

(2012) 02 AHC CK 0356**Allahabad High Court****Case No:** Central Excise Appeal No. 94 of 2004

Commissioner of Customs and
Central Excise

APPELLANT

Vs

Mohit Paper Mills Ltd.

RESPONDENT**Date of Decision:** Feb. 21, 2012**Acts Referred:**

- Central Excises and Salt Act, 1944 - Section 35G

Citation: (2013) 292 ELT 4 : (2013) 20 GSTR 374**Hon'ble Judges:** R.K. Agrawal, J; B. Amit Sthalekar, J**Bench:** Division Bench**Advocate:** R.C. Shukla, S.K. Mishra, A.K. Nigam, A.K. Rai and K.C. Sinha, for the Appellant;**Final Decision:** Dismissed

Judgement

1. Present appeal has been filed u/s 35G of the Central Excise Act, 1944, (hereinafter referred to as the Act), against the order dated 4th March, 2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi. The appeal has been admitted by this Court on the following two questions of law:

1. Whether the Modvat credit is admissible without filing the declaration before receipt goods as statutorily requirement under the erstwhile Rule 57T?

2. Whether Modvat credit is admissible on the capital goods falling under S.H. 7219.20 which are not recovered under the definition of capital goods?

2. Briefly stated the facts giving rise to the present appeal are as follows:

The respondent's company is a Public Limited Company and is engaged in manufacture and sale of paper and allied products. During the period 1998-1999 it had availed Modvat credit in respect of stainless steel plates, stainless steel arsis, parts and components of P.D. pump and CI coils/plates of stainless steel. The Adjudicating Authority had denied Modvat credit in respect of stainless steel plates

and arsis on the ground that credit was taken before filing the necessary declaration under Rule 57T of the Central Excise Rules, hereinafter referred to as the Rules. Further the adjudicating authority had denied the Modvat credit in respect of parts and components of PD pumps on the ground that they were not covered under the definition of capital goods. In respect of C.I. coils/plates of stainless steel the credit was denied on the ground that they were not covered under the definition of capital goods as these are classifiable under the Heading 7219.20 of the Central Excise Tariff Act, 1985. The appeal preferred by the assessee failed and the order of the Adjudicating Authority was upheld by the Commissioner (Appeals). However, the Tribunal has held that Modvat credit in respect of stainless steel plates, stainless steel arsis was taken after filing the prescribed declaration and moreover, in view of the amendment of the Rule 57T of the Rules by Notification No. 7/99-C.E. (N.T.), dated 9-2-1999 credit could not have been denied on the ground that the declaration did not contain all the details required to be contained or the manufacturer failed to comply with any other requirement under sub-rule (1) of Rule 57T. So far as parts and components of PD pump are concerned the Tribunal had held that as these items are classifiable under the heading 8483 of the Central Excise Tariff which relates to capital goods, therefore benefit of Modvat credit was admissible. However, in respect of C.I. coils/plates of stainless steel the Tribunal has remitted the matter to the Adjudicating Authority to find out as to whether these items are used in plant and machinery or not.

3. We have heard Sri R.C. Shukla, learned senior standing counsel appearing for the Revenue. Nobody appears for the respondent-assessee.

4. Learned standing counsel appearing for the Revenue submitted that as the assessee had not filed declaration in the prescribed form before availing the Modvat credit in respect of stainless steel plates, stainless steel arsis the credit was not admissible and the Tribunal erred in holding otherwise. He submitted that the Notification dated 9-2-1999 amending Rule 57T of the Rules was prospective in operation and could not give the benefit in respect of the credit availed on 29th August, 1998. The submission is wholly misconceived. We may mention here that similar matter came up for consideration before this Court in Central Excise Appeal No. 170 of 2004 (Commissioner, Central Excise, Allahabad v. M/s. Hindalco Industries Ltd.) decided on 6th February, 2012. This Court after referring to Rule 57G and amendment made by Notification No. 7/99 dated 9th February, 1999 had held that the benefit of notification dated 9th February, 1999 would be available to all pending cases. The aforesaid decision related to Rule 57G of the Rules but in our considered opinion the principle laid down in the aforesaid case squarely applies to the provisions of Rule 57T also as the amendment made by Notification dated 9th February, 1999 is in similar words.

5. Respectfully following the aforesaid decision we are of considered opinion that the Tribunal has not committed any legal infirmity in allowing Modvat credit in

respect of stainless steel plates, stainless steel arsis. So far as the question of Modvat credit in respect of CI coils/Plates of stainless steel is concerned we may mention here that the Tribunal has remitted the same to the Adjudicating Authority to decide as to whether they are integral part of plant and machinery or not. The Tribunal has not given any definite finding nor it has held that the Modvat credit is admissible. That being the position, we are of the considered opinion that the second question does not call for any adjudication. Accordingly, we do not find any merit in this appeal which is hereby dismissed.