

## Commissioner of Central Excise, Delhi-I Vs CEC Soma JV

**Court:** Delhi High Court

**Date of Decision:** Sept. 5, 2011

**Acts Referred:** Central Excises and Salt Act, 1944 â€” Section 11C, 3, 37B, 6

**Citation:** (2012) 280 ELT 496 : (2013) 20 GSTR 634

**Hon'ble Judges:** J.R. Midha, J; A.K. Sikri, J

**Bench:** Division Bench

**Advocate:** Satish Kumar, for the Appellant; Nageswar Rao with Tushar Jarwa and Mayank Pandey, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

1. The respondents herein are engaged in the manufacture of "prefabricated structural components". These are, admittedly, supplied to the Delhi

Metro Rail Corporation Limited ("DMRC" for short). There is a contract between respondents and DMRC for design and construction of pre-

fabricated components of different segments to be used in elevated viaducts or for manufacture of rings for the tunnel, launching girders and trusses

in respect of a project of the DMRC. It is not in dispute that this production is unique in nature and utility thereof is restricted to the location for

which they are designed and not at any other place. Since the respondent had supplied the said material (and has been supplying the same to

DMRC) without registration certificate u/s 6 of the Central Excise Act 1944 read with Rule 9 of the Central Excise Rules, 2002, ("the Rules" for

short), a show cause notice was issued to the respondent as to how they were removing the aforesaid goods without payment of excise duty which

was required to be paid under Rules 4 and 8 of the Rules and without the cover of any invoice as required under Rule 11 of the Rules. After

eliciting reply from the respondent, adjudicating authority passed the order holding that the respondents were liable to pay the excise duty and in

these circumstances the goods were seized with option to redeem the same on payment of redemption fine. Order of payment of duty was made

and also interest as well as penalty imposed upon the respondent.

2. The respondent preferred appeal there against which has been allowed by CESTAT vide impugned order 2011 (267) ELT 574 on the ground

that the aforesaid supplies are exempted vide Notification No. 01/2011-CE. (N.T.), dated 17-2-2011 following under supply rule of

chapter/document 68 of the First Schedule to the Central Excise Tariff Act, 1985.

3. The Tribunal has, after recording the aforesaid facts, categorically said that there is no dispute that the components so manufactured by the

respondents are intermediate products and duty manufactured at the specified yards and transferred to the site for utilization thereof in elevated

viaduct or tunnel. It is also noted that there is no dispute that the same are utilized in the completion of the work. The Tribunal has, therefore, come

to the conclusion, and rightly so; that the aforesaid Notification dated 17-2-2011 applies to the supplies in question and therefore no excise duty

was required to be paid. Notification No. 01/2011-C.E. (NT.), dated 17-2-2011 reads as under :

Whereas the Central Government is satisfied that a practice was generally prevalent regarding levy of duty of excise (including non-levy thereof) u/s

3 of the Central Excise Act, 1944 (1 of 1944) (hereinafter referred to as the said Act), on goods of the description given in the Table below, and

that such goods were liable to duty of excise which was not being levied u/s 3 of the said Act according to the said practice., during the period as

specified in the said Table, namely :-

2. Now, therefore, in exercise of the powers conferred by Section 11C of the said Act, the Central Government hereby directs that the whole of

duty of excise leviable under the said Act on such goods falling under such tariff sub-headings as specified in the said Table but for the said

practice, shall not be required to be paid for the period specified in column (3) of the said Table subject to fulfillment of condition that the unit

claiming benefit under this notification shall not be admissible unless the benefit in terms of this notification reverse the input credit, if any, taken in

respect of inputs used in manufacture of such goods on which the said duty of excise was not levied during the aforesaid period in accordance with

the said practice.

4. It is the contention of learned counsel for the Revenue, in these appeals preferred against the aforesaid orders of the CESTAT, that the Tribunal

has not gone into the aspect as to whether goods are manufacture at site. He has drawn our attention to the description given in the aforesaid

notification which stipulates "goods manufactured at site of construction for use in construction work". His contention is that in order to be eligible

for exemption under the said Notification, two conditions are required to be satisfied namely (1) goods should be manufactured at site; and (2)

they should be used in construction work at such site.

5. Insofar as second ingredient is concerned, there is no dispute that the goods supplied are used in construction work at site.

6. Insofar as first ingredient is concerned, his submission was that in the instant case goods are not manufactured at site and this aspect is not even

gone into by the Tribunal. On the other hand learned counsel for the respondent has drawn our attention to Circular No. 456/22/99-CX., dated

18-5-1999 where this aspect was clarified by the Central Board of Excise & Customs (C.B.E. & C). The aforesaid requires exercise of power as

contained in Section 37B of Central Excise Tariff Act which makes it clear that insofar as application of beams/girders is concerned, that may not

be necessarily be at the site as that may cause many traffic problems etc. It was, thus, clarified that expression "site" should not be given restrictive

meaning and would include many premises made available to the manufacturer of goods falling under the Central Excise Tariff Act. The said

Circular reads as under :

Representation have been received from the trade regarding difficulties faced in availing of benefit of exemption applicable of goods manufactured

at the site of construction for use in construction work at such site vide Notification No. 5/98-C.E., dated 2-6-1998 (S. No. 182), it has been

stated that the beams/girders or other fabrication work are not presently manufactured at the site due to traffic problems it could cause (especially

in case of flyovers at busy road junctions). Therefore, a separate off road site away from the main site is allotted to the construction company to

carry out pre-casting (manufacturing) of beams and girders so that the traffic is not affected. The field formations are denying that exemption on the

ground that the off road site, which is used for manufacture is not the site of construction.

2. The matter has been examined by the Board. It has been decided that the expression "site" may not be given a restrictive meaning and shall

include any premises made available to the manufacturer of goods falling under Heading No. 68.07 of the Schedule to the Central Excise Tariff

Act, 1985 by way of a specific mention in the contract/agreement for such construction work, provided that the goods manufactured at such

premises are solely used in the said construction work only.

3. This will apply mutatis mutandis to the sub-heading No. 7308.50 of the Schedule to the Central Excise Tariff Act, 1985.

4. Receipt of this circular may be acknowledged.

5. Field formations and trade may be informed accordingly.

In view of the aforesaid, we are of the opinion that both the conditions stipulated in the Circular dated 17-2-2011 stand satisfied in the case of

these respondents and the order of the Tribunal is without any blemish. The respondents, for the supplies made, were entitled to exemption under

the said notification. No question of law arises in the instant cases. The appeals are accordingly dismissed.