



2025:AHC:188956-DB

## HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT TAX No. - 872 of 2021

Modi Rubber Limited

.....Petitioner(s)

Versus

Union Of India And 2 Others

.....Respondent(s)

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Counsel for Petitioner(s) : Nikhil Agrawal  
Counsel for Respondent(s) : A.S.G.I., Amit Mahajan, C.S.C., Parv  
Agarwal, Ramesh Chandra Shukla

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### Court No. - 3

**HON'BLE SAUMITRA DAYAL SINGH, J.**  
**HON'BLE INDRAJEET SHUKLA, J.**

1. Heard Sri Nikhil Agrawal learned counsel for the petitioner and Sri Parv Agarwal learned counsel for the revenue.
2. Present writ petition has been filed against the Show Cause Notice Number C.No.V(15) Off/Adj./126/2005 dated 10.09.2021 and C.No. V(15) Off/Adj./126/2005/1114-1115 dated 23.09.2021 issued by the Commissioner, Central Excise and Customs, Meerut-1, Meerut/respondent No. 3. By the impugned Show Cause Notices, the petitioner has been required to show cause why-

*"(i) Utilization of AED(GSI) amounting to Rs. 3,06,95,274/- towards payment of BED on final products cleared by the party should not be disallowed under Rule 12 CENVAT RuleS 2002 read with Section 88 of the Finance Act 2004 as amended by clause 124(a) of the Finance Act, 2005.*

*(ii) All clearances of tubes & Flaps effected by the party during Oct 97 to Jan 98 (upto 19.01.1998) utilizing the AED credit existing in their RG23A Pt. II account towards payment of BED leviable thereon should not be treated as non-duty paid and also the amount equivalent to the amount of credit utilized of Rs. 3,06,95.274.00 should not be demanded in cash under Section 11A of Central Excise Act 1944 read with Section 88 of the Finance Act, 2004 as amended by Clause 124(a) of Finance Act, 2005;*

*(iii) Interest at the applicable rate on the amount of duty of Rs. 3,06,95,274.00 evaded should not be demanded from them under Section 11AB of Central Excise Act 1944 read with provisions of clause 124(a) of*

*the Finance Act, 2005."*

3. Petitioner was engaged in the manufacture of tyre, tubes and flaps. For that manufacturing activity, the petitioner purchased Tyre Cord Fabric as an input from 13.10.1993 to 19.01.1998. That commodity was exposed to payment of Additional Excise Duty (AED in short). It was paid by the petitioner under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act 1957.

4. Vide amendment made to the MODVAT Rules, that remained in force till 30 June 2001 with effect from 01.03.1997, following proviso was inserted to Rule 57-F(1):

*"Provided that, notwithstanding anything contained in Rule 57A and the notifications issued thereunder the credit of specified duty allowed in respect of any inputs may be utilized towards payment of duty of excise on any other final product, whether or not such inputs have actually been used in the manufacture of such final products, if the said input have been received and used in the factory of production on or after the first day of March, 1997."*

5. In view of that amendment made, the petitioner was visited with earlier Show Cause Notice dated 02.04.1998 requiring it to show cause why-

*"(i) Utilization of AED amounting to Rs. 30695274.00 for payment of BED on final products should not be disallowed under Rule 57-1 read with 57-F of the Central Excise rules, 1944;*

*(ii) All clearances of tubes and flaps utilising the AED- credit existing in party's RG-23A Pt -II towards payment of BED livable thereon effected by party during OCT 1997 to Jan 1998 (upto 19.01.98) should not be considered as non duty paid and treated illegal and also the amount equivalent to the amount of credit of Rs. 3,06,95,274.00 should not be demanded in cash under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excise Act 1944*

*iii) Penalty under Rules 9(2), 52-A, 57-1(4) read rule 173-Q of the Central Excise rules, 1944 should not be imposed upon M/s Modi rubber Ltd. Modipuram.*

