(1991) 09 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No. 2160 of 1991

Konark Television Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Central Excise Tariff Act, 1985 — Section 2

Citation : (1992) 38 ECC 1

Hon'ble Judges : G.B. Patnaik, J;D.M. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The Demand-cum-Show Cause Notice issued by the Collector of Central Excise & Customs dated 1.2.1991, annexed as Annexure-2, and the Circular Letter of the Government of India, Central Board of Excise & Customs, dated 21,6.1988, annexed as Annexure-1, are being assailed in this writ application.

2. According to the excise authorities, the petitioner-Company has contravened the provisions of Rule 9(1) read with Rules 173-F, 57A, 57F and 173G of the Central Excise Rules, 1944 (hereinafter referred to as the "Rules"), inasmuch as it has cleared the colour T.V. sets without payment of appropriate central excise duty by misutilising the Modvat credit. According to the authorities, the credit accrued to the petitioner on the inputs of black & white T.V. sets has been misutilised towards payment of duty on colour T.V. which has resulted in short payment of appropriate duty on colour T.V. sets during the period 1.4.1986 to 31.3.1990 to the tune of Rs. 1,13,45,614.31. The petitioner has, therefore, been asked under Annexure-2 to show cause as to why the amount of Rs. 1,13,45,614.31 (basic excise duty) and Rs. 2,68,771.70 (special duty) should not be recovered from the petitioner under Rule 9(2) of the Rules read with Section 11-A of the Central Excises & Salt Act (hereinafter referred to as the "Act") and why penalty should not be imposed on the petitioner under Rules 9(2) and 173Q

of the Rules.

Annexure-1 is the Circular of the Central Board of Excise & Customs, Government of India, clarifying the application of Modvat credit to black & white T.V. and colour T.V. and it has been stated therein that the credit taken on inputs can be utilised towards payment of duty on the final products in the manufacture of which such inputs are used and, therefore, Modvat credit taken on the parts meant to be used for black & white T.V. cannot be utilised towards payment of duty on colour T.V. So far as Annexure-1 is concerned, broadly the petitioner''s stand is that the said circular infringes upon the quasi-judicial power of the authorities under the statists and accordingly is vitiated. So far as the denial of Modvat credit is concerned, broadly the stand of the petitioner is that the Central Government having notified the finished product to be "television receiver" without making any distinction between colour T.V. and black & white T.V. and the petitioner havind paid excise duty while importing the inputs and thereby being entitled to the Modvat credit, it has availed of the said credit accrued in releasing the colour T.V. and there has been no infraction of any statutory provision thereby.

3. Before examining the point raised, it would be appropriate for us to notice the Modvat Scheme and some relevant provisions of the Act and the Rules necessary for adjudicating the dispute.

A Scheme was introduced with effect from 1st March, 1986, and a new Part "AA" was added to Chapter-V of the Rules consisting of Rules 57A to 57J. The said Scheme is called the "Modified Value Added Tax" (for short, "Modvat"). The aforesaid Scheme allows instant credit of duty paid on specified "inputs" used in or in relation to the manufacture of specified "final products" which are liable to excise duty. Section 37(2)(x via) of the Act which was inserted by Finance Act of 1986 (Act 23 of 1986) authorises the Central Government to make Rules for allowing credit of duty paid or deemed to have been paid on the goods used in or in relation to the manufacture of excisable goods. Prior to the introduction of the Modvat scheme by adding Part-AA to Chapter-V of the rules, the proforma credit system was in vogue which also authorised the credit on the inputs to be taken into account while payment of excise duty on the final products where "inputs" and "final products" fell within the same tariff item. The Modvat Scheme has more wider application and it envisages providing of credit of duty paid on notified excisable goods called "inputs" used in or in relation to the manufacture of notified "final products". The credit of duty is allowed on central excise duty, special excise duty as well as additional duty of customs. The Scheme has the effect of neutralising or limiting the cascading effect of taxation on a large number of excisable products that are used in the manufacture of some other excisable products. The central excise duty became payable almost on all manufactured products and because of the need for revenue, its tentacle reached gradually over each product. In many cases, even the duty-paid goods again became subjected to payment of central excise duty. To avoid repeated taxing on the same goods, the Central Government evolved a scheme known as "Proforma Credit System Scheme" under Rule 56A of the Rules which provided some relief to the manufacturers in respect of duty paid on components, raw materials et cetera which are again used for manufacture of other excisable products. But that Scheme applies only when the "inputs" and the "final products" are covered under the same tariff heading of the Central Excise Tariff. Therefore, the benefit was limited to a very small area and the evil of repeated taxing of the same product continued and consequently the cost of the final product increased enormously. The said system also brought in uncertainty in the final pricing of the finished products. The Central Government, therefore, evolved the new scheme "Modvat".

