

(1999) 08 SC CK 0086

In the Supreme Court Of India

Case No : C.A. No. 10176 of 1996 etc. etc.

Collector of Central Excise, Pune Etc. Etc.

APPELLANT

Vs

Dai Ichi Karkaria Ltd. Etc. Etc.

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Central Excise (Valuation) Rules, 1975 — Rule 2, 3, 4, 5, 57
Central Excises and Salt Act, 1944 — Section 4(1)
Customs Tariff Act, 1975 — Section 3

Citation : AIR 1999 SC 3234 : (1999) AIRSCW 3205 : (1999) 65 ECC 354 :
(1999) ECR 4 : (1999) 112 ELT 353 : (1999) 5 JT 595 : (1999) 4 SCALE 669 :
(1999) 7 SCC 448 : (1999) 1 SCR 360 Supp : (1999) 7 Supreme 456

Hon'ble Judges : S. P. Bharucha, J;R.C. Lahoti, J;N. Santosh Hegde, J

Bench : Full Bench

Advocate : Soli J. Sorabjee, Attorney General, C.S. Vaidyanathan, Additional Solicitor General Gupta, Joseph Vellapally, Harish N. Salve, N.K. Bjpai, Dalip Tandon, Nisha Bagchi, K.C. Kaushik, Hemant Sharma, K. Swamy, Jaideep Gupta, P. Parmeshwaran, Trideep Pais, B. Sunita Rao, B.V. Desai, Siddharth Chowdhary, Tarun Gupta, Ravinder Narain, Sanjeev Sen, Sajan Narain, Bhawana Ahuja, Monica Singhal, V. Lakshmikumar, A.R. Madhav Rao, K. Srinivas, P.K. Sahu, M.L. Lahoty, Paban K. Sharma, Himanshu Shekar, K.J. John, P. Venugopal, P.S. Sudheer, C.N. Sreekumar, P. Sureshan, Radha Rangaswamy, Mohna Madanlal, Pallavi Choudhary, A.K. Goel, S.S. Shamsheery, Sheela Goel, K.K. Mohan, G. Umamathy, R.K. Sharma, Sanjay Grover, Rajesh Kumar, Dinesh Kumar Garg, Sanjay R. Hegde, M.P. Vinod, A.S. Pundir, Sarla, Priya Hingorani and Aman Hingorani for the appearing parties, for the Appellant;

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—It is convenient to set out, at the outset, the question involved in these appeals.

2. The manufacturer purchases raw material. He uses the raw material in the manufacture of an intermediate product. He then uses the intermediate product in the manufacture of a final product. The raw material and the intermediate

product are liable to excise duty and they are specified goods for the purposes of the MODVAT scheme. The assessable value of the intermediate product for the purposes of excise duty has, it is agreed in the instant case, to be determined on the basis of its cost. In determining the assessable value of the intermediate product the cost of the raw material has to be taken into account. The question is: is part of the cost of the raw material the price paid by the manufacturer to its seller, as contended by the Revenue, or is it the price of the raw material less the excise duty thereon, which has been paid by the seller and for which the manufacturer is entitled to credit under the MODVAT scheme, to be utilised against the payment of excise duty on products manufactured by him, including the intermediate product, as contended by the manufacturer.

3. The Central Excise and Gold Control Appellate Tribunal decided the question in favour of the respondent-manufacturers and the Revenue is in appeal. The reasoning of the Tribunal is unclear and has not been relied upon by learned Counsel for the manufacturers. Broadly put, the logic of its decision is this: since the manufacturer gets credit for the amount of the excise duty that has been paid on the raw material, the amount of such excise duty cannot be said to form a part of the cost that is incurred by the manufacturer in procuring it.

4. It was argued on behalf of the manufacturers that the Revenue itself had taken a stand that supported the manufacturers and that, therefore, it could not now urge to the contrary. The learned Attorney General, however, pointed out, with the reference to documents, that the stand of the Revenue had been different at different times. The divergent stand of the Revenue at different times only serves to illustrate the difficulty in answering the question.

