

CASE NO.:
Appeal (civil) 8607 of 2001

PETITIONER:
Commissioner of Central Excise, Madras

RESPONDENT:
M/s Home Ashok Leyland Ltd

DATE OF JUDGMENT: 19/03/2007

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
J U D G M E N T

KAPADIA, J.

In this civil appeal filed by the department the short question which arises for determination is whether the assessee was entitled to avail MODVAT credit on differential duty paid during the period 21.4.1986 to 2.4.1987 in respect of inputs received in his factory during the year 1986-87 which inputs were utilized between the period 16.8.1987 and 30.12.1987. According to the Department, Rule 57E of Central Excise Rules, 1944 underwent an amendment with effect from 15.4.1987 which according to the department operated prospectively and consequently the claimant was not entitled to avail MODVAT credit of differential duty paid during the period 21.4.1986 to 2.4.1987.

The respondent-assessee is a manufacturer of motor vehicles. Assessee had received inputs under the cover of specified documents between the period 21.4.1986 to 2.4.1987. After receipt of those inputs the price of those inputs stood revised by the supplier cum manufacturer of the inputs and consequently additional duty became payable on the enhanced price which the assessee paid during the period 19.12.1986 and 28.10.1987. The credit, however, for the aforesaid amount so paid was taken between the period 16.8.1987 and 30.12.1987. The differential duty in respect of which credit was so taken was in the sum of Rs.6,43,994.47. At this stage it may be noted that the Modified Value Added Tax Scheme (MODVAT Scheme) was introduced from 1.3.1986. That scheme is known as MODVAT Scheme. Prior to MODVAT Scheme there existed Proforma Credit Scheme under which there was proviso three to Explanation 2 to Rule 56A(2) in which it was provided that if the duty paid on the material or on the components for which credit has been allowed, stood varied subsequently due to any reason resulting in refund or recovery from the manufacturer/importer, as the case may be, then the credit shall be accordingly varied by adjustment in the credit account maintained under sub-rule (3) or in the current account under the Rule 9(3) or under Rule 173G(1). If such an adjustment was not possible for any reason then that adjustment had to be satisfied by payment in cash. Unfortunately, the corresponding provision came to be omitted or failed to be incorporated under Rule 57A of the MODVAT Scheme. At this stage it

may be noted that Rule 57A deals with applicability of the MODVAT Scheme and which rule is part of the Rules set out in Chapter AA of Central Excise Rules titled "Credit of Duty Paid on Excisable Goods used as inputs" Rule 57E as it stood when MODVAT was first introduced on 1.3.1986 provided for adjustment in duty credit. It originally provided that if the duty paid on any inputs in respect of which credit has been allowed under Rule 57A, is varied subsequently due to any reason resulting in refund, the credit alone shall be varied accordingly by adjustment in the credit account maintained under Rule 57G(3) (with which we are concerned). Rule 57E underwent a change on 1.3.1987 under which it was stipulated that if duty paid on any inputs in respect of which credit has been allowed under Rule 57A and if such duty is varied subsequently due to any reason resulting in refund or if the duty is varied due to change in classification resulting in recovery then the credit allowed shall also be varied accordingly by adjudgment in the credit account maintained under Rule 57-G(3). Rule 57-E underwent a further change on 11.5.1987. This change operated till 15.4.2000. This case, therefore falls within the above period i.e. 11.5.87 to 15.4.2000. Under this amended Rule 57E the right of the manufacturer to obtain additional MODVAT credit in respect of inputs on which further duty had been paid for any reason subsequent to the date of the receipt of inputs by the manufacturer is recognized. However, such right accrues to the manufacturer subject to his complying with the procedure of adjustment contemplated in Rule 57E, as amended.

The above discussion indicates that the right to claim MODVAT credit existed only in Rule 57A. Even Rule 57E says so. There can be no doubt that right from its inception the right to claim MODVAT credit is under Rule 57A. Rule 57A recognizes the right of the manufacturer to claim credit. Rule 57E recognizes not only the right of the manufacturer to claim credit but also the extent to which credit could be claimed for the duty paid on inputs. Therefore, Rule 57A is a substantive provision. However, the procedure of adjustment finds place in Rule 57E. Rule 57E is procedural provision. It deals with adjustments in duty credit. The object behind enacting Rules 57A, 57E and 57G is to avoid duty on duty whereby the price of the final product is loaded. Therefore, Rule 57A recognizes the right of the manufacturer to take credit for the specified duty paid on the inputs, whereas Rule 57E deals with adjustment in the duty credit, such adjustment mean on account of reduction on the credit allowed. It could also be in the event of refund. Suffice it to state that Rule 57E deals only with adjustment in the duty credit. Rule 57G states that credit shall not be taken unless the manufacturer of the final product maintains his records regarding receipt of the inputs in his factory like having again bill of entry certain types of registers (RR-1) or any other document prescribed by Central Board of Excise and Customs.

In our view, therefore, the courts below were right in holding that Rule 57E was procedural, clarificatory and therefore would not affect the substantive rights of the manufacture of the specified final product to claim MODVAT credit for the duty paid on the inputs subsequent to the date of the receipt of those inputs. Consequently, the respondent-manufacturer in the present case was entitled to take credit between the period

16.8.1987 to 30.12.1987 in the sum of Rs.6,43,994.57.

Accordingly, the appeal stands dismissed with no order as to costs.

JUDIS