Under this Modvat Scheme, a wide range of items required in selected industries had been grouped together and it has been provided that so long as the inputs and the final products fall within the range of products so notified, the benefit of the scheme would be admissible. This scheme is meant for avoiding repeated payment of duty on the same article which will naturally reduce the total burden of duty on the final product and thereby while ensuring revenue of the same order, the price of the final products could be lowered. The Modvat Scheme, therefore, will reduce the cost through elimination of cascading effect and will bring in greater rationalisation in tax structure as well as bring in certainty in the amount of tax leviable on the final product. In addition, it will help consumers understand precisely the impact of taxation on the cost of any product and, therefore, enable the consumer resistance to unethical attempts on the part of manufacturers to raise the price of the final products attributing the same to higher taxes. It was with this basic object, the Central Government had introduced the Modvat Scheme. Rules 57A and 57J provide the legal backing for giving Modvat credit and also prescribe the procedure to be followed. The credit under the Modvat Scheme is available to a manufacturer of a final product classified under any of the Chapters specified in Col. (3) of the Table annexed to Notification No. 177/86-CE and credit can be taken on the strength of the documents evidencing payment of duty on the "inputs". The Notification No. 177/86-CE, dated 1.3.1986, as amended, notifies the goods on which credit of duty under Modvat will be allowed. The said notification specifies the inputs and the final products which will be eligible for the Modvat scheme and it extends to all the chapters of Central Excise Tariffs excepting those relating to tobacco, petroleum products and textiles excluding man-made fibres and filament yarns.

4. We shall now notice some of the relevant provisions necessary for adjudicating the dispute. Rule 57A stipulate that credit is available on basic excise duty, special excise duty or additional duty under the Customs Tariff Act, 1975, paid on specified goods which are used in or in relation to the manufacture of specified final products. Rule 57A makes the provision applicable to such finished "excisable goods" which is referred to as the "final product" as the Central Government may by notification in the Official Gazette specify in this behalf for the purpose of allowing credit of any duty paid on the goods. "Excisable goods"

has been defined in Section 2(d) to mean, goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. The expression "final product" has not been defined in the Act, but is a terminology used in Rule 57A itself which is co-terminus with the expression "excisable goods" in respect of which the Central Government by notification in the Official Gazette has specified allowing the Modvat credit. Under the Central Excise Tariff, Chapter-85.28 describes "Television receivers (including video monitors and video projectors), whether or not combined in the same housing with radio-broadcast receivers or sound or video recording or reproducing apparatus". The entire Chapter-85 deals with electrical machinery and equipments and parts thereof; sound recorders and reproducers; television image and sound recorders and reproducers and parts and accessories of such articles. So far as the heading contained in Chapter-85.28 is concerned, there is only one heading and the same sub-heading under which "television receivers" have been included and the duty payable is 50 per cent, There is no dispute that in the notification issued by the Central Government, namely Notification No. 177/86-CE, dated 1.3.1986, specifying Modvat items, the final product eligible for receiving the credit has been mentioned as in Chapter-85.28 so far as television sets are concerned.

