(2014) 08 GUJ CK 0096

In the Gujarat High Court

Case No : Tax Appeal Nos. 56 to 74, 153 of 2005 and 464 to 466 of 2014

Vinubhai Steel Co. P. Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G, 5A, 5A(1)

Citation : (2015) 50 GST 6 : (2015) 31 GSTR 144

Hon'ble Judges : Sonia Gokani, J;Harsha Devani, J

Bench : Division Bench

Advocate : Uday Joshi for Trivedi and Gupta and Paresh M. Dave, Advocates for the Appellant; Kalpesh N. Shastri, Standing Counsel, Advocates for the Respondent

Judgement

Harsha Devani, J.—Since common questions of law are involved in all these appeals under section 35G of the Central Excise Act, 1944 (hereinafter referred to as "the Act"), the same were taken up for hearing together and are disposed of by this common judgment. The issue that arises for consideration in all these appeals is whether the re-rollers whose aggregate value of clearances in the current financial year had exceeded Rs. 75,00,000 and who were paying full rate of Central excise duty as applicable to re-rollers in respect of clearances exceeding Rs. 75,00,000 in the current financial year, could still avail of the benefit of the Government of India Order No. TS/36/94-TRU, dated March 1, 1994. In other words, whether they could continue with the benefit of deemed credit without production of documents evidencing the payment of duty even when they had ceased to avail of the benefit of Notification No. 1/1993-CE.

2. Tax Appeal Nos. 56/2005 to 74/2005 which are filed at the instance of the assessees have been admitted on the following substantial questions of law:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that whatever interpretation was put on Notification No. 1/1993 would affect the availment of the benefit of the notification and hence, whether the issue was not specifically mentioned in the show-cause notice or not, would not be material?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that whether the benefit of deemed credit available under Order No. TS/36/1994-TRU, dated March 1, 1994 passed by the Central Government in exercise of powers conferred under rule 57G(2) of the erstwhile Central Excise Rules, 1944 could be denied to the re-rollers whose value of clearances have crossed Rs. 75,00,000 in a particular financial year for the purposes of exemption Notification No. 1/1993 on the ground that such re-rollers could not be said to be availing of exemption under the aforesaid Notification No. 1/1993, dated February 28, 1993?"

3. Tax Appeal Nos. 464/2014, 465/2014 and 466/2014 which have been filed at the instance of the Revenue have been admitted on the following two substantial questions of law:

"(1) Whether or not the Tribunal has erred in law in holding that the respondents who were availing of the benefit of Notification No. 1/1993-CE, dated February 28, 1993, entitled to avail of the benefit of the deemed credit order after crossing of the value clearance limit of Rs. 75 lakhs?

(2) Whether in the facts and circumstances of the case, the Tribunal was right in law in allowing the appeal of the assessees in setting aside Order-in-Appeal Nos. 85 to 95/2006, (BVR)CE/AV/Commr. (A-IV) Abd, dated August 30, 2006 of the Commissioner (Appeals) without giving any findings on the issue of admissibility of deemed Modvat credit after rescinding of Order No. TS/36/95-TRU, dated March 1, 1994 with effect from April 1, 1995 vide Order No. TS/8/95-TRU, dated March 16, 1995?"

The second question, though framed in all the appeals, arises only in Tax Appeal No. 466 of 2014.

4. The facts stated briefly are that the assessees are engaged in the business of manufacturing various rolled products of iron or steel falling under Chapter 72 of the Schedule to the Central Excise Tariff Act, 1985. In exercise of powers conferred under rule 57G(2) of the Central Excise Rules, 1944 (hereinafter referred to as "the rules"), the Central Government issued Order No. TS/36/94-TRU, dated March 1, 1994 directing that ingots and re-rollable materials of iron or steel purchased from outside and lying in stock or after first day of April, 1994 with the re-rollers availing of exemption under Notification No. 1/1993, dated February 28, 1993 will be deemed to have been paid duty which may be allowed at the rate of Rs. 920 per tonne.

