REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2789 OF 2007

COMMISSIONER OF CENTRAL EXCISE, CHENNAI ...APPELLANT

VERSUS

M/S. NEBULAE HEALTH CARE LTD. ...RESPONDENTS

W I T H

CIVIL APPEAL NO. 1142 OF 2009

J U D G M E N T

A.K. SIKRI, J.

Delay condoned.

2) These appeals raise an issue of eligibility of concession/exemption from excise duty that is provided under Notification nos. 8/1999, 8/2000, 8/2001, 8/2002 and 8/2003 to the Small Scale Industrial Units (for short, 'SSI Units'). It is not in dispute that the respondents – assessees in these appeals fulfill eligibility conditions for availing the benefit of SSI exemption under the aforesaid Notifications. However, in addition to manufacturing goods on their own account, they are also doing job work

of manufacturing goods of certain other parties on job work basis. The goods manufactured for third parties bear the brand name of those third parties and in respect of such goods manufactured for third parties, the assessees paid the normal duty of excise but at the same time availed the benefit of MODVAT/CENVAT credit as well. Thus, to put it succinctly, the real issue is as to whether availing the benefit of MODVAT/CENVAT credit in respect of branded goods of third parties manufactured by the assessees on job work basis, disentitles them from availing the benefit of the aforesaid Notifications?

3) The assessee in Civil Appeal No. 2789 of 2007 is the manufacturer of medicaments which fall under Chapter Heading 30 of the First Schedule of the Central Excise Tariff Act, 1985 (hereinafter referred to as the "CETA, 1985"). In addition, it is manufacturing medicines under the brand name belonging to third parties, viz., M/s. Roots Pharma House (P) Ltd., Chennai, M/s. Satven & Mer, Chennai, M/s. Tickle Pharma, Chennai, M/s. Shyulu India, Krishnagiri and M/s. ARK Medicare, Chennai. The goods manufactured by the assessee on its own account bear its own brand name and goods manufactured by the third parties bear the brand names belonging to those parties. During the period in question, i.e., 1999 to 2003 – 2004, the assessee had availed the benefit of SSI exemption notifications that were in force, i.e., Notification nos. 8/1999 etc., as mentioned above. Availing the benefit of these

Notifications in respect of goods manufactured by the assessee on its own account, i.e., the goods bearing its own brand name, the assessee had cleared the said goods without payment of any excise duty. On the other hand, during this very period, in respect of goods bearing the brand name of third parties manufactured by the assessee, it paid excise duty thereupon. At the same time, it also availed CENVAT credit in respect of inputs used for the manufacture of these branded goods. It resulted in issuance of five show cause notices stating therein that since the assessee had availed CENVAT credit in respect of inputs used for the manufacture of branded goods, it had lost the right to claim the benefit of SSI exemptions under the aforesaid Notifications and, thus, had claimed the exemption from payment of duties improperly. The details of these show cause notices are as under:

S.No.	SCN No. & Date	Period	Duty involved
1	1471/30.09.99	1999-2000	13,50,000/-
2	579/26.04.2001	2000-2001	13,50,000/-
3	1979/26.12.2001	2001-2002	16,00,000/-
4	588/08.04.2003	2002-2003	15,99,904/-
5	V/Ch.30/15/7/04 dated 16.03.2004	2003-2004	15,99,875/-

4) The aforesaid demand was confirmed by the Joint Commissioner vide his Order-in-Original dated January 17, 2005. Penalty under Rule 25 of the Central Excise Rules as well as interest under Section 11AB of the Central Excise Act was also imposed. The appeal of the assessee to the Commissioner (A) proved futile as it was dismissed by the Commissioner (A) vide orders dated July 19, 2005. However, a partial relief was given by setting aside the penalty. Not satisfied with this outcome, the assessee approached the Central Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") by way of another statutory appeal in which it has succeeded as the CESTAT, Chennai Bench, has allowed the appeal of the assessee.

