

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7269 OF 2009

M/s Steel Authority of India Limited

...Appellant

Versus

Commissioner, Central Excise & Customs,
Bhubaneswar

...Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 16.10.2008 passed by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata (hereinafter referred to as the 'Tribunal') in Appeal No. EDM-261/05, by which the learned Tribunal has upheld the demand of Rs. 45,86,664/- (Rupees Forty Five Lakhs Eighty Six Thousand Six Hundred and Sixty Four only) and reduced the penalty to Rs. 1,00,000/- (Rupees One Lakh only) holding that the appellant was not eligible for the duty credit in respect of

the 'Guide Car', the assessee – M/s Steel Authority of India Limited has preferred the present appeal.

2. At the outset, it is required to be noted that the dispute is with respect to Modvat credit on 'Guide Car' claimed by the appellant – assessee.

3. The facts leading to the present appeal for the purpose of issue involved in the present appeal in a nutshell are as under:

A show cause notice dated 9.5.2000 was issued to the appellant seeking to deny Modvat credit amounting to Rs.3,09,78,465/- availed by the appellant on capital goods, i.e., 'Guide Car' during the month of March, 2000. As per the show cause notice, the Modvat credit on 'Guide Car' was not available since it was classifiable under Chapter sub-heading 8603.00 of the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'Tariff').

3.1 The appellant replied to the show cause notice. It was the case on behalf of the appellant – assessee that there was no reason as to why 'Guide Car' should be classified under Chapter sub-heading 8603.00. According to the appellant – assessee, 'Guide Car' is classifiable under Chapter sub-heading 8428.90, as was being done by the supplier of the same to the appellant. An opportunity of personal hearing was also provided to the appellant.

3.2 Considering the fact that in the case of supplier, the 'Guide Car' was classified under Chapter sub-heading 8603.00, the Adjudicating Authority was of the opinion that the appellant shall not be entitled to the Modvat credit on 'Guide Car' considering Rule 57Q of the Central Excise Rules, 1944 (hereinafter referred to as the 'Rules 1944'). The Adjudicating Authority disallowed the credit amounting to Rs. 1,71,60,376/- wrongly availed by the appellant during the month of March, 2000 which included the Modvat credit availed by the appellant on 'Guide Car'. The Adjudicating Authority – Commissioner also imposed the penalty of Rs. 5,00,000/- under Rule 173Q of the Rules 1944.

3.3 Feeling aggrieved and dissatisfied with the Order-in-original passed by the Commissioner – Adjudicating Authority, disallowing the credit amounting to Rs. 1,71,60,376/- and imposing penalty of Rs. 5,00,000/-, the appellant preferred an appeal before the learned Tribunal. By the impugned judgment and order, the learned Tribunal has confirmed/upheld the demand of Rs. 45,86,664/- being the Modvat credit availed by the appellant on 'Guide Car'. The learned Tribunal has reduced the penalty to Rs. 1,00,000/-.

3.4 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal upholding the demand of Rs. 45,86,664/- being the Modvat credit availed by the appellant on 'Guide

Car' and penalty to the extent of Rs. 1,00,000/-, the assessee has preferred the present appeal.

4. Shri V. Sridharan, learned Senior Advocate appearing on behalf of the appellant has, though initially submitted that the 'Guide Car' shall not be classifiable under Chapter sub-heading 8603.00, but it shall be classifiable under Chapter sub-heading 8428.90, however considering the fact that in the case of very supplier and with respect to very supply of 'Guide Car', the appropriate authority classified 'Guide Car' under Chapter sub-heading 8603.00, learned Senior Advocate appearing on behalf of the appellant has fairly not pressed the said submission. However, he has submitted that 'Guide Car' can be said to be 'Component' of Coke Oven Battery and therefore the case would fall under serial No.5 of the Table given below Rule 57Q of the Rules 1944.

4.1 It is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellant that 'Guide Car' was used for the purpose of transportation of hot coke coming out of the Coke Oven Battery and therefore it can be said to be a 'component' and/or part of the Coke Oven Battery. Therefore, it is vehemently submitted that assuming that 'Guide Cars' are held to be classifiable under Chapter sub-heading 8603.00, in that case also, the same should be considered for capital goods credit as 'component' of the Coke Oven Battery.

4.2 In the alternative, it is submitted by Shri V. Sridharan, learned Senior Advocate appearing on behalf of the appellant that in the present case supply of 'Guide Car' was in the month of November, 1999 and the 'Guide Car' was classified by the appropriate authority under Chapter sub-heading 8603.00 subsequent to those supply and therefore the classification of 'Guide Car' under heading 86.03 shall not be made applicable retrospectively and it shall be made applicable prospectively. Reliance is placed on the decision of this Court in the case of **Collector of Central Excise, Baroda v. Cotspun Limited, (1999) 7 SCC 633**.