*(iv) Interest on the amount of duty of Rs. 30695274.00 evaded should not be demanded should not be demanded form them under Section 11-AB of the Central Excise Act, 1944.*

*(v) The land, building, plant and machinery of the said M/s Modi Rubber Ltd.. Modipuram should not be confiscated under Rule 173Q of the Central Excise Rules 1944.*

6. The above Show Cause Notice culminated in the order in original dated 30.7.1998 passed by the Commissioner Excise, wherein the following demands were levied:

*"(1) Utilisation of BED amount of Rs 3,06,95,274,00 (Rupees Three crores six lacs ninety five thousands & two hundred seventy four only) for payment of BED on final product is disallowed under Rule 57-1 read with Rule 57F of Central Excise Rules.*

*(2) M/s Modi Rubber Ltd. are required to pay an amount of Rs 3,06,95,274.00 (Rupees Three crores six lacs ninety five thousands & two hundred seventy four only) in cash / PLA towards. clearances of goods on which credit of AED was misutilised by them under Rule 9(2) read with Section 11A of Central Excise Act They have to pay interest on this amount under Section 11AB.*

*(3) A penalty of Rs 3,06,95,274. 00 (Rupees Three crores six lacs ninetyfive thousand & two hundred seventy four only) is imposed upon M/s Modi Rubber Ltd., Modipuram, Meerut under Rule 9(2), 52A, 571(4), read with 173Q of Central Excise Act.*

*I also impose the following amount of penalties upon the executive of the aforesaid company, under Rule 209A. :-*

*S/Shri*

*(i) B.K. Modi, Managing Director Rs. 30,00,000/- (Rs. Thirty Lacs)*

*(ii) B.K. Gupta, Chief Executive Rs. 20,00,000/- (Rs. Twenty Lacs)*

*(iii) Anand Agarwal, Executive Director Rs. 20,00,000/- (Rs. Twenty Lacs)*

*(iv) A.P. Arora, Manager (Excise) Rs. 5,00,000.00 (Rs. Five lacs)*

*(v) I also confiscate, land plant, building, machinery of M/s Modi Rubber Ltd., Modipuram, Meerut under Rule 173Q (2) of the Central Excise Rules. However, I give them an option to redeem the same upon redemption fine of Rs. 10,00,000/- (Rs. Ten Lacs)."*

7. The above order was carried in appeal by the petitioner before the Custom Excise and Gold (Control) Appellate Tribunal Northern Division

Bench in Appeal No. E/2695-2699/98-NB. That appeal was allowed by the said Tribunal vide its order dated 30.03.2000 on the following reason:

*"6. We have heard the submissions of the Ld. Counsel as also the submissions of the Ld. SDR. We find that the issue for our determination is whether Sub-Rule (12) of Rule 57F permits utilisation of credit of Additional Excise Duty for payment of Basic Excise Duty payable on tubes. We note that Rule 57A, Notification 5/94 and Rule 57F(12) are relevant for purpose of this enquiry. We note that Rule 57A provides for taking credit of specified duty paid on specified inputs and the credit so taken can be utilised for payment of Central Excise Duty on specified inputs.*

*7. Notification No.5/94 provides for among other things, utilisation of specified duty for payment of specified duty meaning thereby Additional Excise Duty can be paid only out of credit of Additional Excise Duty. However, we find that there is Rule 57F(12) which has got two clauses- the non obstante clause as also enacting clause. The non obstante clause says that without caring for the provisions of Rule 57A and the Notifications issued thereunder, in the instant case the Notification No.5/94 ignoring the provisions of Rule 57A and Notification No. 5-94. We note that the enacting clause is that credit of specified duty allowed in respect of any inputs may be utilised towards payment of duty of excise duty on any other final product whether or not such inputs have actually been used in the manufacture of such other final product, if the said inputs have been received and used in the factory of production on or after the first day of March 1997. Examining the facts of the case before us in the light of the requirement of the enacting clause, we find that the credit in the instant case is the credit of Additional Excise Duty paid on tyre cord fabric. The credit so taken of the Additional Excise Duty is utilized towards payment of Basic Excise Duty on tubes. Tyre Cord fabric is not used as in input in the manufacture of tubes. Tyre Cord Fabric has been received and used in the factory of production on or after first day of March 97. Thus, we find that all the requirement of enacting clause of Rule 57F(12) are fully complied with. In this view of the matter, we find that the impugned order is erroneous, the same is, therefore, set aside and these appeals are allowed."*