5) The assessee in Civil Appeal No. 1142 of 2009 is engaged in the manufacture of motor vehicle rubber parts falling under Chapter Heading 8708.00 of the Act. It filed declaration with effect from May 01, 1995 claiming 15% central excise duty on branded goods and full exemption for its own products on the ground that it was eligible for exemption as

per Notification No. 1/9-C.E., dated February 28, 1993, being an SSI Unit. The excise duty was paid on branded goods which were manufactured for third parties. However, in respect of inputs used in the manufacture of these goods, the assessee availed MODVAT credit. Three show cause notices were issued to the assessee stating that since it had filed MODVAT facility for branded goods under Notification No. 1/93-C.E., the assessee was not entitled to the benefit of exemption notification even in respect of its own products. Order-in-Original dated July 10, 1998 was passed confirming the demand. In the appeal filed by the assessee to the Commissioner (Appeals), the assessee succeeded as the said appeal was allowed by orders dated March 25, 2003 setting aside the Order-in-Original and holding that the assessee could avail both the facilities, i.e., MODVAT credit of inputs used for manufacturing of goods with brand name of others of exemption for own branded goods, simultaneously. This order was challenged by the Department before the CESTAT. However, vide impugned order dated June 12, 2008, the Tribunal has dismissed the appeal, thereby maintaining the order of the Commissioner (Appeals).

This is how the Department has filed the two instant appeals challenging the orders of the Tribunal.

6) From 1986, the SSI Units have been given the benefit of excise duty by

allowing them to clear the goods either without payment of any excise duty or allowing them to clear the goods at concessional duty, depending upon the nature of product manufactured by these SSI Units. General Exemption No. 1 in this behalf was issued vide Notification No. 175/86-CE dated March 01, 1986 which has been amended from time to time. Vide these amendments, the value of the goods produced to avail the benefits has been increasing. It is not in dispute that the two assessees before us qualify the definition of SSI Units. By amendments, certain other eligibility conditions have also been provided from time to time. One such condition/provision with which we are concerned in these appeals pertain to manufacturing of branded goods of third parties.

7) Insofar as Notification No. 1/93-C.E., dated February 28, 1993 is concerned, exemption to first clearances of specified goods upto the value of ₹30,00,000/- and concessional duty on subsequent clearances in case of manufacturer having clearances not exceeding ₹3,00,00,000/- in the preceding financial year was provided. In paragraph 4 of this Notification, it was stated that the exemption contained in the said Notification would not apply to the specified goods bearing a brand name or trade name, whether registered or not, of another person. The said para 4 reads as under:

> "4. The exemption contained in this notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person:

> Provided that nothing contained in this paragraph shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and cleared from a factory for use a original equipment in the manufacture of the said machinery or equipment or appliances, and -
>
> (i) in a case where the clearances of such specified goods are within the first clearances upto an aggregate value not exceeding rupees thirty lakhs in a financial year, the manufacturer of the specified goods gives a declaration that the specified goods shall be used as mentioned above;
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> (ii) in any other case, the procedure set out in Chapter X of the Said Rules is followed:
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> Provided further that nothing contained in this paragraph shall be applicable to the specified goods bearing a brand name or trade name (registered or not) of the Khadi and Village Industries Commission or of the State Khadi and Village Industries Board, National Small Industries Corporation or the State Small Industries Development Corporation.
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> * * * *
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> Notwithstanding the exemption contained in paragraph 1 of this notification, a manufacturer shall have an option for not availing of the benefit of the exemption contained in the said paragraph and to pay duty of excise at the rate applicable to the specified goods but for the exemption contained in the said paragraph 1, subject to the condition that such manufacturer shall pay duty at the rate applicable but for the aforesaid exemption on all subsequent clearances of specified goods made after availing such option, in a financial year in which such date of option falls."

8) This Notification contained as many as 11 explanations. For our purposes, Explanation Nos. III, IX and X are relevant and, therefore, we reproduce here below these explanations as well:

> "*Explanation III.* - For the purpose of computing the aggregate value of clearances under paragraph 1,2 and 3,

the clearances of any specified goods, bearing a brand name or trade name (registered or not) of another person, which are not eligible for grant of exemption in terms of provisions of paragraph 4 of this notification, shall not be taken into account.