5. In exercise of powers conferred under section 5A(1) of the Act, the Central Government had issued Notification No. 1/1993, dated February 28, 1993 exempting clearances made by a small-scale industrial unit to the extent stated therein, having clearances not exceeding Rs. 2 crores in the preceding financial

year.

6. The assessees on the basis of the said order availed of the benefit of deemed credit. However, with respect to the credit availed of by the assessees, show-cause notices came to be issued raising demand as regards the deemed credit availed of by the assessees. Such demand was raised on the ground that re-rollable materials with regard to which deemed credit had been availed of had originated from breaking of ships, boats and floating structures and were obtained either partly or directly from the ship-breakers from their ship-breaking units which were situated in customs area or through traders. It was alleged that as per second proviso to rule 57G(2), credit of duty could be allowed without production of documents evidencing payment of duty but the existence of such documents was necessary. It was also alleged that vide the Finance Bill, 1994, Headings 7230 and 7323 were omitted and with such omission, in fact, there did not exist any duty-paying documents evidencing duty payment on re-rollable materials. The assessees filed their replies in response to the show-cause notices. Vide separate orders-in-originals, the Deputy Commissioner of Central Excise confirmed the demand and also imposed penalty. The assessees carried the matter in appeals before the Commissioner of Central Excise (Appeals). The Commissioner (Appeals) allowed the appeals by observing that the assessees would continue to be eligible for the benefit of deemed credit under the order dated March 1, 1994 even after crossing the clearance value of Rs. 75,00,000. The Revenue carried the matter in appeal before the Customs, Excise and Gold (Control) Appellate Tribunal/Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") wherein the assessees filed cross-objections. The Tribunal dismissed the appeals and held that the assessees were entitled to deemed credit in terms of the order dated March 1, 1994 at the specified rates on inputs obtained by them on ship-breaking, however, such benefit was available to the assessees up to the time their value of clearances did not exceed Rs. 75,00,000.

7. In so far as the facts in the appeals preferred by the Revenue are concerned, the show-cause notices came to be adjudicated by the Joint Commissioner and the deemed Modvat credit came to be disallowed and the demands came to be confirmed. The assessee carried the matter in appeal before the Commissioner (Appeals) who dismissed the appeals. The assessee went in second appeal before the Tribunal, which allowed the appeals by following the decision of the Himachal Pradesh High Court in the case of Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, .

8. Mr. Paresh Dave, learned advocate for the appellant in Tax Appeal Nos. 56/2005 to 74/2005 invited the attention of the court to the impugned order to submit that the Tribunal has followed the decision of the larger Bench in Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, , wherein the Tribunal upon analysis of the scheme of exemption under Notification No. 1/1993-CE, found that beyond the clearances of Rs. 75,00,000, no