5. In the first appeal the manufacturer, M/s. Dai Ichi Karkaria Ltd., purchases a raw material known as 'lab' for short, it uses the 'lab' in the manufacture of an intermediate product, surface active agent or surfactant. It uses the surfactant in the manufacture of a final product, emulsifier. The other respondent manufacturers purchase other raw materials, manufacture other intermediate products and use them in manufacturing other final products. We are here concerned with the assessment for the purposes of excise duty of the intermediate product. For the sake of convenience, therefore, we shall refer to the intermediate product as the excisable product.

6. To understand the contentions in the appeal, it is necessary to set out the provisions of Section 4 of the Central Excises and Salt Act, 1944 ('the Act') and some provisions of the Central Excise (Valuation) Rules, 1975.

Section 4. Valuation of excisable goods for purposes of charging of duty of excise - (1) Where under this Act, the duty of excise is chargeable on any excisable goods with reference to value, such value shall, subject to the other provisions of this section, be deemed to be-

(a) the normal price thereof, that is to say, the price at which such goods are ordinarily sold by the assessee to a buyer in the course of wholesale trade for

delivery at the time and place of removal, where the buyer is not a related person and the price is the sole consideration for the sale:

Provided that -

(i) where, in accordance with the normal practice of the wholesale trade in such goods, such goods are sold by the assessee at different prices to different classes of buyers (not being related persons) each such price shall, subject to the existence of the other circumstances specified in Clause (a), be deemed to be the normal price of such goods in relation to each such class of buyers;

(ii) where such goods are sold by the assessee in the course of wholesale trade for delivery at the time and place of removal at the price fixed under any law for the time being in force or at a price, being the maximum, fixed under any such law, then, notwithstanding anything contained in Clause (iii) of this proviso, the price or the maximum price, as the case may be, so fixed, shall, in relation to the goods so sold, be deemed to be the normal price thereof;

(iii) where the assessee so arranges that the goods are generally not sold by him in the course of wholesale trade except to or through a related person, the normal price of the goods sold by the assessee to or through such related person shall be deemed to be the price at which they are ordinarily sold by the related person in the course of wholesale trade at the time of removal, to dealers (not being related persons) or where such goods are not sold to such dealers, to dealers (being related persons), who sell such goods in retail.

(b) where the normal price of such goods is not ascertainable for the reason, that such goods are not sold or for any other reason, the nearest ascertainable equivalent thereof determined in such manner as may be prescribed.

(2) Where, in relation to any excisable goods the price thereof for delivery at the place of removal is not known and the value thereof is determined with reference to the price for delivery at a place other than the place of removal, the cost of transportation from the place of removal to the place of delivery shall be excluded from such price.

(3) The provisions of this section shall not apply in respect of any excisable goods for which a tariff value has been fixed under Sub-section (2) of Section 3.

(4) For the purposes of this Section -

(a) 'Assessee' means the person who is liable to pay the duty of excise under this Act and includes his agent;

(b) 'place of removal' means -

(i) a factory or any other place or premises of production or manufacture of the excisable goods; or

(ii) a warehouse or any other place or premises wherein the excisable goods have been permitted to be deposited without payment of duty, from where such

goods are removed;

(c) 'related person' means a person who is so associated with the assessee that they have interest, directly or indirectly, in the business of each other and includes a holding company, a subsidiary company, a relative and a distributor of the assessee, and any sub-distributor of such distributor.

Explanation - In this clause "holding company", 'subsidiary company' and 'relative' have the same meanings as in the Companies Act, 1956 (1 of 1956);

(d) 'value', in relation to any excisable goods, -

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of the packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation - In this sub-clause, 'packing' means the wrapper, container, bobbin, pirn, spool, reel or warp beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale.

Explanation - For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of -

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods.

And the effective duty of excise on such goods under each Act referred to in Clause (a) or Clause (b) shall be -

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, [or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid] on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act, in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods.]

(e) 'wholesale trade' means sales to dealers, industrial consumers, Government,

local authorities and other buyers, who or which purchase their requirements otherwise than in retail.}]'

7. 'Value' by reason of Rule 2(c) of the Valuation Rules means 'the value u/s 4 of the Act'. Rules 3 and 6 of the Valuation Rules read thus:

Rule 3. The value of any exciseable goods shall, for the purposes of Clause (b) of Sub-section (I) of Section 4 of the Act, be determined by the proper officer in accordance with these rules.