Explanation IX. - "Brand name" or "trade name" shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person suing such name or mar with or without any indication of the identity of that person.

Explanation X.- For the purpose of this notification, where the specified goods manufactured by a manufacturer, bear a brand name or trade name (registered or not) of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader."

9) The aforesaid Notification was replaced by Notification No. 8/1999-Central Excise, dated February 28, 1999 which provided the exemption from excise duty or clearance of goods on concessional rate of duty as per the table reproduced below:

S. No.	Value of clearances	Rate of duty
(1)	(2)	(3)
1.	First clearances upto an aggregate value not exceeding fifty lakh rupees made on or after the 1st day of April in any financial year	Nil
2.	Clearances upto an aggregate value not exceeding fifty lakh rupees immediately following the clearances specified against Sl. No. 1 above during the financial year	Five per cent *ad valorem*
3.	All clearances of the specified goods which are used as inputs for further	Nil

	manufacture of any specified goods within the factory of production of the specified goods.	

10) In paragraph 2 of this Notification, certain conditions were stipulated subject to fulfillment of which the benefit of exemption Notification could be made available. Some of the conditions with which we are concerned in these appeals are noted below:

> "2. The exemption contained in this notification shall apply subject to the following conditions, namely:-
>
> (i) a manufacturer who intends to avail the exemption under this notification shall exercise his option in writing for availing the exemption under this notification before effecting the first clearances under this notification and such option shall be effective from the date of exercise of the option. Such option shall not be withdrawn during the remaining part of the financial year except when an option is exercised with respect to Notification No. 9/99-C.E., dated 28th February, 1999.
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> (ii) a manufacturer also has the option not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him. Such option shall be exercised before effecting his first clearances at the normal rate of duty. Such option shall not be withdrawn during the remaining part of the financial year.
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> (iii) while exercising the option under condition (i), the manufacturer shall inform in writing to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise with a copy to the Superintendent of Central Excise giving the following particulars, namely:-
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> (a) name and address of the manufacturer;
>
> (b) location/locations of factory/factories;

(c) description of inputs used in manufacture of specified goods;

(d) description of specified goods produced;

(e) date from which option under this notification has been exercised;

(f) aggregate value of clearances of specified goods (excluding the value of clearances referred to in paragraph 3 of this notification) till the date of exercising the option;

(iv) the manufacturer shall not avail the credit of duty on inputs under rule 3 or rule 11 of the CENVAT Credit Rules, 2002 (herein after referred to as the said rules), paid on inputs used in the manufacture of the specified goods cleared for home consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed rupees one hundred lakhs;

(v) the manufacturer also does not utilise the credit of duty on capital goods under rule 3 or rule 11 of the said rules, paid on capital goods, for payment of duty, if any, on the aforesaid clearances, the aggregate value of first clearances of which does not exceed rupees one hundred lakhs, as calculated in the manner specified in the said Table.

3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely:-

(a) clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason;

(b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4 below;

(c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;

(c) clearance of strips of plastics used within the factory

of production for weaving of fabrics or for manufacture of sacks or bags made of polymers or ethylene or propylene.

4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases:-

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in Chapter X of the Central Excise Rules, 1994. Provided that manufacturers, whose aggregate value of clearances for home consumption of such specified goods for use as original equipment does not exceed rupees fifty lakhs in a financial year as calculated in the manner specified in the said Table, may submit a declaration regarding such use instead of following the procedure laid down in Chapter X of the said rules;

(b) where the specified goods bear a brand name or trade name of-

(i) the Khadi and Village Industries Commission; or

(ii) a State Khadi and Village Industry Board; or

(iii) the National Small Industries Corporation; or

(iv) a State Small Industries Development Corporation; or

(v) a State Small Industries Corporation."