exemption is available to re-rollers. According to the Tribunal, the expression used in the Ministry''s order dated March 1, 1994 is "availing of the exemption" which signifies "making use of and "taking advantage of "currently". After the period of availment of the benefit and advantage is over, it could not be said that one is availing of the benefit or advantages. The Tribunal, accordingly, held that the re-rollers whose aggregate value of clearances in the financial year exceeded Rs. 75,00,000 and when they were paying the applicable rate of excise duty on the clearances beyond the value limit of Rs. 75,00,000, were not eligible for the benefit of Ministry''s Deemed Credit Order No. TS/36/1994-TRU, dated March 1, 1994. Mr. Dave submitted that the expression "availing of exemption" in the deemed credit notification dated March 1, 1994 cannot be read to mean availing of concessional rate of duty. It was submitted that if the benefit under the said notification was to be curtailed to the extent of Rs. 75,00,000, it would have been specifically so mentioned in the notification. According to the learned counsel, the condition that re-rollers availing of the exemption under Notification No. 1/1993 would be entitled to the benefit of the order is only for identifying the manufacturers who would be entitled to the benefit of the said order. It was submitted that the restriction of deemed credit to the extent of clearances up to Rs. 75,00,000 was neither intended under the order nor is it justified. The attention of the court was invited to the fact that the benefit of deemed credit under the order dated March 1, 1994 was given only for a period of one year to submit that there is another angle to the matter, namely, the reason behind giving such benefit for one year only. Reference was made to the contents of Notification No. 206/1963-CE, dated November 30, 1963 to point out that by virtue of the said notification, old and used re-rollable scrap was exempted from payment of the whole of the excise duty leviable on such products. Referring to the subsequent Notification No. 123/1965-CE, it was pointed out that the said notification has been amended from time to time and lastly, vide Notification No. 103/1981-CE, dated April 7, 1981, old and used re-rollable scrap was exempted from payment of the whole of the excise duty leviable on such products. It was submitted that upon enactment of the Central Excise Tariff Act, 1985, under the new tariff, once again vide Notification No. 202/1988, dated May 20, 1988, ingots, bars and other rollable and re-rollable materials of iron and steel other than stainless steel of the description provided thereunder were exempted from payment of excise duty. However, such goods became chargeable to duty with effect from March 1, 1994 when Notification No. 202/1984 came to be rescinded by Notification No. 64/1994-CE, dated March 1, 1994. The attention of the court was drawn to the fact that Notification No. 1/1993, dated February 28, 1993 whereby exemption was given to first clearances of specified goods up to the value of rupees 30 lakhs and concessional rate of duty on subsequent clearances in case of manufacturer having clearances not exceeding rupees two crores in the preceding financial year (viz., SSI units) to point out that initially exemption was not granted in respect of item 7214 of Chapter 72 namely, the goods manufactured by the assessees. It was pointed out that Notification No. 1/1993 came to be amended with effect from April 1, 1994 and all goods falling under

Chapter 72 came to be brought within the purview of the said notification and accordingly, the petitioners became entitled to the benefit of Notification No. 1/1993.

9. It was submitted that thus, the exemption from payment of Central excise duty continued for three decades till Notification No. 64/1994-CE, dated March 1, 1994 along with 388 other notifications including Notification No. 202/1988 came to be rescinded. According to the learned counsel, considering the fact that raw materials used by small scale manufacturers were not purchased from manufacturers on account of which they would not have documents evidencing payment of duty, the benefit of deemed credit came to be extended to the small scale manufacturers under the notification dated March 1, 1994 for a period of one year to adjust to the new regime. Thus, the period of one year during which the assessees were given benefit of deemed credit was in the nature of a buffer period. It was submitted that it was never the intention to limit the benefit of the Government of India order under rule 57G(2) of the Rules to the extent of clearances of Rs. 75,00,000 only. It was urged that in the aforesaid backdrop, the only construction that can be put on the expression "availing of exemption" has to be small scale manufacturers who in the previous financial year had clearances of less than Rs. 200 lakhs.

10. It was pointed out that various Tribunals had referred similar questions to the High Courts and the Himachal Pradesh High Court in the case of Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, had held that the only interpretation which can be given is that the wording used in the Notification No. 1/1993-CE identifies the category of manufacturers who are satisfying the criteria as set out therein and are availing of the benefit of the said notification. It was pointed out that the Punjab and Haryana High Court in the case of Collector of Central Excise v. Doaba Steel Rolling Mills [2000] 119 ELT 748 (Trib.-Delhi) CCE v. Doaba Steel Rolling Mills [2010] 257 ELT A53 (P & H), has followed the above referred decision of the Himachal Pradesh High Court and has answered the reference in favour of the assessee. Reliance was also placed upon the decision of the Madras High Court in the case of M/s. Ganesh Steels Vs. The Customs Excise and Service Tax and The Commissioner of Central Excise, wherein the High Court had agreed with the view adopted by the Himachal Pradesh High Court and had taken a similar view. The decision of the Karnataka High Court in the case of Pashupati Steels Vs. Commissioner Of Central Excise, , was also cited wherein a similar view had been taken. It was submitted that the Revenue has not challenged any of the said decisions and hence, the assessees in those states are getting the benefit of the order dated March 1, 1994 in respect of clearances exceeding Rs. 75,00,000 and hence, this court may also adopt a similar view.