4.3 It is further submitted by Shri V. Sridharan, learned Senior Advocate appearing on behalf of the appellant that in the facts and circumstances of the case and as there was no suppression and/or *mala fide* intention on the part of the appellant in claiming the Modvat credit on 'Guide Car' and the appellant bonafidely believed that 'Guide Car' would fall under Chapter sub-heading 8428.90 and therefore no penalty is leviable.

4.4 Making the above submissions and relying upon the aforesaid decision, it is prayed to allow the present appeal.

5. Shri V. Chandrashekara Bharati, learned counsel appearing on behalf of the respondent – Revenue, while opposing the present appeal, has vehemently submitted that as in the case of supplier 'Guide Cars' are classified under heading 86.03, thereafter it will not be open for the

purchaser to classify the goods under another heading, namely, in the present case, under sub-heading 8428.90.

5.1 It is further submitted by the learned counsel appearing on behalf of the Revenue that 'Guide Car' being a different equipment and distinct from the Coke Oven Battery cannot be considered as 'component' and/or part of the Coke Oven Battery. It is submitted that therefore the appellant shall not be entitled to the Modvat credit on 'Guide Cars' under Rule 57Q of the Rules 1944. Learned counsel appearing on behalf of the Revenue has heavily relied upon the decision of this Court in the case of ***Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi (2014) 15 SCC 625*** on the expression 'component'.

5.2 Making the above submissions and relying upon the aforesaid decision, it is prayed to dismiss the present appeal.

6. We have heard learned counsel for the respective parties at length. At the outset, it is required to be noted that in the case of supplier, 'Guide Car' was classified under Chapter sub-heading 8603.00. As per the settled position of law, classification of a product done at the consignor's end shall be final and that cannot be changed/questioned at the consignee's end. Therefore, 'Guide Car' shall be treated and/or considered as classifiable under Chapter sub-heading 8603.00 of the tariff.

6.1 The short question which is posed for the consideration of this Court is, whether the appellant is entitled to Modvat credit under Rule 57Q of the Rules 1944 on 'Guide Cars' treating the same as 'components' of Coke Oven Battery, as claimed?

7. The appellant has claimed the Modvat credit under Rule 57Q of the Rules 1944 on 'Guide Car'. As per Rule 57Q with respect to goods falling under Chapter 84 as mentioned at serial No. 2 in the Table attached with the Schedule to the Tariff, there shall be credit of duty paid on capital goods used by the manufacturer. As observed hereinabove, 'Guide Car' shall not fall under Chapter 84. Therefore, it is the case on behalf of the appellant that it will fall at serial No. 5 of the Table, namely, 'components'.

Rule 57Q of the Rules 1994, relevant for our purpose, reads as under:

"Rules 57Q. Applicability – (1) The provisions of this section shall apply to goods (hereinafter in this section, referred to as the 'final products') described in column (3) of the Table given below and to the goods (hereafter in this section referred to as "capital goods"), described in the corresponding entry in column (2) of the said Table used in the factory of the manufacturer of final products.

TABLE

S.No.	Description of capital goods falling within the Description of final Schedule to the Central Excise Tariff Act, 1985 (5 of products 1986) and used in the factory of the manufacturer		
(1)	(2)	(3)	
1.	xxx	xxx	xxx

- | | | | |
|----|---|-----|-----|
| 2. | xxx | xxx | xxx |
| 3. | xxx | xxx | xxx |
| 4. | xxx | xxx | xxx |
| 5. | Components, spares and accessories of the goods
Specified against S. Nos. 1 to 4 above | | |

Therefore, the short question which is posed for the consideration of this Court is, whether 'Guide Car' can be said to be 'component' of Coke Oven Battery as claimed by the appellant?

8. This Court had an occasion to consider the expression 'component' in the case of **Saraswati Sugar Mills (supra)**. In the aforesaid decision, this Court had an occasion to consider the dictionary meaning of the expression 'components' in *Webster's Comprehensive Dictionary; Oxford Advanced Learner's Dictionary; Advanced Law Lexicon and Encyclopaedic Law Lexicon*. Thereafter, in paragraphs 23 to 27, it is observed and held as under:

“23. The expression “components” is not defined under the Act. Therefore, reference can be made to dictionaries to understand the meaning of the expression “components”. In *Webster's Comprehensive Dictionary*, it is defined as “constituent part”. In *Oxford Advanced Learner's Dictionary*, Vol. 1, International Edn., the word “component” means a “constituent part”. Further, “constituent” means “serving to form or compose as a necessary part”. In *Advanced Law Lexicon*, 3rd Edn., 2005 (by P. Ramanatha Aiyar), the word “component part” is defined as “something which becomes an integral part of the goods in question by losing its 'physical and economic distinctiveness'.” It defines “constituent” (of a component) as “that helps make up or complete a unit or a whole's one part of something that makes up a whole”.