Rule 6. If the value of the excisable goods under assessment cannot be determined under Rule 4 or Rule 5, and -

(a) where such goods are sold by the assessee in retail, the value shall be based on the retail price of such goods reduced by such amount as is necessary and reasonable in the opinion of the proper officer to arrive at the price at which the assessee would have sold such goods in the course of wholesale trade to a person other than a related person:

[Provided that in determining the amount of reduction, due regard shall be had to the nature of the excisable goods, the trade practice in that commodity and other relevant factors;]

(b) where the excisable goods are not sold by the assessee but are used or consumed by him or on his behalf in the production or manufacture of other articles, the value shall be based -

(i) on the value of the comparable goods produced or manufactured by the assessee or by any other assessee:

Provided that in determining the value under this sub-clause, the proper officer shall make such adjustments as appear to him reasonable, taking into consideration all relevant factors and, in particular, the difference, if any, in the material characteristics of the goods to be assessed and of the comparable goods;

(ii) If the value cannot be determined under Sub-clause (I), on the cost of production or manufacture including profits, if any, which the assessee would have normally earned on the sale of such goods;

(c) where the assessee so arranges that the excisable goods are generally not sold by him in the course of wholesale trade except to or through a related person and the value cannot be determined under Clause (iii) of the proviso to Clause (a) of Sub-section (1) of Section 4 of the Act, the value of the goods so sold shall be determined.

(i) in a case where the assessee sells the goods to a related person who sells such goods in retail, in the manner specified in Clause (a) of this rule;

(ii) in a case where a related person does not sell the goods but uses or consumes such goods in the production or manufacture of other articles, in the manner specified in Clause (b) of this rule;

(iii) in a case where a related person sells the goods in the course of wholesale trade to buyers, other than dealers and related persons, and the class to which such buyers belong is known at the time of removal, on the basis of the price at which the goods are ordinarily sold by the related person to such class of buyers.

8. The learned Attorney General submitted that, by reason of the Explanation to Section 4(4)(d)(ii) of the Act, the credit under the MODVAT scheme taken by the manufacturer, equal to the excise duty paid on the raw material, was not to be taken into account to reduce the price paid by the manufacturer to the seller of the raw material; in other words, the price paid by the manufacturer to the seller of the raw material was part of its cost to the manufacturer and it had to be taken into account in computing the assessable value of the excisable product.

9. To examine the correctness of the submission, an analysis of Section 4 of the Act and the Valuation Rules, to the extent relevant, has to be made. Section 4 deals with the valuation of excisable goods which are chargeable to excise duty with reference to their value. The valuation is to be based ordinarily on the price thereof, that is to say, the price at which the excisable goods are ordinarily sold by the manufacturer to a buyer. It is only when the valuation cannot be so made that the closest equivalent thereof has to be determined, in the manner prescribed under the Valuation Rules. 'Value' for the purposes of the Valuation Rules means the value u/s 4 of the Act. It is to be determined, ordinarily, under Rules 4 and 5. Rule 6 comes into play when the valuation of the excisable goods under assessment cannot be so determined. When the excisable goods are not sold by the assessee but are used or consumed by him in the manufacture of other products, as here, the value is to be based upon the value of comparable goods manufactured by the manufacturer, and, if that cannot be done, on the 'cost of production or manufacture including profits, if any, which the assessee would have normally earned on the sale of such goods'. It is common ground that the value of the excisable goods in the instant case has to be determined on the cost of their manufacture, including profits. Sub-section (4) of Section 4 defines certain words "for the purposes of this section". It defines "Value" in relation to any excisable goods". It says, so far is relevant here, that the value of excisable goods does not include the amount of the duty of excise payable on such goods. The Explanation thereto says that, for the purposes of the sub-clause, the amount of excise duty payable on excisable goods is the sum total of the effective excise duty payable thereon under the Act plus the aggregate of the effective excise duties payable thereon under other Central excise statutes.

10. By reason of Clause (i) of the Explanation, where there is an exemption 'notification or order' giving an exemption in respect of the excisable goods it shall be given effect to and the excise duty leviable under the concerned Central excise statute shall be reduced to the extent of such exemption, provided such notification or order is not one "for giving credit with respect to, or reduction of duty of excise under such Act on such goods equal to any duty of excise under such Act, or the additional duty u/s 3 of the Customs Tariff Act, 1975, already

paid on the raw material or component parts used in the production or manufacture of such goods.

