

(1990) 02 GUJ CK 0006
In the Gujarat High Court

Case No : Special Civil Application No's. 6495, 6496, 6561, 6562, 6873, 6874, 6875, 6995, 6996 and 8696 of 1989

Dipak Vegetable oil Industries Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-02-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 57, 57K, 57N

Citation : (1991) 33 ECC 224 : (1991) ECR 511 : (1991) 52 ELT 222 : (1991) 2 GLR 1013

Hon'ble Judges : J.U. Mehta, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : Kamal Trivedi, Rakesh Gupta, Gupta and Dave, of Trivedi, for the Appellant; J.D. Ajmera, for the Respondent

Judgement

G.T. Nanavati, J.—The petitioners in all these petitions are manufacturers of Vanaspati (hydrogenated vegetable oil) and/or soap. Till 1-3-1987 the petitioners were manufacturing Vanaspati/soap from conventional oils because they give high process yield and are cost effective compared to non-conventional minor oils like Rice-Bran Oil, Mahuva Oil, Water Melon Seed Oil, Solvent Kardi Oil etc.

2. In order to encourage use of such minor oils, the Central Government introduced in 1986-87 a system of rebate in excise duties for Vanaspati and soap linked to larger use of such minor oils. It inserted on 1-3-1987 section AAA containing Rules 57K to 57P in Chapter V of the Central excise Rules. On that very day the Government also issued under Rules 57K Notification No. 27/87 and Notification No. 40/87 specifying the final products, minor vegetable oils and rates at which credit was to be given for use of such minor oils in manufacture of Vanaspati and soap, respectively. Notification No. 40/87 was superseded by Notification No. 192/87-C.E. and later notification was subsequently amended by Notification No. 17/88-C.E., dated 1-3-1988.

3. It is the case of the petitioners that with an intention to avail of the benefits of

those notifications, the petitioners effected changes in their plants and machinery and started using specified minor oils. It is also their case, and that is not in dispute, that they were given credit of money for the use of those specified minor oils and were permitted to utilise the same for payment of excise duty on Vanaspati and soap manufactured by them using such specified minor oils till 25-8-1989. The Central Government on 25-8-1989 withdrew Notifications No. 23/87 and 192/87 by issuing Notification No. 39/89. Though these notifications were rescinded on 25-8-1989, the subordinate excise officers probably did not know about the same till 1-9-1989. Thereafter they started informing the petitioners that as both the notifications were rescinded, they should file fresh classification lists and should not avail of the accumulated credit on and from 25-8-1989 for payment of excise duty on the manufacture of Vanaspati and soap. As the petitioners were thus forbidden to utilise the credit which they had earned before 25-8-1989, they have filed these petitions challenging the view taken by the respondents and the directions given on that basis. They want this court to issue a writ of Mandamus restraining them from preventing the petitioners from utilising the credit earned by them as a result of use of minor oils in the manufacture of either Vanaspati or soap.

4. The learned Counsel appearing for the petitioner submitted that the respondents misinterpreting Rules 57K and 57N and the aforesaid notifications, have taken an erroneous and unreasonable view that on and from 25-8-1989 it was not open to the manufacturers of Vanaspati and soap to utilise the credit earned by them for payment of excise duty on the manufacture of Vanaspati and soap, using specified raw oils. He further submitted that the directions given by the respondents to that effect are, therefore, arbitrary, unjust and without authority of law. On the other hand, it was submitted by the learned counsel appearing for the respondents that by making Rules 57K and 57P and by issuing Notifications No. 27/87 and 40/87 on 1-3-1987, no right was conferred on any manufacturer on Vanaspati or soap using minor raw oils and, therefore, as soon as the said notification came to be rescinded, the concession or the exemption which was available to such manufacturers came to an end. He submitted that Rules 57K and 57N could not have operated independently of the notifications and, therefore, as soon as the notifications ceased to remain in existence, the said two rules ceased to operate.

5. In order to appreciate these rival contentions it will be necessary to refer to Rules 57K and 57N. For ready reference, they are set out below :

"57K. Applicability and extent of credit -

(1) The Central Government may by notification in the Official Gazette, specify -

(a) the finished excisable goods (hereinafter referred to as "final products") and the raw materials used in the manufacture of such final products (hereinafter refer to as "inputs"), to which alone the provisions of this section shall apply; and

(b) the rates at which the credit of money is to be given for use of such inputs in

the manufacture of final products.

