

(2009) 07 GUJ CK 0014
In the Gujarat High Court

Case No : CE-Customs Gold Control Reference No. 3 of 1999

Commi. of Central Excise and Customs	APPELLANT
Vs	
Atlas Paper Mills Pvt. Ltd.	RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35(G)

Citation : (2009) 3 GLH 217

Hon'ble Judges : K.A. Puj, J;A.L. Dave, J

Bench : Division Bench

Advocate : Amee Yajnik, for the Appellant;

Judgement

Mr. K.A. Puj, J.—At the instance of the Commissioner of Central Excise and Custom, Surat, the Customs, Excise and Gold (Control) Appellate Tribunal, Bombay has referred the following question of law for the opinion of this Court u/s 35(G) of the Central Excise Act, 1944.

"Whether wire and felt which are used in the machinery for manufacture of paper products are eligible for modvat credit under Rule 57A of the Central Excise Rules."

The brief facts giving rise to the present reference are that, the respondent assessee, namely, M/s. Atlas Paper Mills Ltd., Vapi was engaged in the manufacture of excisable goods viz. paper and paper board falling under Chapter 48 of Central Excise & Tariff and availing benefit of modvat scheme under Rule 57-A of Central Excise Rules, 1944. The respondent assessee availed modvat credit on Wire and Felt Industrial cloth to the tune of Rs. 7, 874. 20 during the month of April, 1990. Since the wire and felt were not used as in puts in or in relation to manufacture of final product, the credit so availed on felt and wire by the respondent assessee was inadmissible. The Range Superintendent therefore issued four show cause notices to the respondent assessee on 30. 5. 1990 asking them to show cause as to whey the credit availed by them in the month of April,

1990 should be recovered from them; under Rule 9(2) read with Rule 57I of Central Excise Rules, 1944.

2. The Assistant Collector, Central Excise, Division-I, Vapi vide his: adjudication order dated 10. 7. 1991 had adjudicated the case and confirmed the demand of duty amounting to Rs. 7, 874. 20.

3. Being aggrieved by the said order passed by the Assistant Collector, the respondent assessee filed an Appeal before the Collector of Central Excise (Appeals), Bombay who vide his order dated 9. 3. 1992 set aside the order in original passed by the Assistant Collector holding therein that the show cause notice issued by the Superintendent was without jurisdiction and order passed pursuant to the said show cause notice was bad in law.

4. Being aggrieved by the said order of Collector of Central Excise (Appeals), the Central Excise Department filed an Appeal before the Tribunal and while disposing of the said Appeal on 25. 4. 1998 the Tribunal observed that there is no requirement in Rule 57-1 that in cases where the extended period contained in the proviso is invoked notice has to be issued by the Collector. It is the proper officer who is to issue notice in all such cases. The Tribunal, however, dismissed the Appeal filed by the Central Excise Department and held that the respondent assessee had rightly taken the credit on wire felt considering that wire and felt used in the manufacture of paper do not fall within the excluded category of inputs specified in the Notification and, therefore, duty paid on these items could be taken as credit and after relying on the decision of the Tribunal in the case of 1996 (66) ECR 1 72 decided the Appeal in favour of the assessee.

5. Ms. Ameer Yagnik, learned Standing Counsel appearing for the Central Excise Department has submitted that the items in question are not capable of participating in the manufacturing process individually or separately and can only do so when they are fitted into the machinery and by virtue of the exclusion Clause (1) of the Explanation to Rule 57-A, these items are also not eligible inputs for modvat purpose. She has further submitted that the Tribunal in its decision in the case of M/s. Union Carbide India Ltd., was influenced by the fact that the machinery parts were not mentioned in the exclusion clause. She has, however, pointed out that in the said Clause the reference is to the production of the goods the goods cannot be produced out of one or two parts but only by an assemblage of all parts into a machinery. She has, therefore, submitted that the words "or parts thereof" were admittedly not used in the exclusion clause. In support of her submission she relied on the decision of Apex Court in the case of M/s. Pankaj Jain Agencies Vs. Union of India and others, wherein it is held that the parts go with the machines even in the absence of specific reference thereof. She has further submitted that the reliance placed by the Tribunal's Larger Bench upon the case of M/s. Singh Alloys & Steel Ltd., v. Asstt. Collector, 1993 (66) 594 (Cal.) also does not appear to be valid as the issue in that case was entirely different from the one in the present case. She has, therefore, submitted that the order passed by the Tribunal is required to be reversed and the question

