation III while computing the aggregate value for the purposes of availing exemption under the notification.

9. In this view of the matter, we find no illegality in the order of the Tribunal. The

appeals are, therefore, dismissed with costs.