(2) When a notification has been so issued under sub-rule (1), credit at rates specified therein may be allowed for use of such inputs in the manufacture of such final products and the credits so allowed may be utilised for payment of duty on the final products, subject to the provisions in this section and the conditions, if any, stipulated in the said Notification.

"57N. Manner of utilisation of the credit :

(1) Credit of money allowed in respect of any inputs may be utilised towards payment of duty of excise on the final products in or in relation to the manufacture of which such inputs are intended to be used in accordance with the provisions of the declaration filed under Rule 57-O :

Provided that the credit in respect of inputs used in the final products cleared for export under bond shall be allowed to be utilised towards the payment of duty of excise on similar final products, cleared for home consumption on payment of duty.

(2) No part of the credit allowed shall be utilised save as provided in sub-rule (1)."

As stated earlier, Rules 57K to 57P came to be inserted into the Central Excise Rules by inserting Section AAA in Chapter V of the said Rules. They are enabling provisions; one enabling the Government to specify the finished excisable goods, the raw materials used in the manufacture of such final products and the rate at which credit of money is to be given for use of such raw materials, and the other enabling such manufacturer to utilise the credit so earned for payment of excise duty on the manufacture of the final product.

6. In order to achieve the object of inserting Section AAA in Chapter V the Government issued certain notifications under Rule 57K. The relevant notification issued on 1-3-1987 with respect to manufacture of Vanaspati/Vegetable products read as under :

"(1) Set-off duty on use of specified minor oils in the manufacture of vegetable products. - In exercise of the powers conferred by Rule 57K of the Central Excise Rules, 1944 the Central Government hereby specifies -

(i) the inputs, namely fixed vegetable oils of the description in column (2) of the Table hereto annexed and used in the manufacture of the final products, namely, vegetable products falling under sub-heading No. 1504.00 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(ii) the rates in the corresponding entry in column (3) of the said Table as the rate at which credit may be granted for use of such inputs in the manufacture of the said final product,

for the purposes of Section AAA of Chapter V of the said rules and stipulates that

the grant of credit and utilisation thereof shall, in addition to the provisions of the said section, subject to the following conditions, namely :-

(i) the credit shall be taken only in respect of the quantity of oil subjected to hydrogenation on or after the 1st day of March 1987 for the manufacture of the said final products and the credit shall be taken only on the date on which the oil has been so hydrogenated;

(ii) the credit taken during any calendar month shall be utilised for payment of duty on the said final products only after the commencement of the succeeding month;

(iii) the quantity of credit utilised for payment of duty on any individual clearance of the said final products shall not exceed rupees one thousand per tonne of vegetable products cleared and the excess credit, if any, available in the credit account shall not be refunded to the manufacturer or adjusted against or utilised for payment of duty on any excisable goods under any other circumstances;

(iv) where the description in column (2) of the Table specifies solvent extracted variety of the oil, the manufacturer shall within 5 months from the date of taking credit, or such extended period as the Assistant Collector of Central Excise may allow in this behalf, produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable oils and fats in the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been manufactured by the solvent extraction method; and

(v) the credit shall be taken only in respect of indigenous inputs and the manufacturer shall produce such documents as may be required by the Assistant Collector of Central Excise in this regard : Provided that in the case palm oil used as input the manufacturer shall within 5 months from the date of taking credit, or within such extended period as the Assistant Collector of Central excise will allow in this behalf produce certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspati, Vegetable oils and fats in the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been of indigenous origin;

TABLE ----- S. Fixed		
Vegetable Oils	Rate of credit per	No. tonne of the fixed vegetable oil.
-----	(1)	(2) (3)
-----	01	Rice bran oil
Rs. 6500	02	Mahuwa oil
Rs. 6500	03	Watermelon seed oil
Rs. 6500	04	Solvent extracted cotton seed oil
Rs. 4000	05	Solvent extracted mustard oil
Rs. 3250	06	Solvent extracted rape seed oil
Rs. 3250	07	Solvent extracted sun-flower oil
Rs. 3250	08	Solvent extracted safflower oil
Rs. 3250	09	Palm Oil

----- Explanation - In this notification, "vegetable product" means any vegetable oil or fat which, whether by itself or in admixture with any other substance, has by hydrogenation or by any other process, been hardened for human consumption.