11) This Notification also provided the definition of 'brand name' or 'trade name', as under:

"*Explanation.* - For the purposes of this notification, -

(A) "brand name" or "trade name" shall mean a brand name or trade name, whether registered or not, that is to say a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of

indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person;

(B) where the specified goods manufactured by a manufacturer bear a brand name or trade name, whether registered or not, of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader"

12) In other Notifications, namely, Notification Nos. 9/1999-C.E., 8/2000-C.E., 9/2000-C.E., 8/2001-C.E., 9/2001-C.E., 8/2002-C.E., 9/2002-C.E., 8/2003-C.E. and 9/2003-C.E., there is no significant amendment which has bearing on the present case as the conditions which are necessary for our purposes remained almost the same. However, it would still be apt to reproduce paras 2, 3 and 4 of Notification No. 8/2003 dated March 01, 2003.

"2. The exemption contained in this notification shall apply subject to the following conditions, namely:-

(i) a manufacturer has the option not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him. Such option shall be exercised before effecting his first clearances at the normal rate of duty. Such option shall not be withdrawn during the remaining part of the financial year;

(ii) while exercising the option under condition (i), the manufacturer shall inform in writing to the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise with a copy to the Superintendent of Central Excise giving the following particulars, namely:-
(a) name and address of the manufacturer;
(b) location/locations of factory/factories;
(c) description of inputs used in manufacture of specified

goods;
(d) description of specified goods produced;
(e) date from which option under this notification has been exercised;
(f) aggregate value of clearances of specified goods (excluding the value of clearances referred to in paragraph 3 of this notification) till the date of exercising the option;

(iii) the manufacturer shall not avail the credit of duty on inputs under rule 3 or rule 11 of the CENVAT Credit Rules, 2002 (herein after referred to as the said rules), paid on inputs used in the manufacture of the specified goods cleared for home consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed rupees one hundred lakhs;

(iv) the manufacturer also does not utilise the credit of duty on capital goods under rule 3 or rule 11 of the said rules, paid on capital goods, for payment of duty, if any, on the aforesaid clearances, the aggregate value of first clearances of which does not exceed rupees one hundred lakhs, as calculated in the manner specified in the said Table;

(v) where a manufacturer clears the specified goods from one or more factories, the exemption in his case shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each factory;

(vi) where the specified goods are cleared by one or more manufacturers from a factory, the exemption shall apply to the aggregate value of clearances mentioned against each of the serial numbers in the said Table and not separately for each manufacturer;

(vii) the aggregate value of clearances of all excisable goods for home consumption by a manufacturer from one or more factories, or from a factory by one or more manufacturers, does not exceed rupees three hundred lakhs in the preceding financial year.

3. For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely:-

(a) clearances bearing the brand name or trade name of

another person, which are ineligible for the grant of this exemption in terms of paragraph 4;

(b) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods;

(c) clearance of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made of polymers or ethylene or propylene.

4. The exemption contained in this notification shall not apply to specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases:-

(a) where the specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in the Central Excise (Removal of Goods at Concessional Rate of Duty of Manufacture or Excisable Goods) Rules, 2001:
Provided that manufacturers, whose aggregate value of clearances of the specified goods for use as original equi9pment does not exceed rupees one hundred lakhs in the financial year 2002-2003 as calculated in the manner specified in paragraph 1, may submit a declaration regarding such use instead of following the procedure laid down in the said Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001:
(b) where the specified goods bear a brand name or trade name of-

(i) the Khadi and Village Industries Commission; or

(ii) a State Khadi and Village Industry Board; or

(iii) the National Small Industries Corporation; or

(iv) a State Small Industries Development Corporation; or

(v) a State Small Industries Corporation;

(c) where the specified goods are manufactured in a factory located in a rural area."