referred to this Court must be answered in the negative i. e. in favour of the Central Excise Department and against the respondent assessee.

6. Nobody appears on behalf of the respondent assessee.

7. We have heard Ms. Amee Yagnik, learned Standing Counsel and considered her submissions in light of the relevant statutory provisions and the decided case law on the subject. Though there is no independent reasoning in the Tribunal's order under challenge and the Tribunal has merely relied on the decision of M/s. Union Carbide (I) Ltd. (Supra). The said decision is required to be considered for the purpose of deciding the issue involved in the present reference.

8. In the case of M/s. Union Carbide (I) Ltd. the Tribunal held that under Rule-57A, inputs are not only goods used in the manufacture of final products, but also goods used in relation to the manufacture of final products. The same language is used in exclusion Clause (i) of the Explanation to the Rule. The words "in relation to the manufacture" are used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract also goods which do not enter directly or indirectly into the finished product but are used in any activity concerned with or pertaining to the manufacture of finished goods. The Tribunal, therefore, held that, Felts. Phosphor Bronze, Stainless Steel Wire Cloth, Wire Mesh and Dandy cloth used as parts in machine or machinery in the manufacture of paper and paper products are eligible inputs and are not excluded by virtue of exclusion Clause (i) of Explanation to Rule 57A of Central Excise Rules, 1944.

9. While arriving at the above conclusion the Tribunal derived support from the decision of the Apex Court in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, , wherein it is held that, the expression "in the manufacture of goods" should normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be commercially inexpedient, goods required in that process would, fall within the expression "in the manufacture of goods". The Tribunal has also derived support from the decision of the Apex Court in the case of Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, , wherein the word, "in relation to" occurring in Section 4(1) of the Swadeshi Cotton Mills Company Ltd., (Acquisition and Transfer of Undertakings) Act, 1986, have been held to be very broad expression and to be of comprehensiveness which might have both a direct significance as well as an indirect significance depending on the context. These words have been held to be equivalent to or synonymous with and pertaining to.

10. The Tribunal has also referred to the decision of the Calcutta High Court in the case of Singh Alloys and Steel Ltd. Vs. Assistant Collector of Central Excise, , wherein it is held that the definition of "input" is not dependent on what ought to

be used but what is in fact used or what is commercially expedient to use. The expression "in relation to" has a very wide connotation. The Court further held that items like dolopatch mix, magnesite peas and ramming mass used in relation to manufacture of steel are eligible for credit. Despite the fact that these items certainly do not come within the dictionary meaning of machines or machinery or instruments or appliances, the items are chemicals and have been classified as such in the Tariff Act. Merely because chemicals are used for the machinery do not make the chemicals, machinery. The only relevant question is, are they used in or in relation to the manufacture of ingots. The Court, therefore, while reversing the order of the Tribunal held that the Tribunal has erred in seeking to limit the meaning of the word "inputs" to those items which go into the steel ingot completely overlooking the phrase "in relation to" in the definition in the major clause of the Explanation.

11. In the above view of the matter, we full agree with the view taken by the Tribunal and submissions made by Ms. Ameer Yagnik could not persuade us to take different view in the matter. We, therefore, answer the question referred to us in the affirmative i. e in favour of the respondent assessee and against the Central Excise Department. The reference is accordingly disposed off.