(1997) 07 KAR CK 0005

In the Karnataka High Court

Case No : Writ Petition No''s. 11689-90/91, 217/92 and 17116/91

Canara Steel Ltd. — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 15-07-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 57A
Customs Tariff Act, 1975 — Section 3, 4

Citation : (1998) 98 ELT 81

Hon'ble Judges : Tirath S. Thakur, J

Bench : Single Bench

Advocate : Shri K.R. Prabhu and M.S. Pai for M/s. Tukaram S. Pai, for the Appellant; Shri Mukunda Menon, CGSC, for the Respondent

Judgement

Shri Tirath S. Thakur, J.—The short question that falls for consideration in this batch of petitions is whether Ramming Mass and Kalminax Sleeves used by the petitioner in the course of manufacture of Steel Ingots and Steel Castings, are "inputs" within the meaning of Rule 57A of the Central Excise Rules. The question arises in the following backdrop.

2. The petitioner company is engaged in the manufacture of steel products and has a factory at Baikampady, Mangalore. In the course of the manufacturing process the petitioner makes use of Ramming Mass and Kalminax Sleeves as lining material in the electric arc furnace and as insulating material for maintaining the temperature of the molten metal poured into castings Modvat credit for both these items was availed by the petitioner in terms of Rule 57A of the Central Excise Rules on the premises that the same were "inputs" used in the manufacture of the final product. The Central Excise Authorities were however of the view that the credit availed of by the petitioner, was not legally admissible to it as the two items mentioned earlier were not "inputs" in the true sense of the said expression. Notices were accordingly issued to the petitioner to show cause why the credit availed by it, should not be denied and the excise duty payable

recovered. The petitioner opposed the show cause notices and the proposed recovery, contending that Ramming Mass and Kalminax Sleeves were inputs and had been rightly treated to be so while granting credit. The Assistant Collector did not however, find favour with the contentions raised by the petitioner and by different orders passed by him, demanded the recovery of the amount said to have been wrongly availed of by the petitioner. Aggrieved the petitioner went up in Appeal to the Collector of Customs and Central Excise (Appeals), Bangalore, who relying upon the decision of the Central Excise and Gold (Control) Appellate Tribunal, South Regional Bench, Madras, in the case of Sathya Steel Strips Pvt. Ltd. v. Collector of Central Excise and the decision of West Regional Bench at Bombay of the said Tribunal in 1990 (25) ECC 125 held that Ramming Mass and Kalminax Sleeves, were not "inputs" and did not qualify for Modvat credit under the Modvat Scheme. The Appeals preferred by the petitioner were accordingly dismissed. It is against the said orders of the Appellate Authority that the petitioner has come up with the present writ petitions, inter alia assailing the constitutional validity of Rule 57A of the Central Excise Rules and in the alternative seeking a declaration to the effect that "Ramming Mass and Kalminax Sleeves" are "inputs" within the meaning of the said Rule.

3. I have heard Mr. Radesh Prabhu, learned Counsel appearing for the petitioner and Mr. Mukunda Menon for the Respondents. The Writ Petitioners do not spell out any reason much less a compelling one why Rule 57A of the Central Excise Rules, could be considered to be ultra vires of the Constitution. All that is stated is that since Rule 57A excludes substances like Ramming Mass and Kalminax Sleeves etc., from the purview of the expression "Inputs", the same makes an unreasonable classification, and that the Rule is arbitrary in nature. Apart from the fact that the petitioner has on a true and correct interpretation of the Rule, accepted the position that the same excludes substance like Ramming Mass and Kalminax Sleeves from the purview of the expression "inputs", it is difficult to see how any such exclusion could by itself make the Rule either unreasonable or arbitrary. Rule 57A, empowers the Central Government to specify by a Notification in the Official Gazette, finished excisable goods also referred to as final product, for purpose of allowing credit of any duty of Excise or the additional duty u/s 3 of the Customs Tariff Act, 1975. Such credit can in terms of the said provision, be claimed on the goods used in or in relation to manufacture of the final products. The credit so allowed towards the payment of excise leviable on the final product whether under the excise Act or any other Act as the case may be can be claimed subject to the provisions of the Rule and the conditions and restrictions that may be specified in the Notification. For the purpose of Rule 57A the expression "inputs" has been defined by the explanation though not exhaustively to include the following :-