8. Arising from that order of the Tribunal, the revenue preferred Central Excise Reference before this Court being Central Excise Reference No. 02 of 2009 on the following questions of law:

*"1. Whether credit of Additional Duties of Excise can be utilised towards*

*payment of Basic Excise Duty when Notification No.5/94-CE(NT) dated 1.3.1994 specifically provides that AED shall be utilised only towards payment of duty of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957?*

*2. Whether on the facts and circumstances of the case, the Tribunal has erred in law in overlooking the provisions of notification no.5/94-CE(NT) dated 1.3.1994 which specifically provides that credit Additional Excise Duties shall be utilised only towards payment of excise leviable under the Additional Duties of Excise (Goods of Special Importance) Act, 1957?"*

9. Vide order dated 19.12.2016, the said Reference was answered in favour of the assessee and against the revenue. No challenge was raised to that order passed by the coordinate bench of this Court.

10. In the meantime, the statutory context underwent multiple changes inasmuch as MODVAT scheme (under which the dispute had arisen) came to an end, with effect from 01 July 2001. From that date, CENVAT scheme was introduced. That scheme underwent change upon introduction of CENVAT scheme 2002 and 2004. Last, it was substituted by CENVAT Credit Rules, 2004 with effect from 01.03.2003.

11. It is in the context of the CENVAT Credit Rules, 2004, chiefly Rule 6(b) the revenue authorities issued second Show Cause Notice dated 15.09.2005.

12. Submission of learned counsel for the petitioner is, once the issue of allowability of MODVAT scheme (that preceded CENVAT scheme) had been raised by the revenue and it had been adjudicated squarely against the revenue by the Tribunal vide its order dated 30.3.2000, which order attained finality, it never became open to the revenue authorities to re-adjudicate the same issue, afresh. Second, it has been submitted, in any case, the proceedings initiated vide notice dated 15.09.2005 were rendered time barred as of no order was passed thereon, within six months from the date of issue of notice - that period of limitation being prescribed under Section 11(11)(a) of the Central Excise Act, 1944. Absolutely no legal impediment existed with the revenue authorities to conclude the proceedings initiated vide notice dated 15.09.2005 within six months from the date of its issue.

13. Upon objections raised by the petitioner, the proceedings remained pending for 16 years without any order being passed. Thus, the proceedings were rendered hopelessly time barred. They cannot be revived on the pretext

of Reference arising from the order of the Tribunal dated 30.03.2000, rejected by this Court vide order dated 19.12.2016. Even if that date were of some relevance, no order came to be passed within six months therefrom. Therefore, the proceedings are hopelessly lacking in jurisdiction as also are barred by limitation.

14. On the other hand, learned counsel for the revenue would contend, once the law was amended upon introduction of CENVAT Credit Rules, 2004 with effect from 01.03.2003 as amended by Finance Bill 2004, a fresh jurisdiction arose to the revenue authorities. As to the proceedings being time barred, it has been submitted, no proceeding could have been conducted during pendency of the Reference before this Court. The revenue authorities have only acted with judicial discipline in mind. After the Reference came to be rejected, proceedings were continued. However, no reason could be assigned for non-conclusion of the proceedings beyond six months, from 19.12.2016.

15. Having heard learned counsel for parties and having perused the record, in the first place, the real issue between the parties is eligibility of AED to MODVAT. Undeniably, the period during which the dispute arose is 13.10.1991 to 19.1.1998. It is equally admitted that CENVAT scheme first came into force on 01.7.2001 and not earlier. Therefore, in the first place in absence of any express provision making any part of the CENVAT scheme directly applicable to transactions performed prior to 01.7.2001, it is difficult to entertain a possibility that the provisions of the CENVAT scheme would govern the issue at hand.