13) Having taken note of the relevant provisions of the aforesaid exemption Notifications and without commenting upon the same at this juncture, we would like to discuss few judgments of this Court which have considered and interpreted these Notifications in the context of the issue that arises for determination in these appeals. In ***Commissioner of Central Excise, Ahmedabad*** v. ***Ramesh Food Products***[1]***,*** the assessee therein was engaged in the manufacture of biscuits under the brand name 'Ramesh' on his own account. It was also manufacturing, on job work basis, biscuits under the brand name of 'Cadbury' on behalf of M/s. Hindustan Coco Products, Bombay. It availed MODVAT benefit on the inputs used for manufacture of Cadbury branded biscuits. The Department issued the show cause notice taking the position that as the assessee had availed MODVAT benefit it had no right to avail the benefit of Notification No. 175/86 in respect of its own goods bearing 'Ramesh' brand either. Though, the Assistant Collector dropped the demand holding that assessee could avail both the benefits, the Collector (Appeals) took a contrary view holding that it was not permissible for the assessee to simultaneously opt for goods of one heading and MODVAT facility in respect of another heading. Assessee's appeal before the CEGAT was decided in favour of the assessee, which decision of CEGAT was upset by this Court in the judgment. This Court noted that

[1] 2004 (174) E.L.T. 310 (S.C.)

the CEGAT had relied upon another judgment of Tribunal in ***Faridabad Tools Pvt. Ltd.*** v. ***Collector of Central Excise***[2] which was specifically overruled by a larger Bench of CEGAT in ***Kamani Food*** v. ***Collector of Central Excise***[3]

14) After extensively quoting from the discussion of the Tribunal in ***Kamani Food*** case (supra), this Court observed as follows:

> "10. Notification 175/86 have to be read as a whole and as noted rightly, in Kharia Cement Works case (supra) Sub-clauses (i) and (ii) have to be construed harmoniously. Exemption envisaged for the specified goods accrues to them through instrumentality of the manufacturer. The notification clearly demarcated the two categories of manufacturers. A clear cut distinction is explicit between a manufacturer availing Modvat credit under Rule 57A and another not opting for the Modvat Scheme. As is statutorily provided, input duty relief is given under the scheme to the manufacturers who opt to operate under the scheme by applying for it in the prescribed manner. Ultimately the manufacturers have the choice of choosing one of the two concessions, i.e. either The Modvat Scheme or Notification 175/86. Further, there is no one to one correlation between the inputs and final products under Modvat Scheme. It would therefore not possible to allow the manufacturer to simultaneously avail Modvat for some products and avail full exemption for others under small-scale exemption scheme."

15) Some of the salient features of the decision of this Court in ***Ramesh Food Products*** which need to be emphasised are the following:

(a) The decision of the Tribunal in that case was of the year 1998 and it had relied upon its earlier judgment in ***Faridabad Tools*** case, which was

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[2] 1993 (63) E.L.T. 759
[3] 1995 (75) E.L.T. 202

decided in the year 1993, without realising that the said judgment had been overruled by a larger Bench of the Tribunal in ***Kamani Foods*** case, decided in the year 1995.

(b) In view of the above, this Court was influenced by the fact that smaller Bench of the Tribunal, while giving the decision which was impugned before it, was bound to follow the judgment of the larger Bench as per the demands of judicial propriety.

(c) In ***Kamani Foods*** case, the larger Bench of the Tribunal had noted its earlier Special Bench ruling in the case of ***Kharia Cement Works*** v. ***Collector of Central Excise***[4] wherein it was held that Notification No. 175 of 1986 had to be read as a whole and sub-clauses (i) and (ii) had to be construed harmoniously. The case was, thus, confined to interplay between sub-clauses (i) and (ii) of clause (a) of para 1 of the Notification, which reads as under:

> "In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 85/85-Central Excises, dated the 17th March, 1985, the Central Government hereby exempts the excisable goods of the description specified in the Annexure below and falling under the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), (hereinafter referred to as the "specified goods"), and cleared for home consumption on or after the 1st day of April in any financial year, by a manufacturer from one or more factories, -
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> (a) in the case of the first clearances of the specified

[4] 1989 (42) ELT 696 (Tribunal)

goods upto an aggregate value not exceeding rupees thirty lakhs, -

(i) in a case where a manufacturer avails of the credit of the duty paid on inputs used in the manufacture of the specified goods cleared for home consumption under Rule 57A of the said Rules, from so much of the duty of excise leviable thereon which is specified in the said Schedule [read with any relevant notification issued under sub-rule (1) of Rule 8 of the said Rules or sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 (1 of 1944) and in force for the time being] as is equivalent to an amount calculated at the rate of 10% *ad valorem* :

