
(2001) 02 P&H CK 0002
In the Punjab And Haryana At Chandigarh
Case No : C.C.E.S. No. 44 of 2000

Commissioner of C. Ex., Chandigarh

APPELLANT

Vs

Alpha Drugs (India) Ltd.

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 13, 57A, 57C

Citation : (2002) 140 ELT 43

Hon'ble Judges : Nirmal Singh, J;G.G. Singhvi, J

Bench : Division Bench

Advocate : Rajesh Gumber, for the Respondent

Final Decision : Dismissed

Judgement

G.G. Singhvi, J.—This is a petition u/s 35H(I) of the Central Excise Act, 1944 (for short, the Act) for directing the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short, the Tribunal) to refer the following question of law to this Court for its opinion :

"Whether the Hon'ble Tribunal is correct in holding that Modvat credit is admissible in respect of inputs utilised in manufacture of such goods which were cleared under Chapter X i.e. against CT-2 without reversing the Modvat credit which is contrary to the provisions of Rule 57C or Rule 57CC of the Central Excise Rules, 1944?

2. A perusal of the record shows that respondent No. 1 - M/s. Alpha Drugs (India) Ltd. is engaged in the manufacture of D Alpha Phenyl Glycine Chloride Hydrochloride falling under Heading 29.21 of the schedule. Annexed to the Central Excise Tariff Act, 1985. It availed the credit of specified duty paid on the inputs utilised for the manufacture of final product in terms of Rule 57A of the Central Excise Rules, 1944 (for short, the Rules). Thereafter, the Assistant Commissioner, Central Excise, Chandigarh issued notice to respondent No. 1 to show cause as to why a sum of Rs. 21,01,330/-should not be recovered from it

under Rule 57-1 read with Rule 57U of the rules along with interest u/s 11AB of the Act. It was also asked to show cause against the imposition of penalty under Rule 173Q of the Rules read with Section 11AC of the Act. In reply to the show cause notice, respondent No. 1 contested the allegation that it had contravened the provisions of the Rules. After hearing its representative, the Assistant Commissioner, Central Excise, Chandigarh passed orders Annexures P-1 and P-2, dated 19-1-1998 vide which he confirmed the demand of Rs. 10,89,550/- for the period of July, 1996 and imposed personal penalty of Rs. 5,00,000/-. He also confirmed the demand of Rs. 21,01,330/- for the period from August and September, 1996 and imposed personal penalty of Rs. 2,00,000/-. The appeals filed by respondent No. 1 were dismissed by the Commissioner (Appeals). For that purpose, the officer concerned relied upon the order passed by the Tribunal in 1997 (93) ELT 451 and held that clearance of the goods under bond at nil rate of duty in terms of Notification No, 49/94.C.E. (N.T.), dated 22-9-1994 issued under Rule 13 of the Rules amounted to clearance of goods without payment of duty and, therefore, the provisions of Rule 57C were attracted. However, the second appeal filed by respondent No. 1 was allowed by the Tribunal on 6-1-2001. For the sake of convenience, paragraphs 2 to 5 of the Tribunal's order are reproduced below :

"2. The facts of the case in brief are that the appellants took credit of duly paid on inputs under Rule 57A. These inputs are used in the manufacture of final product namely, D-Alpha phenyl Glycerine Chloride Hydrochloride which they cleared from their factory without payment of duty on bond in terms of notification No. 49/94-CE. (N.T-), dated 22-9-1994 issued under Rule 13 of the Central Excise Rules. The contention of the Department was that the assessee cleared the goods from their factory under invoices at nil rate of duty by following the procedure laid down in Chapter X of the Central Excise Rules; that the assessee had not reversed the Modvat credit of duty in respect of the inputs contained in the said excisable goods from their factory which tantamount to violation of the provisions of Rule 57C; that Rule 57C provides that no credit shall be allowed if the final product is exempt from the whole of duty of excise leviable thereon or is chargeable to nil rate of duty.

3. Arguing the case Shri G. Singh Das, Id. Counsel appeared for the assessee and submitted that their case is fully covered by the decision of this Tribunal in the case of 1995 (59) ECR 395 wherein this Tribunal held that inputs used in the manufacture of final products cleared under Bond for export purposes in terms of Rule 191B/191BB of the Central Excise Rules, 1944 benefit of proviso to Rule 57F(3) *ibid* was available for removing similar goods for home consumption and that the goods cleared for export under Bond without payment of duty are neither goods exempted from whole of duty nor are goods chargeable to Nil rate of duty. Learned Counsel also submitted that similar view taken by this Tribunal in the case of 1994 (50) ECR 412 He submits that in this case the Tribunal had observed that input credit was admissible for manufacture of intermediate products which are cleared to Another factory under Bond under Rule

191B/191BB of Central Excise Rules, 1944 for export production; that products so cleared under Bond are not treatable as goods wholly exempt or chargeable at Nil rate of duty. Id. Counsel submits that their case was fully covered by these decisions of the Tribunal and that the provisions of Notification No. 49/94-C.E. (N.T.), dated 22-9-1994 are similar to the Provisions of Rule 191B and Rule 191BB. He, therefore, submitted that their case was fully covered by the above decisions of the Tribunal and he, therefore prays that these appeals maybe allowed :

4. Shri R.D. Negi, Id. SDR submits that in this case the appellants were required to follow the provisions of Notification No. 49/94, dated 22-9-1994 that the goods were cleared at Nil rate of duty and, therefore, the authorities below had rightly held that provisions of Rule 57C were attracted in this case and, therefore, disallowed benefit of Modvat credit. He submitted that the Id. Commissioner (Appeals) had rightly relied on the decisions of this tribunal in the case of 1997 (93) ELT 451 . He, therefore, prayed that these appeals may be rejected.

5. We have heard the rival submission, we have also perused various decisions of this Tribunal and the two decisions cited and relied upon by the assessee. We find that Notification No. 49/94 was issued under Rule 13 of the Central Excise Rules, 1944 which permitted export of goods under Bond without payment of duty. Without payment of duty is not the same thing as goods wholly exempt or goods chargeable at nil rate of duty, therefore, the provisions of Rule 57C are not attracted. We find that the Id. Commissioner (Appeals) erred in holding that the ratio of the decision of this Tribunal in the case of Dujodwala Resin was applicable. Following the ratio of the decision of this Tribunal cited by the appellant, we hold that Modvat credit will be admissible to the assessee on the inputs. In this view of the matter, the appeals are allowed.

6. We have gone through the decision referred to in the order dated 6-1-2000 and are of the opinion that the view taken by the Tribunal on the issue of respondent No. 1 entitlement to avail Modvat credit cannot be termed as erroneous and no referable question of law arises in the present case.

7. Hence, the petition is dismissed.