16. Rucially, the issue had not only arisen under the MODVAT scheme but it had led to issuance of Show Cause Notice dated 02.04.1998 (extracted above). Upon reply of the petitioner being rejected, the order in original dated 30.07.1998 was passed creating the demand. That order was set aside by the Tribunal vide its order dated 30.03.2000 (extracted above). Assuming, for the sake of submissions advanced by learned counsel for the revenue that CENVAT scheme may have been relevant to the issue at hand, it was for the revenue to have raised that issue in continuation of the proceedings evidenced by the issuance of the Show Cause Notice dated 02.04.1998 as had culminated in the order of the Tribunal dated 30.03.2000. Though, principle of resjudicata is not strictly applicable in tax matters, at the same time it would be inconsistent to the basic tenets of law applicable to this

field, to allow the revenue more than one opportunity and therefore, to pursue plural proceedings, with respect to one infringement of the law, alleged by it. Though, the revenue claims that the changed law applied to the issue at hand, it did not seek the application of that law to the proceeding that had been initiated by it vide notice dated 02.04.1998. Therefore, it never became open to the revenue to initiate a fresh proceeding only to give effect to what it describes as the changed law. It may be further noted that the changed law did not make any specific provision to enable the revenue authorities to initiate a fresh proceedings, where earlier proceedings had already been initiated and concluded under the MODVAT scheme. Therefore, the revenue authority did not acquire the jurisdiction to issue the second Show Cause Notice dated 02.04.1998, on the issue that stood concluded by earlier order of the Tribunal dated 30.03.2000..

17. Also, on the issue of limitation, though Section 11A(11)(a) may not be mandatory in the strict sense, at the same time, it introduces concept of reasonable time to conclude a proceeding.

18. Whichever way one may look at, it has to be recognized that the Reference filed by the revenue was not a continuation of the appeal proceedings yet, that too was terminated by order dated 19.12.2016, passed by the coordinate bench of this Court. Applying the concept of reasonable time as contained in Section 11A(11)(a), the further notice issued pursuant to the Show Cause Notice dated 15.9.2005 on 10.09.2021 is wholly belated being almost after five years from the rejection of the Reference Application made by the revenue.

19. Absolutely, no explanation has been brought forth by means of the Counter Affidavit to establish any disability or legal impediment suffered by the revenue, to continue and conclude the proceedings initiated by the second Show Cause Notice dated 15.09.2005, within reasonable time - indicatively six months from 19.12.2016, or soon thereafter.

20. Reliance placed by learned counsel for the revenue on the decision of the Supreme Court in **Commissioner, GST and Central Excise Commissionerate II and Others Vs Swati Menthol and Allied Chemical Ltd. and Another, Civil Appeal No. Nil of 2023, SLP (c) No. 20072 of 2021**, decided on 10.7.2023 is of no avail to the revenue in the facts of this case. In **Swati Menthol (supra)**, though proceedings had remained pending for over a decade and it is true that the Supreme Court allowed the revenue to conclude those proceedings, neither there was involvement of ground of

lack of inherent jurisdiction nor any objection was raised by the assessee on the strength of Section 11A(11)(a) of the Act. For that reason, it appears to us that that order of the Supreme Court is referable to the unique powers of that Court under Article 142 of the Constitution of India. To the extent that decision does not appear to lay down binding law as may be applicable to the facts of the present case, the said decision may remain distinguishable.

21. In view of the above, writ petition succeeds and is **allowed**. Second Show Cause Notice 15.09.2025 is found to be lacking both in jurisdiction as on the ground of limitation. It is accordingly quashed. No order as to costs.

**October 28, 2025**

Faraz

**(Indrajeet Shukla,J.) (Saumitra Dayal Singh,J.)**