(ii) in any other case from the whole of the duty of excise leviable thereon :

Provided that the aggregate value of clearances of the specified goods under sub-clause (ii) of this clause in respect of any one chapter of the said Schedule, shall not exceed rupees twenty lakhs;

xx xx xx"

(d) Interpreting the aforesaid two sub-clauses harmoniously, this Court, while giving its imprimatur to ***Kamani Foods*** case, held that if the MODVAT credit under Rule 57A is availed by the assessee, it would not be entitled to exemption from excise duty under the said Notification. Significantly, these two sub-clauses deal with the goods manufactured by the assessee with its own brand and do not deal with the situation where, in addition, the assessee/manufacturer also manufactures the goods of third parties on job work basis. It goes without saying, and does not need much elaboration, that in respect of its own goods manufactured by the SSI Unit, it can either claim exemption from the

excise duty or CENVAT credit, and not both. That is the clear message of sub-clauses (i) and (ii) of clause (a) of para 1 of the Notification.

(e) Distinction between the goods cleared for home consumption and those manufactured on job work basis for third parties and the fact that CENVAT credit was availed of only in respect of goods manufactured for third parties and not with respect to home brand was not brought to the notice of the Court. Other provisions of the notifications which have bearing on this issue were also not brought to the notice of the Court. In fact, as noted above, the Court was primarily influenced by the fact that Tribunal had relied upon its earlier decision in ***Faridabad Tools*** case without realising that same had already been overruled by a larger Bench of the Tribunal in ***Kamani Foods*** case. It would be pertinent to point out that the appeal was decided *ex parte,* i.e., in the absence of assessee who chose not to appear. As would be noted hereafter on this issue, it is the other clauses of the Notifications which provide a correct answer.

16) The question posed in these appeals, however, is different where the assessees have not claimed any CENVAT/MODVAT credit in respect of inputs used in the manufacture of their own products. This CENVAT credit is availed by them in respect of goods manufactured for third parties on job work basis for which the assessees had admittedly paid the excise duty. In such circumstances, whether such an assessee

loses the benefit of exemption notification even in respect of goods for home consumption? Answer to this question is not available in sub-clauses (i) and (ii) of clause (a) of para 1. For this, other paragraphs of the Notifications in question have to be looked into. We have already extracted those relevant paragraphs from these Notifications. We reproduce, in the form of a comparative chart, extract of those paragraphs:

Notification No. 175/86	**Notification No. 8/99-CE and 9/99-CE**
Proviso to Para 3 "Provided that for the purpose of computing the aggregate value of clearances under this paragraph, the clearances of any excisable goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification, shall not be taken into account;"	Para 3 For the purposes of determining the aggregate value of clearances for home consumption, the following clearances shall not be taken into account, namely: (a) clearances, which are exempt from the whole of the excise duty leviable thereon (other than an exemption based on quantity or value of clearances) under any other notification or on which no excise duty is payable for any other reason; (b) clearances being the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4 below; (c) clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods; (d) clearances of strips of plastics used within the factory of production for weaving of fabrics or for manufacture of sacks or bags made

	of polymers of ethylene or propylene.
Para 7 The exemption contained in this notification shall not apply to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification. Provided that nothing containing in this notification shall be applicable to the specified goods which are component parts of any machinery or equipment or appliances and cleared from a factory for use as original equipment in the manufacture of the said machinery or equipment or appliances and the procedure set out in Chapter X of the said rules is followed... Provided further that nothing contained in this paragraph shall be applicable to the specified goods where a manufacturer affixes the specified goods with a brand name or trade name (registered or not) of the Khadi and Village Industries Commission, the State Khadi and Village Industries Board, the National Small Industries Corporation or the State Small Industries Development Corporation.	Para 4 The exemption contained in this notification shall not apply to the specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases:- (a) where such specified goods, being in the nature of components or parts of any machinery or equipment or appliances, are cleared for use as original equipment in the manufacture of the said machinery or equipment or appliances by following the procedure laid down in Chapter X of the Central Excise Rules, 1944. Provided that manufacturers, whose aggregate value of clearances for home consumption of such specified goods for use as original equipment does not exceed rupees fifty lakhs in a financial year as calculated in the manner specified in the said Table, may submit a declaration regarding such use instead of following the procedure laid down in Chapter X of the said rules; (b) where the specified goods bear a brand name or trade name of - (i) the Khadi and Village Industries Commission; or (ii) a State Khadi and Village Industry Board; or (iii) the National Small Industries Corporation; or (iv) a State Small Industries Development Corporation; or (v) a State Small Industries Corporation.
Explanation IV For the purposes of this notification, where the specified goods	Explanation B to para 5 For the purposes of this notification, where the specified goods