11. It is, therefore, only a notification or order relating to the excisable goods that gives an exemption equal to the excise duty already paid on raw material used therein that is not to be taken into account for the purposes of computing the effective duty on the excisable product. We are not here concerned with a notification or order; the MODVAT scheme is a part of the Central Excise Rules. Secondly, it is nobody's case that the credit that each of the respondent-manufacturers takes on its excisable product is equal to the excise duty paid on the raw material used therein. The Explanation to Section 4(4)(d)(ii) cannot, therefore, assist the Revenue's case.

12. The learned Attorney General drew our attention to the judgment of this Court in *M/s. Kirloskar Brothers Ltd., Dewas (M.P.) Vs. Union of India and others*, , and *Collector of Central Excise, Bangalore Vs. Mysore Paper Mills Ltd.*, . Neither of these judgments dealt with the Explanation to Section 4(4)(d)(ii) of the Act or the provisions of the MODVAT scheme. They are, therefore, of little assistance.

13. The learned Attorney General brought to our attention the judgment of the Tribunal in 1990 (45) ELT 342 adopting it as a part of his argument. The Tribunal read the Rules pertaining to the MODVAT scheme and found it to be clear that "the manufacturer is allowed to utilise the duty paid on inputs by deducting the same from the duty payable on the final product but subject to following the procedure under the Rules". It added, "It is no doubt true that it will result in reduction in the cost of final product to the extent of the credit but it does not automatically reduce the assessable value which is to be determined in accordance with Section 4. Assessable value is to be determined in accordance with Section 4 of the Act only and MODVAT credit has no direct impact on the assessable value." We shall examine the Rules pertaining to the MODVAT scheme ourselves but we note the finding of the Tribunal that MODVAT credit results in the reduction of the cost of the excisable product to the extent of the credit.

14. The learned Attorney General cited the judgment of a learned Single Judge of the Allahabad High Court in *Super Cassettes Industries Ltd. Vs. Union of India (UOI)*, . The learned Judge found no warrant for the view that MODVAT credit once availed of by making the necessary entries was irrevocable. He held that there could be no final credit until the inputs were used and excise duty on the final product was paid or the inputs were otherwise disposed of.

15. Before we look at the Rules relating to the MODVAT scheme we must set out the submissions of the learned Attorney General in this regard. He submitted that the raw material suffered excise duty legally and factually. If there had been no MODVAT scheme excise duty on the raw material would be included in the cost of production of the excisable product. The MODVAT scheme did not alter this fundamental position. By virtue of it the cost of the raw material was not

reduced. The MODVAT scheme resulted in reducing the excise duty on the excisable product. It was a separate and special facility that had the effect of reducing the excise duty incidence on the excisable product and had no bearing in determining the cost of its production. The credit of excise duty on the raw material in the register maintained for MODVAT purposes was only a book entry which might be utilised later for payment of excise duty on the excisable product. In other words, it matured when the excisable product was removed from the factory and the stage for payment of excise duty thereon was reached. Actually, credit was taken, that is, availed of or utilised, at the time of the removal of the excisable product. Consequently, the cost of production of the excisable product was not reduced by the amount of the MODVAT credit on the raw material. The credit was a contingent credit. It might be disallowed under certain circumstances. It could not be withdrawn like a credit amount in a bank account. The manufacturer did not have any indefeasible right or title to it. The rules pertaining to the MODVAT scheme made it clear that MODVAT credit was in the nature of a set off or an adjustment.

16. There is no doubt that, were it not for the MODVAT scheme and the credit available on the excise duty paid on the raw material thereunder, the excise duty paid on the raw material would be a factor in determining the cost of the excisable product. The question is : does the MODVAT scheme make a difference?