11. Mr. Uday Joshi, learned advocate appearing on behalf of the appellant in Tax Appeal Nos. 56/2005 to 74/2005 as well as Mr. P.R. Abichandani, learned advocate appearing on behalf of the respondent in Tax Appeal No. 153/2005

adopted the submissions advanced by Mr. Dave.

12. Mr. Y.N. Ravani, learned senior standing counsel appearing in the appeals preferred by the Revenue wherein the assessees have succeeded in view of the fact that the Tribunal has followed the above referred decisions of the High Courts, submitted that by virtue of the Government order dated March 1, 1994, the Legislature has presumed that the goods used by the assessees are duty-paid goods, but has only provided for not producing duty-paid documents evidencing payment of such duty. It was argued that no buffer period as is sought to be contended on behalf of the assessees has been provided. It was submitted that the Government''s aim to allow deemed credit vide deemed credit order (TS/36/94-TRU) is specifically to provide the benefit of deemed credit to re-rollers availing of the small-scale industries exemption under Notification No. 1/1993 and hence, as and when a manufacturer crosses the exemption limit, as provided in the said notification, he is not entitled to the benefit of deemed credit order dated March 1, 1994. In other words, under Notification No. 1/1993 different slabs have been prescribed, and a small-scale industries is initially entitled to the benefit of deemed credit, but once it reaches clearances of more than Rs. 75,00,000, it is no longer entitled to the benefit thereunder. It was contended that the Himachal Pradesh High Court in the case of Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, has not considered the intention behind providing slabs in Notification No. 1/1993 and has arrived at an erroneous interpretation of the order dated March 1, 1994. It was argued that the Himachal Pradesh High Court has read an eligibility concept in Notification No. 1/1993 which was not provided thereunder and that the court should have interpreted the notification to mean it limits the benefit to the extent of Rs. 75,00,000. It was accordingly urged that the expression "availing of exemption" is required to be so interpreted that the benefit of deemed Modvat credit benefit would be available only so long as the manufacturer enjoys exemption right under Notification No. 1/1993. It was, accordingly, urged that the Tribunal was not justified in holding that the benefit of deemed credit to the respondents could be allowed even after they cross the limit up to which goods could be cleared at exempted rates.

13. Mr. Kalpesh Shastri, learned standing counsel appearing on behalf of the respondent in the tax appeals filed by the assessees, adopted the submissions advanced by Mr. Ravani.

14. The facts are not in dispute. Under Order No. TS/36/1994-TRU, dated March 1, 1994 (effective from April 1, 1994) issued in exercise of powers conferred under the second proviso to rule 57G(2) of the Rules, the Central Government directed that ingots and re-rollable materials of iron or steel purchased from outside and lying in stock on or after first day of April, 1994 with the re-rollers, availing of the exemption under Notification No. 1/1993-CE, dated February 28, 1993 will be deemed to have paid Central excise duty. The credit of duty under rule 57A of the rules in respect of such ingots and re-rollable materials used,

without undergoing the process of melting, in the manufacture of goods falling under Chapter 72 or 73 of the Schedule to the Central Excise Tariff Act, was allowable. Credit at the rate of Rs. 920 per tonne was allowable in respect of ingots and re-rollable materials, without production of documents evidencing the payment of duty. Under Notification No. 1/1993-CE, dated February 28, 1993, the specified goods up to the aggregate value of clearances not exceeding Rs. 75,00,000 enjoyed full/concessional/slab exemption from the payment of Central excise duty subject to various conditions and limitations as provided in that exemption notification. The exemption under the said notification was not available if the aggregate value of clearances of all excisable goods for home consumption (a) by a manufacturer from one or more factories; or (b) from any factory by one or more manufacturers; had exceeded rupees two crores in the preceding financial year. In the present case, the assessees are entitled to the benefit of exemption under Notification No. 1/1993-CE, however, the benefit of deemed credit under the order dated March 1, 1994 is sought to be denied to them beyond aggregate value of clearances exceeding Rs. 75,00,000. According to the respondents, since the benefit of deemed credit under the order dated March 1, 1994 is available only to assessees availing of exemption under Notification No. 1/1993-CE, they are not entitled to the benefit of deemed credit beyond clearances of goods worth Rs. 75,00,000.

