

(2002) 07 P&H CK 0105
In the Punjab And Haryana At Chandigarh
Case No : CEC No. 108 of 2001 (O and M)

Commissioner of C. Ex.

APPELLANT

Vs

J.C.T. Limited

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57G

Citation : (2003) 151 ELT 508

Hon'ble Judges : Virender Singh, J;N.K. Sodhi, J

Bench : Division Bench

Advocate : M.S. Guglani, ACGSC, for the Appellant; Balbir Singh, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This order will dispose of two Central Excise cases 41 and 108 of 2001 in which the question of law sought to be raised by the Department is the same. Both these cases pertain to M/s. J.C.T. Limited, Synthetics Fibre Division, Hoshiarpur.

2. The assessee is engaged in the manufacture of polyester/nylon filament yarn, textured/non-textured yarn falling under sub-headings 5402 and 5403 of the Central Excise Tariff Act, 1985 and it is availing the benefit of Modvat scheme under Rules 57A and 57Q of the Central Excise Rules, 1944 (for short the Rules). It availed Modvat credit on "clean-flo" and "floron gas". The Assistant Commissioner issued a notice to the assessee to show cause why the benefit claimed be not withdrawn. In response thereto, a detailed reply was filed as a result of which the adjudicating authority allowed the benefit as claimed. The order was upheld by the Commissioner (Appeals), Chandigarh. The Department then filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The question that arose before the Tribunal was whether the Modvat credit was admissible under Rule 57A of the Rules on "clean-flo" and "floron gas" used in the air-conditioners to remove the fungus and unwanted

deposits in air-conditioners used to maintain the temperature in the filament yarn plant of the assessee? This issue was decided in favour of the assessee and against the Department and while doing so the Tribunal relied upon its earlier decision in the case of 1998 (98) ELT 507 upholding that Modvat credit was available on the aforesaid items even though they do not go into the production of the final products.

3. On the last date of hearing when this case came up for hearing, we specifically inquired from the Counsel for the Department as to whether any reference was sought by the latter against the order of the Tribunal on which reliance had been placed. Counsel for the Department sought time to seek the information. He is still not aware whether any reference was sought. Learned Counsel appearing for the assessee has brought to our notice that no such reference was sought and that the decision of the Tribunal in M/s. J.K. Synthetics's case (supra) has become final which is being followed by the Tribunal regularly. Since the Department did not seek reference in the case of M/s. J.K. Synthetics's case (supra) and has allowed the Tribunal to follow its earlier decision in a large number of cases, it is obvious that the Department has accepted that view and having done so it cannot seek a reference in the present case. Be that as it may, the provisions of Sub-rule (4) of Rule 57A of the Rules is so clear that the argument now sought to be raised does not really arise. A reading of this sub-rule leaves no room for doubt that the credit of specified duty has to be allowed on inputs used in the manufacture of final products as well as on inputs used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final product or not. The argument of the Department that "clean-flo" and "floron gas" are not inputs for the manufacture of the final products and that they are used as inputs only for the air-conditioners and, therefore, the assessee is not entitled to claim Modvat benefit cannot be accepted in the light of the language used in Sub-rule (4) of Rule 57A of the Rules. The answer to the question is so obvious and we are of the view that no reference is called for.

4. In Central Excise case 41 of 2001 another issue is sought to be raised namely whether triplicate copy of the bill of entry endorsed by the importer in favour of the assessee is an admissible document to avail Modvat credit ? Apart from the fact that the Tribunal has been holding such documents to be valid duty paying documents and the Department has not challenged those, the learned Counsel for the assessee has brought to our notice paragraph 4 of circular dated 28-2-1996 issued by the Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi. This paragraph reads as under :

"Where the imported goods are still in Customs dock area and the manufacturer/importer decides to divert/transfer the goods, a declaration by the manufacturer/importer can be made on the reverse of triplicate copy of Bill of Entry/duplicate copy of the Bill of Entry generated on EDI system by the manufacturer/importer that consignments are being delivered to the unit (name of the unit) for availing

credit and endorsed by the Proper Officer of Customs for enabling the manufacturing unit to avail credit."

It is, thus, clear that the triplicate copy of the bill of entry endorsed by the importer in favour of the assessee would be a valid duty paying document. In view of this circular, no referable question of law arises from the order of the Tribunal.

In the result, both the petitions are dismissed.