"(a) Inputs which are manufactured and used within the factory of production, in or in relation to, the manufacture of final products,

(b) Paints and packaging materials,

(c) Inputs used as fuel, and

(d) Inputs used for general of electricity, used within the factory of production for manufacture of final products or for any other purpose, but does not include -

i) Machines, machinery, plant, equipment apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products;

ii) Packaging materials in respect of which any exemption to the extent of the duty of excise payable on the value of the packaging materials is being availed for packaging any final products;

iii) Packaging materials the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products u/s 4 of the Act; or

iv) Cylinders for packing gases."

4. From a bare reading of the Rule it is apparent that the same classifies for purposes of Modvat Credit "inputs" that go into manufacture and are used in or in relation to the manufacture of final products including paints and packaging materials but excludes from such classification machines, machinery, substance, equipments etc., used for producing or processing of any goods or bringing about any change in any substance in or in relation to the manufacture of final products. Packaging materials falling under Tariffs (ii) and (iii) of the Explanation to the Rule extracted above, also do not qualify as "inputs" nor are cylinders for packaging gases eligible for such credit. The object behind the classification is to identify goods which go into the manufacture of finished product as against others, which are only used for producing or processing such goods, as is the case with machines, machinery, plant, equipment, etc. Apart from the fact that the legislature and so also a subordinate legislative authority enjoy considerable latitude in classifying goods that may be taxed and others that may be left out of the tax net, I see no palpable irrationality or discrimination in the classification that the Rule makes while conceding Modvat Credit to some and denying the same to others. Merely because machinery, plant, equipment or apparatus, or other items which can be said to be a part and parcel of the same, are excluded by the Rule while classifying the goods eligible for purposes of grant or refusal of credit is therefore no reason why the Rule can be said to be discriminatory or arbitrary so as to be offensive to Article 14 of the Constitution. The first limb of the petitioners'' case touching upon the constitutional validity of the Rule must therefore fail.

5. Coming then to the question whether Ramming Mass and Kalminax Sleeves can be said to be "inputs", it is essential to note the use to which the said material is put. The adjudicating authority and so also the first Appellate Authority have concurrently come to the conclusion that Ramming Mass is in the form of a powder and is used as lining material in the electric arc furnace to

avoid erosion of the brick lining while Kalminax Sleeves are heat insulating material used to maintain temperature of molten metal poured into the castings and also to eliminate shrinkage of the castings. If that be so all that remains, to be seen is whether in the light of the said findings, the two commodities mentioned above can be said to be in the nature of equipment for manufacture of finished goods or "inputs" that go into the manufacture of such goods. Having given my anxious considerations to the submissions made at the Bar, I am inclined to accept the view, that since Ramming Mass and Kaminax Sleeves are used to coat the inside of the machinery used by the petitioner, it is more in the nature of a part of the furnace and hence a part of machinery and equipment used for producing the final product then an "input" used ''in or in relation'' to the manufacture of final product. Functional utility of the items used would be a relevant consideration if not the acid test for determining whether the goods in question are inputs or merely aids for the smooth and proper functioning of the machinery. In the present case since the entire object behind the use of Ramming Mass and the Kalminax Sleeves is to provide a protective layer to the machinery so as to enable the same to withstand the high temperature at which the molten material flows through it, it must be treated to be a part of the machinery more than a part of raw material that goes into the production of the ultimate product. That is precisely the view taken by the Officers below who have correctly understood the import of the expression "inputs" to be articles and items other than those used as machines, plants, apparatus used for manufacture of other products or for processing of goods or for bringing about any change in the same. Even granting that the petitioner''s admission made in para 12 of the writ petition to the effect that Ramming Machines and Kalminax Sleeves are excluded from the purview of the expression "inputs" does not stop it from arguing the contrary, yet on a true and correct interpretation and in the light of the findings returned by the authorities below it must be held that the said two substances utilised by the petitioner do not qualify for Modvat credit. There is no merit in these petitions which fail and are accordingly dismissed, but in the circumstances without any orders as to costs.