
(2000) 10 MAD CK 0065

In the Madras High Court

Case No : Reference Case No. 3 of 1996

Collector of Central Excise, Madras

APPELLANT

Vs

Union Carbide India Ltd.

RESPONDENT

Date of Decision : 11-10-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57C, 57CC, 57D

Citation : (2001) 129 ELT 40

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Division Bench

Advocate : K. Veeraraghavan, ACGSC, for the Appellant; T. Ramesh, for N. Inbarajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The respondent is a manufacturer of dry cells which is an excisable final product had availed the benefit of Notification No. 100/69-C.E., dated 22-3-1969 as amended by Notification No. 97/86-CE., dated 10-2-1986 under which dry cell batteries falling under Heading No. 85.06 of the Schedule to the Central Excise Tariff Act, 1985, removed for laboratory tests under exempt from the whole of the duty leviable thereon subject to a certificate from the laboratory in which the samples are tested showing that the samples have been destroyed in test. In respect of the quantity of the final product so removed for the purpose of testing on which no duty was paid, a demand was made for expunging the Modvat credit, that had been taken for the inputs used for manufactured the quantity of the cells which had been removed for testing on which excise duty had not been paid. The Tribunal which considered the claim of the assessee that it is not required to expunge the credit so taken, upheld the assessee's claim accepting the argument that under Rule 57C the inputs that had been used in the cells taken for testing had become waste as the cells were destroyed after the test. Aggrieved by the order of the Tribunal, the revenue sought a reference and the following question has been referred to us by the Tribunal.

"Whether in the facts and circumstances of the case Modvat credit is available in respect of inputs used in the exempted final products, which was sent for testing under the exemption Notification 100/69 as amended by Notification 97/86, dated 10-2-1986?".

2. Before us, learned counsel for the assessee submitted that though Rule 57C had been relied on before the Tribunal, the proper rule to be referred to would be Rule 57A which entitles the manufacturer of finished excisable goods to avail the Modvat credit on the inputs used in the manufacture of specified excisable goods. It was submitted that the right of manufacturer to obtain the credit arises at the time of receipt of the inputs and the credit once so taken, such credit being in accordance with law at the time the credit was taken, cannot be subsequently reversed. Counsel contended that Rule 57C refers to the manufacture of final products which are exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty. It was submitted that the rule would have no application as the final products manufactured by the assessee are admittedly subject to duty and that product is not exempted from the payment of duty. Counsel contended that the fact that duty was not paid on some quantity of the final product by availing the benefit of exemption under the notification issued under Rule 8(1), would not have the effect of the assessee having to cancel the credit availed of on the inputs used in the quantity of the final product which had been removed for the purpose of testing. The further submission was, there is no one-to-one correlation as between the input received on which credit was taken and the input that had been actually utilised and contained in the final product.

3. Counsel further contended that the rule making authority has subsequently made a specific rule to deal with contingencies like the present one in Rule 57CC. But that was done long after the period with which we are concerned in this case namely the period from 1-8-1990 to 30-4-1992; Rule 57CC having been made on 23-7-1996. Attention was invited in particular to Rule 57CC Clause (9), which stipulates that, in respect of inputs other than inputs used as fuel which are used in or in relation to the manufacture of any goods, which are exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, the manufacturer shall maintain separate inventory and accounts of the receipt and use of inputs for the aforesaid purpose and shall not take credit of the specified duty paid on such inputs.

4. The argument so advanced though superficially attractive, cannot be accepted. The rules have to be read together. It is not possible to read Rule 57C as being totally divorced from Rule 57A. Rule 57A enables the manufacturer of the finished excisable goods to take credit on the inputs required for the manufacture of such finished excisable goods. Rule 57C provides that credit of the duty paid on inputs shall not be allowed on the quantity of inputs used in the manufacture of final products which are exempted from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty subject to certain exceptions,

which we are not concerned in this case.

5. The fact that the manufacturer is engaged in the manufacture of a final product which is subject to duty, does not on that score alone entitle the manufacturer to simultaneously avail the benefit of duty exemption on a part of the final product provided for under an exemption notification issued under Rule 8(1), and also retain the Modvat credit on the inputs for the manufacture of such product which has been cleared without payment of duty. Rule 57C applies not only to cases where the product is subject to nil rate of duty but else applies to final products which are exempted from the whole of the duty of excise leviable thereon question of exemption will arise only when the product is leviable for payment of duty under the provisions of the Act or Rules made thereunder. Thus, where the final excisable product is subject to payment of duty, but a portion of such final product is allowed to be cleared without payment of duty by granting exemption for such clearance by issue of a notification under Rule 8(1) the manufacturer cannot fall back on Rule 57A, and claim the right to retain the Modvat credit even in respect of the inputs used in that part of the final product which has been cleared without payment of duty. The words "Final product" used in Rule 57A and also in Rule 57C must be read and understood to mean final product which is subject to the payment of excise duty. If a part of the final product is not subject to payment of duty by reason of grant of exemption, then the exempted final product is not one in respect of which Modvat credit on inputs can be availed.

6. The extent to which Modvat credit can be retained on inputs which are not ultimately cleared as part of the final product on which duty is paid is set out in Rule 57D which provides that the credit of specified duty shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse or by-product arising during the manufacture of the final product, or that the inputs have become waste during the course of manufacture of the final product, whether or not such waste or refuse or by product is exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty or is not specified as a final product under Rule 57A. In this case, Rule 57D would have no application as the product had been manufactured and after the completion of manufacture, the finished product was taken out by availing the benefit of exemption notification without payment of duty. The fact that the cells so taken out were destroyed after the test, would not by that reason, become for the purpose of Rule 57D, waste or refuse arising during the course of manufacture. A sample which is destroyed, after testing such sample having been cleared after completion of the process of manufacture, cannot be regarded as waste which occurs during the course of manufacture.

7. The fact that the rule making authority at a subsequent point of time chose to regulate the manner in which the Modvat credit for inputs utilised in exempted final product would be dealt with, does not on that score alone indicate that the legislative intention prior to the introduction of Rule 57CC was to allow the

manufacturers to avail of the Modvat credit on the quantity of inputs used in the clearance of exempted final products solely on the ground that the manufacturer has paid duty on non-exempt quantities of final product. Sub-clause (9) of Rule 57CC now makes explicit that what had always been part of the Rules. It merely provides an easier methodology for determining the extent of the inputs and their value as also the extent of modvat credit that had been utilised at the time of receipt of the inputs by the manufacturer where such of them were used in the manufacture of exempted final products.

8. The fact that under Rule 57CC the manufacturer is required to maintain a separate account in respect of the inputs received for the manufacture of final products which are excisable for payment of excise duty and for final products which are exempted or chargeable to nil duty, does not on that score release the manufacturer from the duty to expunge the credit on inputs used in the manufacture of exempted final products prior to the introduction of the rule as Rules 57A read with Rules 57C and 57D clearly indicates that Modvat credit can be availed of only in respect of the inputs utilised in the manufacture of excisable final products on which duty is paid excepting in the circumstances set out under Rule 57D. We must also notice that, in this case there was no dispute at all before the authorities about the amount of the Modvat credit taken by the assessee on the quantity of inputs used in the manufacture of exempted final product. We therefore answer the question referred to us in favour of the revenue and against the assessee. In the circumstances, parties are directed to bear their respective costs.