

(2015) 10 SC CK 0013

SUPREME COURT OF INDIA

Case No: Civil Appeal No. 5745 of 2007

Commissioner of Central Excise

APPELLANT

Vs

Tetra Pak Converting (P) Ltd.

RESPONDENT

Date of Decision: Oct. 16, 2015

Citation: (2015) 326 ELT 238

Hon'ble Judges: A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench: Division Bench

Advocate: Ms. Padmavati Patil, S/Shri Sandeep Narain, M.H. Patel and Sachin Chitnis, Advocates, M/s. S. Narain and Co, for the Respondent; S/Shri K. Radhakrishnan, Senior Advocate, Ms. Shirin Khajuria, R.K. Verma, A.P. Mayee and B. Krishna Prasad, Advocates, for the Appellant

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

'1. The respondent-assessee herein is seeking to get the benefit of Rule 57A(4) of the Central Excise Rules, relevant portion whereof reads as under : -

"The credit of specified duty under this section shall be allowed on inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not."

2. Reading of the aforesaid provision demonstrates that credit would be allowed if the inputs used in the manufacture of final products as well as on inputs which are used in or in relation to the manufacture of the final products. The question in the present case is as to whether the inputs which was used were for the final products or not. The evidence which has surfaced on record is stated by the Commissioner in his order in Paragraph 13 of his order which reads as under : -

"13. On a clear appreciation of the facts and evidence, it has to be noticed that M/s. Tetra Pak Converting (I) Ltd. are not manufacturers of aseptic packages. They are only manufacturing aseptic packaging paper namely Aluminium foil back with paper thickness not exceeding 0.2 mm. It is true that this packaging paper is used in the manufacture of aseptic packages by various customers. Depending upon their design, colour, etc., the paper is printed and supplied in roll form to their customers. So the moot point to be examined is whether in the manufacture of aseptic packaging paper, the three disputed inputs are actually used directly or indirectly or not. Admittedly, these sealing strips are not used in the manufacture of aseptic packaging paper. It is only the down stream user of the paper who use this paper in the manufacture of various tetra packs. They use the imported sealing strips to make the packages leak proof. It is for the down stream customers who manufacture tetra packages to avail MODVAT credit in respect of these inputs and not by the manufacture of aseptic packaging paper."

3. From the aforesaid, it is clear that insofar as sealing strips are concerned, they are not used by the assessee in the manufacture of aseptic packaging. In this context, the question would be as to whether these are used in the manufacture of final products by the assessee. On the aforesaid facts, a question of law would arise as to when the assessee does not use the same itself and the said sealing strips are used by the buyer on the goods sold by the assessee, whether the benefit of Rule 57A(4) would still be admissible to the assessee.

4. No doubt this question was decided by the Tribunal in favour of the assessee. However, we find that the appeal preferred by the Department before the High Court has been dismissed solely on the ground that no question of law arises. We do not agree with the aforesaid observations of the High Court as according to us, question of law clearly arises which had to be determined by the High Court. We, thus, set aside the impugned judgment and remand the case back to the High Court for fresh decision on the aforesaid question of law.

5. We may make it clear that we have not expressed our opinion either way.

6. Appeal stands disposed of.