15. From the facts and contentions noted hereinabove, it is apparent that the goods manufactured by the assessees, namely, bars and rods were exempted from payment of Central excise duty right from the year 1963 till 1994 when Notification No. 202/1988, dated May 20, 1988 came to be rescinded with effect from March 1, 1994. However, at the same time, while rescinding the said notification, the items falling under Tariff Heading 72 came to be brought within the purview of Notification No. 1/1993-CE, effective from April 1, 1994 whereby exemption for first clearances of specified goods up to the value of 30 lakhs and concessional duty thereafter, in case of small-scale industrial units having clearances not exceeding rupees two crores in the preceding year came to be granted. The said notification provided for different slabs for availment of the benefit thereunder; however, such benefit was available in the aggregate, to clearances of Rs. 75,00,000. While the benefit of the said notification was available up to a limit of clearance of Rs. 75,00,000, for the purpose of being eligible to the benefit thereof, the aggregate value of clearances of all excisable goods for home consumption should not have exceeded Rs. 200 lakhs in the preceding financial year. By the order dated March 1, 1994 issued in exercise of powers under rule 57G(2) of the Rules, the benefit of deemed credit was given to manufacturers of goods falling within the ambit of Notification No. 1/1993. Thus, to be eligible to the benefit of Notification No. 1/1993, certain criteria as set out therein had to be satisfied. Such criteria related to the aggregate value of clearances made in the past year. Under Notification No. 1/1993, the benefit thereunder has been provided till clearances reached Rs. 75,00,000 and thereafter, the normal rate of duty was payable by such manufacturers. The

Government of India order dated March 1, 1994 granting facility of deemed credit, was available to re-rollers availing of the exemption under Notification No. 1/1993. It appears that the Government, taking into consideration the ground realities in regard to purchase of material by the re-rollers from the open market, by virtue of such order, has exempted them from the requirements of production of gate pass, etc., evidencing payment of duty in respect of ingots and re-rollable materials of iron and steel purchased from outside and lying in stock on or after first day of April 1994. The moot question that arises for consideration is whether the deemed credit provided to the re-rollers under the order dated March 1, 1994 is available to them even if their clearances exceed Rs. 75,00,000.

16. On behalf of the Revenue it has been contended that while providing the benefit of deemed credit under the Government order dated March 1, 1994, the Government had presumed that the goods in question would be duty-paid goods, but only benefit of not producing evidence of such duty having been paid had been granted. It would, therefore, be necessary to refer to the provisions of rule 57G(2) of the rules and more particularly to the second proviso thereto in exercise of powers whereunder, the above order has been passed.

17. Rule 57G of the rules makes provision for the procedure to be observed by the manufacturer and to the extent the same is relevant for the present purpose reads thus:

"Procedure to be observed by the manufacturer.--(1) Every manufacturer intending to take credit of 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 Assistant Collector may require, and obtain a dated acknowledgment of the said declaration.

(2) A manufacturer who has filed a declaration under sub-rule (1) may, after obtaining the acknowledgment aforesaid, take credit of the duty paid on the inputs received by him:

Provided that no credit shall be taken unless the inputs are received in the factory under the cover of a gate pass, and A.R. 1, a bill of entry or any other document as may be prescribed by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 in this behalf evidencing the payment of duty on such inputs:

Provided further that having regard to the period that has elapsed since the duty of excise was imposed on any inputs, the position of demand and supply of the said inputs in the country and any other relevant considerations, the Central Government may direct that with effect from a specified date, all stocks of the said input in the country, except such stocks lying in a factory, customs area as defined in the Customs Act, 1962 or a warehouse as are clearly recognisable as being non-duty paid, may be deemed to be duty-paid and credit of duty in respect of the said inputs may be allowed at such rate and subject to such conditions as the Central Government may direct, without production of documents evidencing payment of duty."