manufactured by a manufacturer, are affixed with a brand name or trade name (registered or not) of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader.	manufactured by a manufacturer bear a brand name or trade name, whether registered or not, of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader.

17) A holistic reading of the Notification, in the light of the other paragraphs, brings into focus the overall scheme. It, *inter alia*, provides that the clearances bearing the brand name or trade name of third parties which are ineligible for grant of this exemption, for the purposes of determining aggregate value of clearances for home consumption, are not to be included. These Notifications also make it clear that the exemption contained therein is not to apply to the specified goods bearing a brand name or trade name, whether registered or not, of any person, except under certain circumstances specifically stipulated therein. The Notifications also clarify that for the purpose of these Notifications, where the goods manufactured by a manufacturer bear brand name or trade name (whether registered or not) of any manufacturer of trade, they shall not be deemed to have been manufactured by such other manufacturer or trade. Reading of the aforesaid provisions in the Notifications unambiguously points out that for the purposes of availing the benefit of Notification by an SSI Unit, the clearances for home consumption only are to be taken into consideration, except in those cases where it is clearly provided otherwise. For this purpose, clearances bearing the

brand name or trade name of third parties are concerned, they are kept outside the scheme inasmuch as: (a) they are not to be included for the purposes of determining the aggregate value of the clearances for home consumption; and (b) such products bearing brand names or trade names of third parties, even if manufactured by the SSI Unit, are not eligible for any exemption and excise duty thereupon has to be paid. Once we understand the scheme of the Notifications in the aforesaid perspective, which according to us is the only manner in which it has to be understood, it becomes apparent that so far as manufacture of branded goods of third party on job work basis by the SSI Unit is concerned, they are to be dealt with differently in the sense that they do not come within the ambit of exemption on which normally excise duty, as per the provisions of the Act, is payable. As a sequitur, it also follows that once excise duty is paid by the manufacturer on such branded goods manufactured, the brand name whereof belongs to another person, on job work basis, the SSI Unit would be entitled to CENVAT/MODVAT credit on the inputs which were used for manufacture of such goods as on those inputs also excise duty was paid. To put it otherwise, these branded goods manufactured by the SSI Units meant for third parties are regulated by the normal provisions of excise law and will have no bearing or relevance insofar as availing the benefit of those exemption notifications in respect of its own products manufactured by

the SSI Units is concerned.

18) We, thus, find that the Tribunal in the impugned decisions in both these appeals has decided the issue correctly. Admittedly, in respect of home production, the assessee had not availed the benefit of two options simultaneously as no CENVAT credit is claimed in respect of those goods. While doing so, the Tribunal has taken note of the judgment of this Court in ***Ramesh Food Products*** case and rightly analysed the same. We reproduce following discussion in the impugned judgment dated 22.08.2006 of the Tribunal (which is the subject matter of Civil Appeal No. 2789 of 2007):

