LEGAL DECISIONS

—By Smita Pandey

INDIRECT TAXES

1. Whether a SSI using brand name of another company on its invoices would be entitled to the benefit of exemption?

CCEx., v. Superex Industries 2004 (174) E.L.T. 4 (S.C.)

The assessee manufactured diesel generating sets. In the process of manufacture of diesel generating sets, they used certain components manufactured by Kirloskar. The diesel generating sets, manufactured by the assessee did not bear the name Kirloskar. However, in the invoices issued to the purchasers the generating sets were described as "Kirloskar Generating Sets".

The Adjudicating Authority held that the assessee was not entitled to the benefit of the Notification No. 175/86 dated 01.03.1986. The said Notification read as follows:

"The exemption contained in the notification shall not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification.

Provided that nothing contained in this paragraph shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and the procedure set out in Chapter X of the said rule is followed."

The Supreme Court reaffirmed the reasoning set out by the CEGAT that the benefit of the Notification would be lost only if the manufacturer affixed the specified goods with a brand name or trade name of the another who was not eligible to the exemption under the notification. It was observed by the CEGAT that the name Kirloskar was not affixed to the generating sets. It was held that merely because, in the invoices, the set was passed off as a Kirloskar generating sets, the benefit of the Notification would not be lost.

Note: The judgment has emphasised the need of **affixing the brand name/trade name on the specified goods** for disentitling any SSI from the benefit of the exemption. Usage of the brand name/trade name elsewhere like invoices would not deprive a SSI from the exemption.

2. Whether inputs damaged during transit can be considered "as used" for the manufacture of specified goods?

BPL Display Devices Ltd. v. CCEx., Ghaziabad 2004 (174) E.L.T. 5 (S.C.)

Exemption Notification No.13/97-Cus. exempts specified raw material if they are imported into India for use in the manufacture of specified goods.

The appellant imported parts of picture tubes for manufacture of colour picture tubes. Both the input and the manufactured items were covered by the notification. A small portion of the imported parts was damaged during transit and could not be used to manufacture picture tubes. The appellant claimed the benefit of the aforesaid notification in respect of the entire lot of the parts imported.

The Supreme Court relied on the earlier judgments of the Tribunal in *National Organic Chemical Indus. Ltd. v. Collector of Customs (Import), Mumbai,* 2000 (126) E.L.T. 1072 which had held that the benefit of the Notifications could not be deneied in respect of goods which were intended for use for manufacture of the final product but could not be so used due to shortage or leakage. The notifications relied upon in the above case were substantially similar to the present notification.

The Apex Court held that no material distinction could be drawn between the loss on account of leakage and loss on account of damage. The benefit of said exemption could not be denied as inputs were 'intended for use' in the manufacture of final product but could not be used due to shortage/leakage/damage.

Note: Loss on account of leakage and loss on account of damage has been placed at equal footing by this decision of the Supreme Court. Further, it was clarified by the Court that word "for use" has to be construed to mean intended "for use".

3. Whether the process of cutting of Jumbo rolls of typewriter/telex rolls into ribbons of standard length amounts to manufacture?

Kores India Ltd. v. CCEx., Chennai 2004 (174) E.L.T. (S.C)

The assessee manufactured typewriter ribbons. Jumbo rolls were fed into cutting and splitting machines in their premises and ribbons of standard lengths of 10 mtrs. and 5 mtrs. were cut/split and subsequently wound/spooled on the metal spools and 10 such spools were blister packed and sealed with aluminium foil.

The issue involved in the case was that whether such process amounted to manufacture. It was categorically observed by the Supreme Court that the assessee produced ribbons in spools out of Jumbo rolls and the resultant product was a distinct, identifiable article having distinct name,

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function and use. The resultant product was also commercially distinct as understood in commercial parlance and had a separate market. Their function and use were also completely different and both products were not interchangeable. The ribbon in Jumbo rolls could not be used in a typewriter and similarly a person who required 30 pieces of spool ribbon would not be satisfied if he was offered Jumbo rolls of equal length. In fact, assessee had a separate unit, machinery and work force to manufacture in spool form. In that view of the mater, it was held by the Apex Court that the process involved was manufacture.