24. *Encyclopaedic Law Lexicon*, Vol. 2008-09 Edn., by Justice C.K. Thakkar, describes the “components” as:

“It appears, therefore, that for an article to be called a component part, it is not necessary that even if it becomes part of another article, it should still retain its identity. All that is necessary to make an article a component part is that it goes in to the composition of another article. If an article is an element in the composition of another article made out of it, such an article may well be described as a component part of another article. It may be that the final product made may be in the nature of a compound in which case, the elements forming component parts may not be capable of any more separate identification. Equally, it may be that when a machinery is assembled out of several parts forming that machinery, those machineries, those parts, even after their being filled may retain their individuality or identity.”

25. The meaning of the expression “components” as defined in the dictionary is accepted and adopted by this Court in *Star Paper Mills Ltd. v. CCE* [*Star Paper Mills Ltd. v. CCE*, (1989) 4 SCC 724 : 1990 SCC (Tax) 138] and the same is quoted with approval in *CCE v. Allied Air-Conditioning Corpn.* [*CCE v. Allied Air-Conditioning Corpn.*, (2006) 7 SCC 735].

26. In order to determine whether a particular article is a component part of another article, the correct test would be to look both at the article which is said to be component part and the completed article and then come to a conclusion whether the first article is a component part of the whole or not. One must first look at the article itself and consider what its uses are and whether its only use or its primary or ordinary use is as the component part of another article. There cannot possibly be any serious dispute that in common parlance, components are items or parts which are used in the manufacture of the final product and without which, final product cannot be conceived of.

27. The meaning of the expression “component” in common parlance is that “component part of an article is an integral part necessary to the constitution of the whole article and without it, the article will not be complete”.

Therefore, the test would be whether the ‘Guide Car’ can be said to be an integral part necessary to the constitution of the whole article, namely, Coke Oven Battery and whether without it, the Coke Oven Battery shall not be complete?

9. Considering the process and the manner in which and/or for the purpose for which the 'Guide Car' is used, by no stretch of imagination, it can be said to be a 'component' of Coke Oven Battery. It cannot be said that without the 'Guide Car' the Coke Oven Battery shall not be functional. The 'Guide Car' is being used for the purpose of transporting the hot coke after it is processed in the Coke Oven Battery. Therefore, 'Guide Car' can be said to be a different equipment distinct from the Coke Oven Battery and cannot be considered to be a part of the Coke Oven Battery. In that view of the matter, the appellant shall not be entitled to the Modvat credit on 'Guide Car' as 'component' and/or part of Coke Oven Battery as claimed by the appellant. The Adjudicating Authority as well as the learned Tribunal have rightly confirmed the demand of Modvat credit availed by the appellant on 'Guide Cars'. We are in complete agreement with the view taken by the Adjudicating Authority as well as the learned Tribunal.

10. However, at the same time and in the facts and circumstances of the case, the penalty was not justified at all. The appellant bonafidely believed that the goods would fall under Chapter sub-heading 8428.90 and/or that the 'Guide Car' can be said to be a 'component' of the Coke Oven Battery. Therefore, the order of penalty of Rs.1,00,000/- imposed by the Tribunal is required to be quashed and set aside.

11. Now so far as the submission on behalf of the appellant that the classification of the 'Guide Car' under Chapter sub-heading 8603.00 shall be applicable prospectively and shall not be applicable retrospectively with respect to supply in the month of November, 1999 and the reliance placed upon the decision of this Court in the case if **Cotspun Limited (supra)** is concerned, the aforesaid has no substance. It is required to be noted that it was a case of self-assessment by the supplier and the supplier classified the 'Guide Car' under Chapter sub-heading 8428.90, though it was classifiable under Chapter sub-heading 8603.00. That thereafter the appropriate authority classified the 'Guide Car' under Chapter sub-heading 8603.00. Therefore, it will relate back to the original claim and/or relate back to the date of supply/self-assessment.

11.1 Now so far as the reliance placed upon the decision of this Court in the case of **Cotspun Limited (supra)** is concerned, the same shall not be applicable to the facts of the case on hand. In the case before this Court, it was a case of an approved classification list sought to be corrected subsequently and to that it is observed that the levy of excise duty on the basis of an approved classification list is the correct levy, at least until the correctness of the approval is questioned by the issuance of a show cause notice to the assessee. Therefore, on facts, the

aforesaid decision shall not be applicable to the facts of the case on hand.

12. In view of the above and for the reasons stated above, the present appeal with respect to Modvat credit claimed by the appellant on 'Guide Car' is hereby dismissed. The Adjudicating Authority as well as the learned Tribunal have rightly denied the Modvat credit to the appellant on 'Guide Car'. The learned Tribunal has rightly confirmed the demand of Rs. 45,86,664/- being the Modvat credit availed by the appellant on 'Guide Car'. The present appeal is dismissed so far as the confirmation of demand of Modvat credit availed by the appellant on 'Guide Car'. However, the order of penalty imposed by the Adjudicating Authority, modified by the learned Tribunal to Rs. 1,00,000/- is hereby quashed and set aside. To that extent, the present appeal is partly allowed. In the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[M.R. SHAH]

NEW DELHI;
SEPTEMBER 16, 2022.

.....J.
[KRISHNA MURARI]