17. The Central Excise Rules, in Chapter VAA, deal with "The credit of duty paid on excisable goods used as inputs". The relevant Rules are Rule 57A to Rule 57J. Sub rule (1) of Rule 57A reads thus:

(1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the "final products"), as the Central Government may, by notification in the Official Gazette, specify in this behalf, for the purpose of allowing credit of any duty of excise or the additional duty u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter referred to as the "specified duty") paid on the goods used in or in relation to the manufacture of the said final products [whether directly or indirectly and whether contained in the final product or not] (hereinafter referred to as the 'input') and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification:

Provided that the Central Government may specify the goods or classes of goods in respect of which the credit of specified duty may be restricted.

18. Rule 57C states that no credit of duty paid on a final product may be allowed if the final product is exempt from the whole of the excise duty leviable thereon or is chargeable to a nil rate of duty. Rule 57D says that the credit of duty allowed in respect of any inputs shall not be denied or varied on the ground that

part of the inputs is contained in any waste, refuse, or by-product arising from the manufacture of the final product or on the ground that any intermediate product has come into existence during the course of the production of the final product. Rule 57E says that if the duty paid on any inputs on which credit has been allowed is varied subsequently, the credit allowed shall be varied accordingly by adjustment of the credit account or, if adjustment is not possible for any reason, by cash recovery from or, as the case may be, by refund to the manufacturer availing of the credit. Rule 57F(1) reads thus:

The inputs in respect of which a credit of duty has been allowed under Rule 57A -

(i) may be used in, or in relation to, the manufacture of final products for which such inputs have been brought into the factory; or

(ii) shall be removed, after intimating the Assistant Commissioner of Central Excise having jurisdiction over factory and obtaining a dated acknowledgement of the same from the factory for home consumption or for export under bond.

Provided that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty excise shall be the amount of credit that has been availed in respect of such inputs under Rule 57A.

Rule 57G provides that the manufacturer intending to take credit of duty paid on inputs must file a declaration with the concerned excise officer indicating what the final products are that are manufactured in its factory and the inputs intended to be used therein and obtain an acknowledgement thereof. The manufacturer, having filed the declaration and obtained the acknowledgement, can take credit for the duty on the inputs received by him. Rule 57I provides for the recovery of credit wrongly availed of or utilised in an irregular manner. The manufacturer is then required to show cause why he should not be disallowed such credit, or, if it has utilised it, why its value should not be recovered from him. After considering the reply, the concerned excise officer is empowered to make the appropriate order in such terms.

19. It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the

particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available.

20. It is, therefore, that in the case of Eicher Motors Limited and Another Vs. Union of India and Others Etc., this Court said that a credit under the MODVAT scheme was "as good as tax paid.

21. With this in mind, we must now determine whether the excise duty paid on the raw material should form part of the cost of the excisable product for the purposes of Section 4(1)(b) of the Act read with Rule 6 of the Valuation Rules?

22. Learned Counsel for the respondents drew our attention to the judgment of this Court in Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, . The Court was concerned with 'written down value'. The 'written down value' had to be taken into consideration while considering the question of deduction on account of depreciation and development rebate under the Income Tax Act. 'Written down value' depended upon the 'actual cost' of the assets to the assessee. The expression 'actual cost' had not been defined in the Income Tax Act, 1922 and the question was whether the interest paid before the commencement of production on the amount borrowed for the acquisition and installation of the plant and machinery could be considered to be a part of the 'actual cost' of the assets to the assessee. As the expression 'actual cost' had not been defined, this Court was of the view that it should be construed "in the sense which no commercial man would misunderstand. For this purpose, it would be necessary to ascertain the connotation of the above expression in accordance with the normal rules of accountancy prevailing in commerce and industry." Having considered authoritative books in this regard, this Court said that the accepted accountancy rule for determining the cost of fixed assets was to include all expenditure necessary to bring such assets into existence and to put them in working condition. That rule of accountancy had to be adopted for determining the 'actual cost' of the assets in the absence of any statutory definition or other indication to the contrary.

23. The learned Attorney General submitted that judgments relating to the Income Tax Act or other statutes had no relevance while considering a provision in an excise statute. There can be no doubt about the correctness of this proposition, but the Challapalli Sugars Ltd judgment is one in which the meaning of 'actual cost', not defined under the Income Tax Act, 1922, was considered. For ascertaining what 'actual cost' was in the circumstances, this Court referred to accepted accountancy rules and said that they should be adopted and that the expression "actual value" should be construed in a sense which commercial men would understand. The judgment in Challapalli Sugars Ltd. is relevant to the instant case where we have to put a meaning to the word 'cost' which is not defined in the Act. The meaning we give should be such as accords with the meaning that a man of business put upon it, and for so doing established accountancy practice would be relevant.