5. The crux of the dispute is that when the final product has been notified to be television sets without any differentiation like "colour" and "black and white", is a manufacturer entitled to avail of the credit accrued in his favour on account of payment of excise duty on the inputs, whether those inputs are actually used in the manufacture of the final product in question or not. In other words, if a manufacturer pays excise duty or inputs and thereby earns credit, can he utilise the said credit while making payments of excise duty on the final product even though those very inputs have not been utilised in the manufacture of the final product in question? The stand of the petitioner is that given a plain grammatical meaning of Rule 57A read with the Notification No. 177/86-CE, dated 1.3.1986 issued under Rule 57A, "television receiver" having been described as the "final product" under Chapter-85.28, the manufacturer would be entitled to the Modvat credit accrued in his favour on account of payment of excise duty on the inputs and it is beyond the competence of the excise authority not to allow such credit and require the manufacturer to indicate whether the inputs on which excise duty has been paid and credit has been accrued in favour of the manufacturer were, in fact, utilised for the purpose of the final product, namely the television receiver, in respect of which such credit is being claimed. The stand of the revenue, on the other hand, is that looking at the Scheme of Modvat and the purpose for which the said scheme was introduced and on an analysis of different provisions of the Act, the Rules and the Tariff Act, it will be clear that until and unless the inputs in respect of which excise duty has been paid by the manufacturer are utilised in the final product, the manufacturer cannot claim the Modvat credit even though certain credit has been accrued in his favour. In other words, according to the revenue, on payment of excise duty on the inputs no

doubt credit has accrued in favour of the petitioner, but the petitioner can utilise that credit only in getting release of the final products wherein those inputs are utilised and consequently, even though the petitioner might have paid excise duty on inputs meant for manufacture of black & white T.V. and thereby has earned the credit, yet cannot claim that credit in releasing, colour T.V. where such inputs have not at all been utilised. According to the revenue, though the final product has been notified to be "television receiver" as per Chapter-85.28, yet in order to avail of the Modvat credit, the manufacturer must establish that the inputs were, in fact, utilised for the manufacture of the final product in question. The rival stand, therefore, hinges on interpretation of the Rules and the Notification issued thereunder and to what extent it would be permissible for the Court to look into the legislative intent behind the introduction of the Modvat Scheme for interpreting the Rules.

6. A plain reading of Rule 57A with the Notification of the Central Government issued there under No. 177/86-CE, dated 1.3.1986, unequivocally supports the petitioner''s stand. Since the notification issued under Rule 57A specifies final products to be "goods under the heading of Chapter-85 of the Tariff Act" and Chapter-85.28 describes the goods to be "television receiver", there is nothing in Rule 57A which prohibits a manufacturer of television receiver to avail of the Modvat credit accrued in his favour on payment of excise duty on the inputs while releasing the final product, namely the "television receiver", whether colour or black & white. But the expression "... paid on the goods used in or in relation to the manufacture?"in Rule 57A must be given some meaning and in order to find out the true meaning, it would be necessary to examine some other provisions of very Part-AA of the Rules.

In this connection Rule 57F(3)(i) throws some light. Rule 57F indicates the manner of utilisation of the inputs and the credit allowed in respect of duty paid thereon. Sub-rule (3)(i) of Rule 57F stipulates that credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise on any of the final products in or in relation to the manufacture of which such inputs are intended to be used in accordance with declaration filed under Sub-rule (1) of Rule 57G. Sub-rule (5) of Rule 57F clearly states that no part of the credit of duty allowed shall be utilised save as provided in Sub-rule (3). It would be appropriate at this stage to extract Sub-rule (3)(i) and Sub-rule (5) of Rule 57F:

57F. Manner of utilisation of the inputs and the credit allowed in respect of duty paid thereon.

.... (3) Credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise,-

(i) On any of the final products in or, in relation to the manufacture of which such inputs are intended to be used in accordance with the declaration filed under Sub-rule (1) of Rule 57G; or

(5) No part of the credit of duty allowed shall be utilised save as provided in Sub-rule (3).

