**(2010) 03 P&H CK 0303**

**In the Punjab And Haryana At Chandigarh**

Commissioner of Central Excise APPELLANT

Vs

Vimal Alloys (P.) Ltd. RESPONDENT

**Date of Decision :** 18-03-2010

**Acts Referred:**
Central Excise Rules, 1944 — Rule 57A

**Citation :** (2010) 26 STT 211

**Hon'ble Judges :** Mehinder Singh Sullar, J;Ashutosh Mohunta, J

**Bench :** Division Bench

# Judgement

Ashutosh Mohunta, J.—The Customs, Excise & Gold (Control), Appellate Tribunal has referred the following substantial question of law for adjudication by this Court:

Whether use of Oxygen/acetylene gases in cutting of scrap of Iron & Steel into smaller pieces to be fed into a furnace is a part of integrated process connected with the ultimate production of final products namely steel ingots and other steel castings and is essentially required in process of manufacture of final products and whether oxygen/acetylene gases are eligible inputs for Modvat credit?

2. The provisions of Rule 57A granting incentive to the manufacturer was inserted in order to expend the business premises in India. The combined reading of this provision would reveal that the manufacturer is entitled to claim the Modvat credit on such finished excisable goods as the Central Government may notify and the credit of specified duty under this section shall be allowed on the inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not. According to Section 57B, the manufacturer of final products shall be allowed to take credit of the specified duty paid on the inputs used in or in relation to the manufacture of final products, whether directly or indirectly and whether contained in the final products or not, namely, (i) the inputs, which are manufactured and used within the factory of production, but according to Section 57B(2), the manufacturer of

the final products shall not be allowed to take credit of the duty paid on machines, machinery, equipment, apparatus, tools, appliances or capital goods.

3. It means, the assessee is entitled to avail the Modvat credit on the inputs/ material used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not.

4. In Collector of Central Excise, Bangalore Vs. Escorts Mahle Ltd., , the Hon''ble Supreme Court has held that the material used in the manufacture of final products would be eligible Modvat credit being an input.

5. In this case, the use of oxygen/acetylene gases in cutting of scrap of Iron & Steel into smaller pieces to be fed into a furnace is a part of integrated process connected with the ultimate production of final products namely steel ingots and other steel castings. In fact, in Escorts Mahle Ltd.''s case (supra), even parts of machinery would be eligible for Modvat credit. Similar view was taken by a Division Bench of this Court in case Commissioner of C. Ex. Vs. Bhushan Alloys and Steels Ltd., wherein the question was whether Modvat credit in respect of mortar, castable powder, refractory, ramming mass, foundry flux and chemicals is available under Rule 57A of the Central Excise Rules, 1944. It was held that for this credit, the manufacturer can avail the Modvat credit.

6. In view of the above, we hold that the oxygen/acetylene gases used in cutting of scrap of iron and steel into smaller pieces to be fed into a furnace cannot be a material, which is used in manufacture of final products and hence the assessee was entitled to claim Modvat credit. Resultantly, the question posed is answered in favour of the assessee and against the revenue.

 