18. On a plain reading of the second proviso to rule 57G(2) of the rules, it is clear that what the same envisages is that having regard to the circumstances described therein, the Central Government may direct that with effect from a specified date all stocks of inputs (as described therein) as are clearly recognisable as being non-duty-paid, may be deemed to be duty paid. Thus, the proviso contemplates issuance of an order in respect of goods that are clearly recognisable as being non-duty-paid which shall be deemed to be duty-paid and credit of duty in respect of such inputs may be allowed at such rate and subject to such conditions as the Central Government may direct, without production of documents evidencing payment of duty. The contention that the Central Government would have presumed the goods to be duty-paid, therefore, flies in the face of the second proviso to rule 57G(2) of the rules and, therefore, does not merit acceptance.

19. With a view to properly appreciate the controversy involved in the present case, it may be germane to refer to the Central Government order dated March 1, 1994 which came to be issued vide Notification No. TS/36/94-TRU, dated March 1, 1994 which reads thus:

"Deemed credit in respect of re-rollable material--Chapters 72 and 73

In exercise of the powers conferred under the second proviso to rule 57G(2) of the Central Excise Rules, 1944 (1 of 1944), and in supersession of Order F. No. 342/5/91-TRU, dated Jury 7, 1992, as amended, the Central Government hereby directs that the ingots and re-rollable materials of iron and steel purchased from outside and lying in stock on or after first day of April, 1994 with re-rollers, availing of the exemption under Notification No. 1/1993-Central Excises, dated 28th February, 1993 will be deemed to have paid duty, and the credit of duty under rule 57A of the said Rules in respect of such ingots and re-rollable materials used without undergoing the process of melting, in the manufacture of goods falling under Chapter 72 or 73 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), may be allowed at the rate of Rs. 920 per tonne, without production of documents evidencing payment of duty.

This order shall come into force on first day of April, 1994."

20. Thus, what the above order dated March 1, 1994 envisages is grant of benefit of deemed credit to re-rollers availing of the exemption under Notification No. 1/1993. The next question that arises for consideration as to what meaning can be attributed to the words "availing of exemption under Notification No. 1/1993", which is the principal controversy arising in the present case.

21. For this purpose it would be germane to refer to the contents of Notification No. 1/1993. By the said notification which has been issued in exercise of powers

under sub-section (1) of section 5A of the Central Excise Act, 1944 the Central Government has exempted the excisable goods of the description specified in the annexure below the notification and falling under the Schedule to the Central Excise Tariff Act, 1985 and cleared for home consumption on or after first day of April in any financial year, by a manufacturer from a factory, which is an undertaking registered with the Director of Industries in any State or the Development Commissioner (Small-Scale Industries) as a small-scale industry under the provisions of the Industries (Development and Regulation) Act, 1951 by way of three different slabs as provided under sub-clauses (a), (b) and (c) to clause (1) thereof. The second proviso to clause (1) of the notification postulates that the aggregate value of clearances of the specified goods in terms of sub-clauses (a), (b) and (c) taken together, shall not exceed rupees seventy five lakhs. Clause (3) of the notification provides that nothing contained in the notification shall apply if the aggregate value of clearances of all excisable goods for home consumption,--(a) by a manufacturer, from one or more factories, or (b) from any factory, by one or more manufacturers, had exceeded rupees two hundred lakhs in the preceding financial year.

22. Thus, from the heading of the notification it is clear that the benefit thereunder is available to small-scale industrial units provided they have not exceeded clearances of rupees two crores in the preceding financial year. What is stated in the heading is provided under clause (3) of the notification which limits the entitlement to the benefit of the notification to small-scale industrial units, the aggregate value of whose clearances have not exceeded rupees two hundred lakhs. In effect and substance, clause (3) of the notification provides for the eligibility criteria for getting the benefit of the said notification and accordingly provides that such small-scale industrial units whose aggregate clearances in the preceding financial year have not exceeded two hundred lakhs shall be eligible to get the benefit of the said notification. Assigning a plain meaning to the language used in the Government order dated March 1, 1994, the re-rollers who are eligible to get the benefit of Notification No. 1/1993 and are availing of exemption thereunder are eligible to get the benefit of deemed credit thereunder.