7. Similar notification with some changes was issued on that day with respect to manufacture of soap also. As stated earlier, the said notification was superseded and the new notification was thereafter modified. The modified notification read as under :

"Credit of duty on use of minor oils if used in the manufacture of soap. - In exercise of the powers conferred by Rule 57K of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Dept. of Revenue) No. 40/87-Central Excise dated the 1st March 1987, the Central Government hereby specifies -

(i) the inputs, namely, vegetable oils (whether or not subjected to any one or more of the processes of hydrogenation or hydrolysis) of the description in column (2) of the Table hereto annexed and used in the manufacture of the final product, namely, soap, falling under sub-heading No. 3401.10 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986); and

(ii) The rates in the corresponding entry in column (3) of the said Table as the rate at which credit may be granted for use of the said inputs in the manufacture of the said final product,

for the purposes of Section AAA of Chapter V of the said rules, and stipulates that the grant of credit and utilisation thereof shall, in addition to the provisions of the said section, be subject to the following conditions, namely :-

(i) the credit shall be taken only in respect of indigenous inputs;

(ii) in the cases where all the processes relating to the manufacture of soap, starting from vegetable oils, are done in the same factory, the credit shall be taken on the quantity of vegetable is received into the factory for the purpose and only on or after the date of receipt of such vegetable oils;

(iii) in the cases where the processes of hydrogenation or hydrolysis are done out-side the factory manufacturing soap, the credit shall be allowed -

(a) only if the procedure that may be specified by the Collector to establish the identity of the vegetable oils from which such processed oil has been made is followed and only if the manufacturer produces such documents as may be required by the Collector in this regard;

(b) only on or after the receipt of such hydrolysed or hydrogenated vegetable oils into the factory manufacturing soap;

(c) on the quantity of processed vegetable oils received into the factory calculated at the rate applicable to the corresponding vegetable oils.

(iv) the credit taken during any calendar month shall be utilised for payment of duty on the said final products only after the commencement of the succeeding month; and

(v) the credit available in RG 23B may be utilised for payment of duty on any

soap manufactured by the manufacturer and no amount of excess credit if any available in the credit account shall be refunded to the manufacturer or utilised for payment of duty on any other excisable goods.

TABLE	S. No.		
Vegetable oils	Rate of credit per ton of the vegetable oil	(1)	(2)
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Rs. 320	2. Neem Oil Rs. 2800	3. Karanj Oil Rs. 2800	4. Kusum Oil Rs. 2800
5. Sal Oil Rs. 2800	6. Khakhan Oil Rs. 2800	7. Mahua Oil Rs. 2800	8. Rubberseed oil Rs. 2800
9. Mango-Kernel Oil Rs. 2800	10. Kokum Oil Rs. 2800	11. Dhupa Oil Rs. 2800	12. Undi Oil Rs. 2800
13. Maroti Oil Rs. 2800	14. Pisa Oil Rs. 2800	15. Nahor	Oil Rs. 2800
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8. From a combined reading of Rules 57K and 57N and the above two notifications, the object or purpose thereof clearly appears to be to give credit of money to the manufacturers of Vanaspati and soap, if they used certain types of raw materials, i.e. minor raw oils. Though for the purpose of interpreting a rule a budget speech may not be relevant, it may be referred to with advantage for the purpose of finding out the object and purpose of introducing that provisions. In the budget of 1986-87 a rebate scheme was evolved for the purpose of granting incentives for greater production of edible oils from non-conventional oils. Incentive for greater production of edible oils was by way of giving rebate to the manufacturers of Vanaspati or soap, if they used certain types of minor oils in production of those items. While introducing budget for the year 1987-88, the union Finance Minister made the following speech in this behalf :

..... Last year, we introduced a system of rebate in excise duties for Vanaspati and soap linked to larger use of minor oils. This has had the desired effect and production of rice-bran oil as well as its use in Vanaspati and soap have increased considerably. The rebate scheme is being continued this year. There are some procedural changes and the ad valorem duty on Vanaspati is being changed to a specific duty."

