(2007) 11 MAD CK 0064

In the Madras High Court

Case No : W.A. No''s. 1547 to 1549 of 2000

Asian Paints India Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 21-11-2007

Acts Referred:
Central Excise Rules, 1944 — Rule 57A
Customs Tariff Act, 1975 — Section 3

Citation : (2008) 227 ELT 192 : (2008) WritLR 211

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : R. Premkumar, for the Appellant; V.T. Gopalan, Addl. Solicitor General and P. Wilson, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—The writ appeals are filed against the order of the learned single Judge dated 5.6.2000 made in W.P. Nos. 12823

to 12825 of 1990.

2. In the writ petitions a notification issued in No. 177/86-WE dated 1st March 1986 to the extent that it restricts the Modvat credit of duty to

only certain inputs as listed in column 2 of the table annexed to the notification was sought to be declared as ultra vires of Rule 57-A of the Central

Excise Rules, 1944 on the premise that under Rule 57-A the legislature has conferred power on the Central Government only to specify the final

products and specified duty. In other words Rule 57-A nowhere uses the words ""as may be specified"" in relation to ""inputs"" and the Central

Government has not empowered its delegate to specify the inputs and thereby restrict the list of inputs, regarding which the credit may be availed of, if duty is paid on the inputs. According to the appellant, the Central Government has exceeded its power and jurisdiction as a delegate and the

notification issued by the Central Government to the extent that it is not in strict conformity with the ambit and scope of Rule 57-A of the Rules, is

ultra vires, illegal and void.

3. This Court after hearing the learned Counsel on either side in an elaborate fashion, considering the argument in extenso and after taking note of

the Rule 57-A has held that a careful reading of the Rule 57-A, showed that the Central Government was empowered to specify in the notification

the final excisable goods eligible for Modvat credit which are referred to as final products. The Central Government was also empowered to notify

in the said notification the duties for the purpose of allowing credit of any duty of excise or the additional duty u/s 3 of the Customs Tariff Act,

1975 which were referred to as ""specified duty"" paid on the goods used in or in relation to the manufacture of the said final products which were

referred to as inputs. The Court further proceeded that though the expression ""inputs"" was not qualified by the expression ""as specified in the

notification"" the rule did not stop with the expression ""inputs"", but proceeded further by use of the conjunction word ""and"" following the word

inputs'' with the last part of the rule and the entire rule had to be read as a whole. If such exercise has been done, the rule indicated that the

utilisation of credit to be allowed towards payment of excise duty leviable on the final products would be subject to the provision of the Section

and the restriction and condition that may be specified in the notification. The learned single Judge finally held that the notification was not in any

way repugnant to the rule making authority under Rule 57-A and the intention of the rule making authority was not to allow credit to all inputs. The

credit was available and restricted to the inputs specified in the notification which were used in or in relation to the manufacture of final products.

4. We heard the arguments of the learned Counsel appearing for the appellant, who reiterated the very same arguments, which has been argued

before the learned single Judge.

5. On a reading of the order of the learned single Judge, we are of the considered view that Rule 57A cannot be regarded as extraneous to the

statutory provisions or repugnant to the statute, which empowers the Central

Government to exclude some inputs or specify certain inputs for

availing the benefit of Modvat Credit. The Rule, which is generally an extension of statutory provisions can be questioned only if the Rule is over-

edged the substantive Act or repugnant to the substantive statutory provisions. In the absence of anything to attribute that the rule which has been

framed is repugnant to the main statutory provision, the assessee cannot have any legal right to put in issue a beneficial notification, which confers

certain benefit under the Modvat Credit scheme in respect of certain category of inputs. Hence we do not find any reason to interfere with the

order of the learned single Judge. The writ appeals are dismissed. No costs.