23. The question that next arises for consideration is as to whether the limit of Rs. 75,00,000 for availing of the benefit under Notification No. 1/1993 also extends to the Government order dated March 1, 1994 as is sought to be contended on behalf of the Revenue. In the opinion of this court, the provision whereby the benefit of Notification No. 1/1993 is limited to the aggregate value of clearances of specified goods to the extent of rupees seventy five lakhs relates to the extent of benefit that can be claimed under the said notification. However, the same is not an eligibility criteria for availing of the benefit of the said notification. A re-roller who avails of the benefit of Notification No. 1/1993 is by dint of such fact eligible for the benefit of deemed credit under the order dated March 1, 1994 and the benefit under the said order is not qualified by the limit provided for availment of the benefit of Notification No. 1/1993. The decision of the Tribunal in the case of Sood Steel Industrial (P) Ltd. Vs. Commissioners of

Central Excise and Another, , whereby it is held that the eligibility to avail of the benefit under the order would be only to the extent the clearances do not exceed Rs. 75,00,000, is, therefore, an incorrect interpretation of the order dated March 1, 1994 as well as Notification No. 1/1993.

24. The above view taken by this court, finds support in various decisions rendered by other High Courts. The Himachal Pradesh High Court in the case of Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, has in relation to a similar controversy held thus:

"13. In our view, the order of the larger Bench of the CEGAT is not correct. The benefit of Notification No. 1/1993-CE is available to any manufacturer whose total clearances in the preceding financial year did not exceed Rs. 2 crores. The deemed credit order clearly states that all concerns availing of exemption under Notification No. 1/1993-CE, dated February 28, 1993 will be deemed to have paid duty under rule 57-I of the Rules and the credit may be allowed to them at the rate fixed without production of any documents evidencing the payment of duty. Any manufacturer whose total clearances did not exceed Rs. 2 crores was entitled to the benefit of exemption under Notification No. 1/1993-CE. No doubt the benefits under this notification were limited to clearances of Rs. 75 lakhs but this does not mean that manufacturers whose clearances exceeded Rs. 75 lakhs were not availing of the exemption under the notification. In our considered view, the only interpretation which can be given is that the wording used in the notification identifies the category of manufacturers who are satisfying the criteria as set out in Notification No. 1/1993-CE and are availing of the benefit of the said notification. The trade note limiting this benefit to those manufacturers whose clearances do not exceed Rs. 75 lakhs is totally illegal and against the deemed credit order issued by the Ministry. We may also point out that though the Department may be bound by its trade note, the industry is not bound by the same and has a right to challenge the same."

25. The Madras High Court in the case of M/s. Ganesh Steels Vs. The Customs Excise and Service Tax and The Commissioner of Central Excise, has, on the question of interpretation of the provisions of Notification No. 1/1993 read with the Government order dated March 1, 1994 has agreed with the view taken by the Himachal Pradesh High Court and has held thus (page 270 of 21 GSTR):

"We agree with the view taken by the Division Bench of Himachal Pradesh High Court. Notification No. 1/1993-CE, dated February 28, 1993 deals with payment of full/concessional/slab exemption rate of duty for the specified goods up to the aggregate value of clearances not exceeding Rs. 75 lakhs, subject to various conditions and limitations as provided in that exemption notification. The exemption under that notification was not available if the aggregate value of clearances of all excisable goods for home consumption (a) by a manufacturer from one or more factories; or (b) from any factory by one or more manufacturers had exceeded Rs. 200 lakhs in the preceding financial year. Notification No. 1/1993-CE, dated February 28, 1993 did not deal with availing of credit. Whereas the Ministry''s deemed credit Order No. TS/36/94-TRU, dated March 1, 1994 is that goods should be lying in stock on or after April 1, 1994 with the re-rollers. As per the Ministry''s deemed credit order dated March 1, 1994, re-rollers availing of exemption under Notification No. 1/1993-CE, dated February 28, 1993 will be deemed to have paid the duty.