In the Memorandum issued by the Finance Ministry, explaining provisions of Finance Bill for the year 1987-88, it was further explained that the existing rebate scheme for vanaspati and soap was modified so as to provide for granting of rebate through a system of granting credit to be used for payment of duty on final products. The speech and the memorandum also make it clear that the purpose of the new provisions contained in section AAA was to allow credit to the manufacturers of vanaspati and soap, if they had used in the manufacture of those products specified minor oils.

9. This purpose will have to be kept in mind while interpreting Rules 57K and 57N. Clause (b) of sub-rule (1) of Rule 57K uses the words, "the credit of money is to be given". Sub-rule (2) though uses the words, "may be allowed" really

confers a right on the manufacturer and leaves no discretion with the excise authorities to refuse credit, if all the specified conditions are satisfied. Though Rule 57N provides that the credit of money allowed in respect of any inputs may be utilised toward payment of duty of excise on the final products, it really confers a right on the manufacturer so to do if in or in relation to the manufacture of the final product such inputs have been used. The combined effect of Rules 57K and 57N and the notifications is that if the manufacturer of vanaspati or soap used notified vegetable oils as inputs, then he becomes entitled to credit of money at the notified rate and the said credit could be utilised for payment of duty on the final products, after the commencement of the succeeding month. The rules further provided show that if the manufacturer had complied with the conditions of the rules and the notifications, he was not to be denied the benefit of credit of money for payment of duty on the final products in the succeeding months in this context, it will have to be held that once the manufacturer used the specified inputs and satisfied all other conditions of the rules and the notifications, he acquired a right not only to get the credit of money but also utilise the same for payment of duty on the final products after the commencement of the succeeding month. Neither Rule 57N nor the notifications provided the period during which the credit so earned was to be utilised, though the notifications provided that the said credit could be utilised after the commencement of the succeeding month.

10. While it is true that the right to get credit came into existence only on issuance of the aforesaid notifications, on a correct interpretation of Rule 57N read with Rule 57K, it will have to be held that the right to utilise the credit so earned did not come to an end the moment the said notifications were rescinded. In this context it is pertinent to note that only the aforesaid notifications have been rescinded and not Rule 57N which confers a right to utilise the credit already earned. A right conferred by a rule could not have been taken away by the Government by merely rescinding the notifications which had brought the said right into existence. The right which the manufacturer had got, no doubt on the issuance of said notifications, was a monetary right and once it got crystallised in terms of money, the same could not have been treated as having come to an end on the day which the said notifications came to be rescinded. As a result of rescission of the said notifications on and from that date onwards, the manufacturer ceased to have the benefit of earning credit of money; but the Government could not have intended to deprive the manufacturer of his right to utilise the credit already earned because that would have been unfair to the manufacturers. The manufacturers, relying upon the rules and the notifications, used the notified minor oils in the manufacture of Vanaspati or soap, thus suffering a disadvantage because of the low process yield of such minor oils, but hoping to get credit of money by way of rebate and a further right to utilise that credit for payment of excise duty on the manufacture of vanaspati and soap. We are, therefore, of the opinion that even after the aforesaid notifications came to be rescinded with effect from 25-8-1989, the credit of money which was earned

by the manufacturers of Vanaspati and soap could be utilised by them in terms of the rules and the notifications for payment of excise duty on Vanaspati and soap manufactured by them after 25-8-1989.

11. Learned counsel for the petitioners relied upon the decision of the Bombay High Court in *London Star Diamond Co. (India) Private Ltd. Vs. Union of India (UOI)*, wherein it was held that the importers who became entitled to receive drawback of 3% as they had imported rough, uncut diamonds and exported them, could not be deprived of the benefit of the drawback as a result of the public notice dated 7-4-1978 by which sub-serial No. 5804 and the entries therein relating to cut and polished diamonds were deleted from the table published in the public notice dated 7-10-1977. It was further held that the only manner in which the subsequently public notice could be read was that it operated prospectively, meaning thereby that the drawback was not to be available on import of rough, uncut diamonds, meant for exporting them after the issue of the public notice dated 7-4-1978. Though this decision is not directly on the point, it does support the view which we are inclined to take.