Another point raised in the case was the applicability of the extended period of limitation. It was brought to the notice of the Court that the invoices issued by the assessee showed that the price quoted was inclusive of the excise duty. However, no excise duty was paid. Identical goods manufactured by the assessee were cleared from another unit on payment of duty and that the assessee had clear knowledge that subject goods were excisable goods liable to duty. Therefore, it was held by the Supreme Court that the Department was right in invoking the extended period of limitation as there was suppression of facts relating to manufacture and removal of goods by the assessee.

Note: It has been clearly spelt out in this case that cutting and spooling of Jumbo rolls of typewriter/telex rolls into ribbons of standard length amounts to manufacture.

4. Can refining/processing of edible vegetable oil be deemed as manufacture?

Shyam Oil Cake Ltd. v. CCEx., Jaipur, 2004 (174) E.L.T. 145 (S.C.)

Appellants were engaged in the activity of refining edible vegetable oil purchased from the open market. The contention of the Department was that refining the vegetable oil amounted to manufacture. Therefore, excise duty was demanded from the assessee on the refined vegetable oil being manufactured by them.

The refined edible oil fell under Tariff Item 1503.10, which read as follows:

15.03	**Fixed vegetable oils, other than those of heading No. 15.02**
1503.10	Which have undergone, subsequent to their extraction, any one or more of the following processes, namely: -Rs. 5,000 per tonne (1) Treatment with an alkali or acid (2) Bleaching (3) Deodorisation
1503.90	Other:- NIL

The definition of manufacture *inter alia* provides that "manufacture includes any process, which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture."

The Supreme Court stated that merely setting out a process in tariff entry would not be sufficient to hold that the particular process resulted in manufacture. If the process was indicated in the Tariff Entry, without specifying that the same would amount to manufacture, then the indication of the process was merely for the purpose of identifying the product and the rate which was applicable to that product. The Apex Court emphasised that for a deeming provision to come in to play it must be specifically stated that a particular process would amount to manufacture. In the absence of it being so specified the commodity would not become excisable merely because a separate Tariff Item existed in respect of that commodity.

It was observed by the Supreme Court that neither the Section Note nor the Chapter Note nor the Tariff Item gave any indication that the process indicated would amount to manufacture. The product remained edible vegetable oil even after the processing/refining. It was held by the Apex Court that as actual manufacture had not taken place, deeming provision could not be invoked in the absence of a specific statement that the process would amount to manufacture.

Note: Deeming provision of manufacture would be applicable only when it is clearly stated that a particular process amounts to manufacture. Mere mention of that process in the Tariff Entry will not serve the purpose.

5. Whether the reversal of Modvat credit can be treated as non-availment of credit?

Hello Minerals Water (P) Ltd. v. Union of India 2004(174) E.L.T. 422 (All.)

The appellant manufactured products falling under Chapter 39 of the Schedule to the Central Excise Tariff Act. Notification No. 15/94-C.E., dated 1.3.1994 exempts certain final products of Chapter 39 of the Schedule to the Central Excise Tariff Act from the payment of excise duty. However, the exemption is available only when the credit is not taken on the inputs used for the manufacture of final products. The appellants had taken credit on the raw material but had reversed the same after the removal of the final products. The Department was of the view that since the credit had been taken and reversed only after the removal of the final products the benefit of the notification could not be granted.

The High Court stated that subsequent reversal of Modvat credit amounted to non-availment of credit on inputs. Further, reversal of credit could be made even subsequent to clearance of final product. The reversal should be done for availing the benefits of notification and the time of reversal was not material. Therefore, it was held by the High Court that the benefit of the exemption notification would be granted to the assessee.

Note: The decision of the Allahabad High court has clarified that reversal of the credit amounts to not taking of credit and the time of reversal is immaterial. ■