In the present case, the appellant has not crossed the value of clearance of Rs. 200 lakhs during the preceding financial year and availed of full exemption under Notification No. 1/1993-CE, dated February 28, 1993 up to December 24, 1994 and thereafter, started paying duty. Therefore, the appellant cannot said to be not availing of exemption under Notification No. 1/1993-CE, dated February 28, 1993 during the year 1994-95. The Deputy Commissioner of Central Excise recorded factual finding that the appellant satisfied the conditions, viz., (i) the inputs were re-rollable materials of steels; (ii) the inputs were purchased from outside and were lying in stock; (iii) the appellant were re-rollers availing of exemption under Notification No. 1/1993-CE, dated February 28, 1993; and (iv) the process carried was heating and not melting and that the goods manufactured were classifiable under Chapter 72. When the Deputy Commissioner had recorded such factual finding that the appellant satisfied the conditions in Notification No. 1/1993-CE, dated February 28, 1993 and the Ministry''s deemed credit, Order No. TS/36/94-TRU, dated March 1, 1994 and applying the ratio laid down by the Division Bench of the Himachal Pradesh High Court in Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, , we are of the view that the order of the Tribunal cannot be sustained."

26. The Karnataka High Court in Pashupati Steels Vs. Commissioner Of Central Excise, has also taken a similar view.

27. In the light of the above discussion, question 2 in Tax Appeal Nos. 56/2005 to 74/2005 is answered in the negative, that is, in favour of the asses-see and against the Revenue. The Tribunal was not justified in holding that the benefit of deemed credit available under Order No. TS/36/94-TRU dated March 1, 1994 passed by the Central Government in exercise of powers conferred under rule 57G(2) of the erstwhile Central Excise Rules, 1994 could be denied to the re-rollers whose value of clearances have crossed Rs. 75,00,000 in a particular financial year for the purposes of exemption Notification No. 1/1993 on the ground that such re-rollers could not be said to be availing of exemption under the aforesaid Notification No. 1/1993, dated February 28, 1993. In the light of the above view adopted by this court, it is not necessary to answer question 1.

28. Question 1 in Tax Appeal Nos. 464/2014, 465/2014 and 466/2014 at the instance of the Revenue is answered against the Revenue and in favour of the assessee. The Tribunal was justified in holding that the respondents who were availing of the benefit of Notification No. 1/1993-CE, dated February, 28, 1993 were entitled to avail of the benefit of the deemed credit order after crossing the value clearance limit of Rs. 75,00,000.

29. However, it may be noted that in Tax Appeal No. 466 of 2014, the respondent, M/s. Sonthalia Steel Re-Rolling Mills, had availed of the benefit of deemed Modvat credit of Rs. 5,74,098 on December 24, 1995 for input lying in stock, after Notification No. TS/36/94-TRU, dated March 1, 1994 came to be rescinded vide Notification No. TS/8/95-TRU, dated March 16, 1995 whereby the Central Government in exercise of powers under the second proviso to sub-rule (2) of rule 57G of the Rules rescinded the order dated March 1, 1994 with effect from April 1, 1995. Thus, to the extent M/s. Sonthalia Steel Re-Rolling Mills had availed of the benefit of the order dated March 1, 1994 after it came to be rescinded with effect from April 1, 1995, it was not entitled to such benefit. The second question in the appeals preferred by the Revenue, is therefore, answered in favour of the Revenue and against the assessee. The Tribunal was not justified in setting aside the order-in-appeal passed by the Commissioner (Appeals) without giving any findings on the issue of admissibility of deemed Modvat credit after the order dated March 1, 1994 came to be rescinded with effect from April 1, 1995. In the light of the above discussion, the tax appeals preferred by the assessees are hereby allowed by quashing and setting aside the impugned orders passed by the Tribunal to the extent the Tribunal has held that the assessees are not entitled to the benefit of the order dated March 1, 1994 after crossing the aggregate value of clearances of Rs. 75,00,000. Tax Appeal No. 466 of 2014 is partly allowed by setting aside the impugned order passed by the Tribunal to the extent the Tribunal has allowed the appeal in respect of the benefit of deemed Modvat credit of Rs. 5,74,098 availed of by the respondent-assessee on December 24, 1995. Tax Appeal Nos. 464 and 465 of 2014 are hereby dismissed.