12. In *Abdul Khader Rowther v. Sara Bai*, 1989(43) ELT797(SC), the Supreme court, while considering the effect of withdrawal of Compounded Levy Scheme from 24-7-1972, held that a withdrawal did not result in enhancement of the rate of duty retrospectively on the goods, already cleared even if for captive consumption. It further held that where the concessional rate of duty is withdrawn, normal rates are made applicable, but the normal rates cannot retrospectively apply to the goods which have been authorisedly removed for captive consumption prior to the withdrawal of concessional rate, because there is no principle or statutory language that compels an assessee to be deprived of the concessional rate that has been made available to him in respect of the goods produced by it and utilised for captive consumption. What is important to note is that the Supreme Court has recognised the principle that if a manufacturer of goods is entitled to a benefit then he cannot be deprived of the same retrospectively by withdrawing the concession of the benefit by an executive etc.

13. The learned counsel Shri Trivedi also relied upon the following observations made by the supreme court in *Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh*, :

"5. It is a well recognized rule of interpretation that in the absence of express words or appropriate language from which retrospectivity may be inferred, a notification takes effect from the date it is issued and not from any prior date. The principle is also well settled that statutes should not be construed so as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the Amending Act came into force."

14. He also relied upon similar observations made by the Supreme Court in

Govind Das and Others Vs. The Income Tax Officer and Another, :

"10. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure."

15. These observations of the Supreme Court also support the view that a right which is acquired as a result of operation of a statutory provision cannot be taken away retrospectively unless the statutory provision so provides or by necessary implication it has the same effect. As pointed out, here in this case, what has been done is to rescind the notifications and not the Rules. Though the right of the manufacturers like petitioners to credit of money had crystallized only after issuance of the notifications and the extent of it was governed by the terms of the notifications, once the said right got crystallized in terms of money, in our opinion, it was not intended to be taken away or could not be taken away merely by rescinding the notifications. The effect of the rescinded notifications is, in our opinion, that from the date on which the said notifications came to be rescinded, the manufacturers of Vanaspati and soap ceased to earn the benefit of credit of money while manufacturing their final products - Vanaspati or soap - with the help of notified inputs, but they were not deprived of their right to utilise the credit of money which they had already earned validly so long as the same was or intended to be used for payment of excise duty in the manufacture of Vanaspati or soap, as the case may be, merely because the notifications have been rescinded, it cannot be said that Rule 57N has ceased to operate. For these reasons the contention raised on behalf of the respondents will have to be rejected.

16. In the result these petitions are allowed. A writ of Mandamus shall issue directing the respondents to permit the petitioners to utilise the credit of money earned by them as a result of purchase of duty paid notified inputs before the notifications in question came to be rescinded for payment excise duty on manufacture of Vanaspati or soap, as the case may be. Those benefits will be available to the petitioners in addition to the benefits which have again been made available to them under Notfn. Nos. 45/89 and 46/89, dated 11th October, 1989. The Bank Guarantees already furnished by the petitioners pursuant to the interim direction given by this Court for the amount of credit utilised by the petitioners of some time after 25-8-1989 are directed to be discharged. Rule in each of these petitions is made absolute accordingly with no order as to costs.

17. The learned counsel appearing for the respondents applied for certificate of fitness under Art. 133(1)(c) of the Constitution. In our opinion this is not a fit case which is required to be decided by the Supreme Court because in fact we have followed the principles laid down by the Supreme Court in the two decisions referred to hereinabove. The learned counsel further submitted that the operation of our judgment and order be stayed for a period of eight weeks as the

department would like to approach the Supreme Court against this judgment. This request is opposed by the learned counsel appearing for the petitioners on the ground that in no other state manufacturers of Vanaspati and soap were deprived of the benefit under the old notifications on the ground that the notifications were rescinded in the month of August 1989 and thereafter utilisation of credit earned under those notifications was not permissible. If we stay the operation of this judgment then that will put the petitioners to a great dis-advantage vis-a-vis the manufactures in the rest of the states. We, therefore, do not think it proper to grant stay as praying for by the learned counsel for the respondents. However, in order to safeguard the interest of the respondents, we direct the petitioners to furnish bank guarantees for the amount of credit that may be utilised by them as a result of this judgment. The petitioners will give such bank guarantees for a period of eight weeks from today. The bank guarantees already given by the petitioners for the past and which we have directed to be discharged shall be discharged only after a period of six weeks from today.