Rule 57G prescribes the procedure to be observed by the manufacturer and under the. said rule, the manufacturer is required to file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products. Rule 57G(1) is extracted hereinbelow in extenso:

57G. Procedure to be observed by the manufacturer. (1) Every manufacturer intending to take credit of the duty paid on inputs under Rule 57A, shall file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and such other information as the said Assistant Collector may require, and obtain a dated acknowledgement of the said declaration." Rule 57N indicates the manner of utilisation of the credit and it clearly stipulates that the credit of money allowed in respect of any inputs may be utilised towards payment of duty of excise on the final products in or in relation to the manufacture of which such inputs are intended to be used in accordance with the provisions of the declarations filed under Rule 57-0 and Rule 57-0 is the procedure to be observed by the manufacturer. Rules 57N(1) and 57-0(1) are quoted herein below in extenso:

57N. Manner of utilisation of the credit.--(1) Credit of money allowed in respect of any inputs may be utilised towards payment of duty of excise on the final products in or in relation to the manufacture of which such inputs are intended to be used in accordance with the provisions of the declaration filed under Rule 57-0:

Provided that the credit in respect of inputs used in the final products cleared for export under bond shall be allowed to be utilised towards the payment of duty of excise on similar final products cleared for home consumption on payment of duty.?

57-0. Procedure to be observed by the manufacturer. (1) Every manufacturer intending to take credit under this section shall file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products and such other information as the said Assistant Collector of Central Excise may require and obtain a dated acknowledgement of the said declaration.

The expression "in or in relation to the manufacture of which such inputs are intended to be used" in Rule 57N (1) and the expression "the inputs intended to be used in each of the said final products" in Rule 57-0(1) clearly indicate the legislative intent that the scheme of Modvat credit can be availed of by a manufacturer only when the inputs on which excise duty is paid are utilised in the manufacture of the final product in question. A similar expression also occurs in Rule 57A itself.

7. A combined reading of the aforesaid provisions makes it explicitly clear that to avail of Modvat credit, it must be shown by the manufacturer that he has paid excise duty on the inputs and thereby has earned the credit and he has utilised those inputs in the manufacture of the final product in question so that he can avail of the credit. In other words, a manufacturer of television will have to establish that the inputs on which he has paid the excise duty were in fact utilised in or in relation to the manufacture of the final product entitled for availing of the Modvat credit under the Notification issued under Rule 57A. Consequently, even if the finished product is described in one heading, namely, "Television receiver", unless it is shown that the inputs are utilised for the manufacture of the colour television, the manufacturer will not be entitled to avail of the credit in question. The very purpose of the Modvat scheme will be frustrated if credit is allowed eve though the inputs are not utilised in the manufacture of the final product.

8. We have arrived at the aforesaid conclusion by finding out the intention of the legislature as expressed in the different provisions of the statute itself, as discussed earlier and bearing in mind the principle that the Act should be on ail occasions interpreted in a large, liberal and comprehensive spirit considering the magnitude of the subject with which it purports to deal in very few words. We have considered the different provisions of the Rules contained in Part-AA so as to arrive at the real meaning. It is always necessary to get the exact conception of the aim, scope and object of the whole Act as enshrined in the different provisions. It is a sound principle of construction that a statute should be construed so as to prevent the mischief and advance the remedy according to the true intention of the makers of the statute and it should not be construed in a manner so as to defeat the purpose of the statute itself. In this view of the matter, it is difficult for us to accept the contention of the petitioner and, on the other hand, the contention of the revenue must be sustained. In view of the aforesaid conclusion of ours, we see no infirmity in the notice issued by the Collector of Central Excise, annexed as Annexure-2.

So far as Annexure-1 is concerned, on going through the same, we do not find anything stated therein which has encroached upon the quasi-judicial power of the adjudicating authority. It is merely a clarificatory note issued by the highest authority with regard to the application of the Modvat Scheme in respect of different kinds of television. On examining Annexure-1, we are not in a position to hold that the said document has usurped the quasi-judicial power of the authority under the statute. Accordingly, we do not see any infirmity in the said document. In this view of the matter, the writ application fails and is dismissed, but without any order as to costs.

9. While entertaining this writ application, on 6.5.1991, we had passed an

interim order that the petitioner shall file its show cause before the competent authority, but no final decision will be taken thereon until the writ application is disposed of. With the dismissal of the writ application that order stands vacated and the competent authority may now dispose of the proceedings before him.

D.M. Patnaik, J.

10. I agree.

