(1979) 02 MAD CK 0043

In the Madras High Court

Case No : Writ Petition No. 3226 of 1976

E.I.D. Parry (India) Ltd. APPELLANT

Vs

Government of India RESPONDENT

Date of Decision : 05-02-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 56A, 56A(2), 56A(3)

Citation : (1979) CENCUS 370 : (1979) 4 ELT 253

Hon'ble Judges : Mohan, J

Bench : Single Bench

Judgement

Mohan, J.

The short facts leading to this writ petition are as follows : --

1. The petitioners who are manufacturers of fertilisers are liable to Central Excise duty under Item No. 14 HH of the Ist Schedule to the Central Excise and Salt Act, 1944. In the manufacture of fertilisers the petitioners are using Rock Phosphate which is imported into India. At the time of import, countervailing duty is levied on Rock Phosphates and the petitioners are availing the duty paid on imported rock phosphate, as per the procedure laid down under Rule 56A of the Central Excise Rules. In September 1971, the petitioners imported a quantity of 745....490 M.T. of Rock Phosphate under Bill of "Entry No. D.723 dated 10-9-1971 and a quantity of 560...298 M.T. was utilised in the manufacture of fertilisers and the same was cleared between 4-10-1971 and 14-10-1971. As per the provisions contained in Rule 56A(3)(vi) as it stood prior to the Notification No. 163/73 dated 25-8-1973, the duty payable on the said quantity of fertilisers become liable to be demanded under Rule 56A(3)(v) of the Central Excise Rules. Therefore the Assistant Collector made a demand on 28-9-1974, but that demand was not complied with. Consequently, an order was passed on 16-11-1974, directing the petitioner to pay a sum of Rs. 87439 - 89 being the duty payable in respect of the fertilisers cleared between 4-10-1971 and 14-10-1971. Aggrieved by this order, the petitioner filed an appeal to the

Appellate Collector, Central Excise, who confirmed the duty payable. The petitioners thereafter preferred a revision to the Government of India and that was rejected on 11-3-1976. It is under these circumstances, the present writ petition has been referred to quash the above said order.

2. What is contended on behalf of the petitioner, there is no obligation that the imported Rock Phosphates must be utilised in one and the same process and so long as it is properly accounted for, there is every satisfaction of Rule 56A(3)(vi). As against this, the department takes the stand that there must be a correlation between the actual quantity of the goods imported and the ultimate product, that, according to the department, is the real purport and intent of Rule 56A(3)(vi).

3. In order to appreciate the respective contentions, let me extract Rule 56A(3)(vi) : --

"Except to the extent provided in the second proviso to sub-rule (2) the credit allowed in respect of any material or component parts shall be utilised towards payment of duty on the finished excisable goods in the manufacture of which such materials or component parts are used or on the materials or component parts themselves and no part of such credit shall be refunded in cash or by cheque."

By a reading of this rule, I do not get the impression that there is any obligation on the part of the manufacturer to correlate the Rock Phosphates imported to the ultimate finished product. In this case, it is not denied that the entire Rock Phosphate imported, namely, 745...490 M.T. was utilised for the manufacture of fertilisers, may be 56 C 298 M.T. was utilised, but later on the remaining quantity was also utilised. So long as there has been a complete utilisation, in other words there is no misdirection of the imported goods, there is every compliance with Rule 56A(3)(vi). Undoubtedly, the meaning of the word ''such'' has been misinterpreted by the Department and that is which led to this writ petition. Therefore, I hold that the writ petitioners are entitled to succeed. Accordingly the writ allowed. No costs.

4. In view of this order, the department is directed to dispose of the application of the petitioner as early as possible.