24. Learned Counsel for the Respondents made reference to the "Guidance Note on accounting treatment for MODVAT" as on 16th March, 1995 issued by the Institute of Chartered Accountants of India. The Guidance Note deals (in paragraph 6) with "Accounting treatment in case of inputs used in for relation to manufacture of final products". It states:

In the light of the above, it may be stated that MODVAT is a procedure whereby the manufacturer can utilise credit for specified duty on inputs against duty payable on final products. Duty credit taken on inputs is of the nature of set-off available against the payment of excise duty on the final products. There are two alternative methods of treatment of MODVAT credit in accounts:

(a) Specified duty paid on inputs may be debited to a separate account, e.g., MODVAT Credit Receivable (Inputs) Account. As and when MODVAT credit is actually utilised against payment of excise duty on final products, appropriate accounting entries will be required to adjust the excise duty paid out of MODVAT Credit Receivable (Inputs) Account to the account maintained for payment/provision for excise duty on final product. In this case, the purchase cost of the inputs would be net of the specified duty on inputs. Therefore, the inputs consumed and the inventory of inputs would be valued on the basis of purchase cost net of the specified duty on inputs. The debit balance in MODVAT Credit Receivable (Inputs) Account should be shown on the assets side under the head 'advances'.

(b) In the second alternative, the cost of inputs may be recorded at the total amount paid to the supplier inclusive of the specified duty on inputs. To the extent the MODVAT credit is utilised for payment of excise duty on final products, the amount could be credited to a separate account, e.g., MODVAT Credit Availed Account. Out of the MODVAT Credit Availed Account, the amount of MODVAT credit availed in respect of consumption of inputs would be reduced from the total cost of inputs consumed. The balance amount standing to the credit of MODVAT Credit Availed Account representing MODVAT credit in respect of input not consumed but lying in stock could be shown in the balance sheet as deduction from the value of inventory.

(Emphasis supplied)

25. The learned Attorney General referred to an extract from a compendium of Guidance Notes of the said Institute as revised upto 31st March, 1990. It states : "Where excise duty is paid on excisable goods and such goods are subsequently utilised in the manufacturing process the duty paid on such goods become a manufacturing cost and must be included in the valuation of work in progress or finished goods arising from the subsequent processing of such goods." It is not clear whether this Guidance Note was issued in relation to excise duty paid on an input under the MODVAT scheme.

26. We think it is appropriate that the cost of the excisable product for the purposes of assessment of excise duty u/s 4(1)(b) of the Act read with Rule 6 of

the Valuation Rules should be reckoned as it would be reckoned by a man of commerce. We think that such realism must inform the meaning that the Courts give to words of a commercial nature, like cost, which are not defined in the statutes which use them. A man of commerce would, in our view, look at the matter thus: "I paid Rs. 100 to the seller of the raw material as the price thereof. The seller of the raw material had paid Rs. 10 as the excise duty thereon. Consequent upon purchasing the raw material and by virtue of the MODVAT scheme, I have become entitled to the credit of Rs. 10 with the excise authorities and can utilise this credit when I pay excise duty on my finished product. The real cost of the raw material (exclusive of freight, insurance and the like) to me is, therefore, Rs. 90. In reckoning the cost of the final product I would include Rs. 90 on this account." This, in real terms, is the cost of the raw material (exclusive of freight, insurance and the like) and it is this, in our view, which should properly be included in computing the cost of the excisable product.

27. The view we take about the cost of the raw material is borne out by the Guidance Note of the Indian Institute of Chartered Accountants, and there can be no doubt that this Institute is an authoritative body in the matter of laying down accountancy standards.

28. To answer the question involved in these appeals, in determining the cost of an excisable product covered by the MODVAT scheme u/s 4(1)(b) of the Act read with Rule 6 of the Valuation Rules the excise duty paid on raw material also covered by the MODVAT scheme is not to be included.

29. The appeals are dismissed.

30. Refunds, if any, shall be made subject to the law.

No order as to costs.