> "7. The provisions in the relevant Notifications to compute aggregate value of clearances mandate that the clearances of goods bearing brand name or trade name of another persons which are ineligible for the grant of exemption shall not be taken into account in determining the aggregate value of clearances. Therefore, value of clearances of goods bearing brand name of third parties without availing the benefit of Notification No. 8/2003 is not reckoned for computing clearance value of rupees one hundred lakhs in any year for exemption benefit. From these clauses contained in the relevant Notifications, it is clear that goods bearing brand name of third parties were not eligible for exemption contained in Notification No. 8/2003. Identical provision existed in Notifn No. 9/2003 where the option of availment of Modvat benefit and payment of a concessional rate of duty was prescribed. Goods bearing brand name of third parties are therefore excluded from the exemption in Notification No. 9/2003 as well. The assessee has not availed the benefit contained in either of the Notifications 8/99 and 9/99, 8/2000 and 9/2000 etc. in respect of goods bearing brand name of third parties.
>
> 8. We find that the impugned order also seeks support of the ratio of Ramesh Food Products case decided by the

Hon'ble Supreme Court. In that case, the Honourable Supreme Court considered the options available to the SSI units clearing specified goods and decided that both the options provided substantive concessions viz; modvat and exemption under Notfn. 175/86 to the manufacturer and the manufacturer had to decide on one option. Once an option was made, there was no liberty to the assessee to avail benefits of both the options simultaneously. Therefore an SSI unit availing full exemption as per the Notfn. No. 175/86 in respect of certain specified goods could not also avail the modvat benefit in respect of certain other specified goods.

8.1 Notfn No. 175/86 dated 01.03.1986 extended concessional rate of duty on first clearances of specified goods of value of rupees seven and half lakhs while availing modvat credit on inputs or full exemptions benefit for such goods without the benefit of modvat credit. The Notfn also provided lesser benefit for further clearances in excess of the above aggregate value under both the options for higher slabs/aggregate value of clearances. In computing the aggregate value of clearances for the purposes of exemption under both the options, the notification did not require that the goods bearing brand name of third parties should be excluded. The following explanations, inter-alia, governed computation of the above aggregate value for the Notfn.

Explanation IV – For the purposes of this notification, where the specified goods manufactured by a manufacturer, are affixed with a brand name or trade name (registered or not) of another manufacturer or traders, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader.

8.2 The above condition though present in the Notifications that replaced the scheme of duty benefit for SSI units contained in Notfn. 175/86, value of such goods are specifically excluded from the computation of aggregate value in these Notfns. Clearances of goods bearing brand name of third parties is thus not governed by the Notfns issued for the benefit of SSI units.

xx xx xx

9.1 All the twin Notifications contain the following identical conditions excluding the goods bearing brand name of

third parties from the purview of both the Notifications:

> "3. For the purpose of determining the aggregate value of clearances for home consumptions, the following clearances shall not be taken into account, namely:
>
> (a) xx xx xx
>
> (b) clearances bearing the brand name or trade name of another person, which are ineligible for the grant of this exemption in terms of paragraph 4 below.
>
> 4. The exemption contained in the Notification shall not apply to the specified goods bearing a brand name or trade name, whether registered or not, of another person, except in the following cases...."

The exclusions mentioned are components manufactured for OE manufacturers, goods manufactured in rural area, goods bearing brand names of KVIC etc. The conditions contained in para 2(iii) of the relevant Notifications seminal to the dispute was not present in the Notification No. 175/86. The relevant notifications are different from Notification No. 175/86 in view of the other new conditions since added.

10. Therefore, the ratio laid down by the Apex Court interpreting Notification No. 175/86 in Ramesh Food Products cannot apply in reading the scope of pairs of Notifications issued in various years after its (Notification No. 175/86) rescission for the benefit of SSI Units. It is well settled that each Notification has to be construed strictly on its own terms. The issue involved in the subject case is interpretation of the scope of relevant Notfns extending exemption without the benefit of modvat credit. In the view we have taken of the relevant Notifications, the assessee had correctly availed the exemption under the relevant Notfns. and the impugned order is passed on incorrect reasoning. We therefore set aside the impugned order and allow the appeal."

19) We, accordingly, uphold the view of the Tribunal in both the decisions, result whereof is to dismiss these appeals. Ordered accordingly. There

shall, however, be no order as to costs.

.....J.
(A.K. SIKRI)

.....J.
(ROHINTON FALI NARIMAN)

NEW DELHI;
OCTOBER 27, 2015.