
(1989) 12 MAD CK 0024

In the Madras High Court

Case No : Writ Petition No's. 13564 to 13567 of 1986 and 11938 and 11939 of 1988

Ennore Steel Enterprises Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 31-12-1989

Acts Referred:

Central Excise Rules, 1944 — Rule 56, 57, 57A, 57G
Central Excises and Salt Act, 1944 — Section 11A

Citation : (1990) 26 ECC 123 : (1990) 47 ELT 363

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : Habibullah Badsha, for A.S. Chandrasekaran, S. Mohamed Yousuf and C. Mani Shankar, for the Appellant; T. Somasundaram, Central Government Standing Counsel, for the Respondent

Judgement

1. Out of these writ petitions one manufacturer has filed W.P. Nos. 13566 and 13567 of 1986 and 11938 of 1988 while another manufacturer has

filed Writ Petition Nos. 13564 and 13565 of 1986 and 11939 of 1988. The prayer in the writ petition Nos. 13566 and 13564 of 1986 are similar

and they are for certiorarified mandamus to call for the records of the third respondent demanding certain amounts from the petitioners under Rule

56(i) of the Central Excise Rules. The prayer in the Writ Petition Nos. 13565 and 13567 of 1986 is for a declaration declaring

condition (ii) in para 2 of the order F.No. B.22-5-1986-TRU, dated 7-4-1986 as invalid while the prayer in the writ petition Nos. 11938 and

11939 of 1988 is for a declaration declaring Rule 56(i) of the Central Excise Rules as ultra vires.

2. The brief facts necessary for the purpose of these cases are as follows : The

petitioners are manufacturers of steel ignots. One of the inputs is waste and scrap which the petitioners buy in the open market. Under Rule 57A of the Central Excise Rules, the Central Government may by notification in the Official Gazette, specify in this behalf, for the purpose of allowing credit of any duty of excise or the additional duty paid on the goods used (hereinafter referred to as the "input") towards payment of duty of excise leviable on the final products Rule 57-G states that every manufacturer intending to take credit of the duty paid on inputs under Rule 57A, shall file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory, indicating the description of the final products manufactured in his factory and the inputs intended to be used in each of the said final products. The second proviso the Rule 57-G is important and it reads as follows :

Provided further that having regard to the period that has elapsed since the duty of excise was imposed on any inputs, the position of demand and supply of the said inputs in the country, and any other relevant considerations, the Central Government may direct that with effect from a specified date, all stocks of the said inputs in the country, except such stocks lying in a factory, customs area or a warehouse as are clearly recognisable as being non-duty paid, may be deemed to be duty-paid, and credit of duty in respect of the said inputs may be allowed at such rate and subject to such conditions as the Central Government may, direct without production of documents evidencing the payment of duty.

3. It is seen that in exercise of powers under Rule 57-G, the Central Government had issued an order dated 7-4-1986 inter alia stating that no credit under Rule 57A read with Rule 5-7G shall be allowed if the inputs are clearly recognisable as being non-duty paid or charged to NIL rate of duty. Acting on this order dated 7-4-1986 the third respondent in these writ petitions issued a notice of demand dated 8/10-2-1986 under Rule 57-I of the Rules demanding certain amounts from the petitioners on the ground that credit had been wrongly taken by the petitioners and, therefore, they should pay the amount within ten days.

4. Rule 57-I, which has been relied upon by the third respondent reads as follows :

If the credit of duty paid on inputs has been taken wrongly, the credit so taken

may be disallowed by the proper officer and the amount so disallowed shall be adjusted in the credit account or the account-current maintained by the manufacturer or if such adjustments are not possible for any reason, by cash recovery from the manufacturer of the said goods.

Sub-rule (2) of Rule 57-I states that if any inputs in respect of which credit has been taken are not fully accounted for as having been disposed of

in the manner specified in this section, the manufacturer shall upon a written demand being made by the Assistant Collector of Central Excise may

the duty leviable on such inputs within 10 days of the notice of demand. In the instant case, the third respondent had issued the demand dated

8/10-12-1986 on the ground that the petitioners have taken excise duty credit on waste and scrap inputs but such waste and scrap purchased

from the local market is not eligible for credit under Rule 57-A or 57-G since the same is clearly recognisable as non-duty paid.

5. Aggrieved by the said demand, the writ petition Nos. 13564 and 13566 of 1986 have been filed contending as follows : (1) that the demand

visits the petitioner with civil consequences and affects him adversely. The principles of natural justice had not been followed. The petitioners had

not been given an opportunity to state their case before the amounts are demanded from the petitioners; (2) that the demand is based upon the

order issued by the Central Government dated 7-4-1986 and the said order is not consistent with or in conformity with Rule 57-A and 57-G.

Under the second proviso to Rule 57-G the deeming provision is attracted except as to goods which are clearly distinguishable as non-duty paid

and available on a specified date within the factory premises, customs area or a warehouse. In respect of the other inputs, the deeming provision is

made applicable by the Rule, whereas by the orders issued on 7-4-1986 the Government had introduced in a sort of indirect way an additional

condition taking away the benefit conferred under the Rule and therefore, the second condition enshrined in the order of the Government dated 7-

4-1986 should be declared as invalid. The last submission of the petitioner is that if Rule 57-I were to be strictly applied as enabling the third

respondent to issue a notice of demand based on his subjective satisfaction of wrong credit, then the rule itself would be liable to be struck down

as vesting arbitrary powers violative of Article 14 of the Constitution. It is also

contended that insofar as Rule 57-I is not consistent with the provisions of Section 11-A of the Act, which provides for recovery of amounts short-levied etc. Rule 57-A is Ultra vires Section 11-A.

6. In view of the fact that writ petition Nos. 13564 and 13566 of 1986 which are with the prayer for a certiorarified mandamus to quash the respective demands on the petitioners are to be allowed on the short ground of violation of principles of natural justice and if such demands are quashed on the said ground, there would be no existing demand on the petitioner, it might be unnecessary to dispose the writ petition Nos. 13565 and 13567 of 1986 as well as W.P. Nos. 13564, 13566 of 1986 are concerned, the petitioner is well founded in his contention that though in terms, Rule 57-I does not contemplate the issue of a show cause notice and an opportunity to the person likely to be affected by the adverse orders that may be passed under Rule 57(i), it is elementary that insofar as the orders are likely to effect adversely the interest of the petitioners and involve him in other liabilities that before passing orders under Rule 57(i), the third respondent should issue a show cause notice to the petitioners stating the circumstances under which the powers under the said rule is to be invoked and an opportunity to the petitioners should be given to state their case. This line of thinking is supported by the decision of the Madhya Pradesh High Court in Steel Ingote P. Ltd. v. U.O.I.

1988 (36) E.L.T. 529. There is held :

In the instant case, no opportunity was admittedly given to the petitioners to show cause before passing the impugned orders under Rule 57-I.

These orders, therefore, deserve to be quashed on this short ground"".

Madhya Pradesh High Court relied on the judgment of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, .

7. In view of the facts that the demand in the instant case, which really were the cause of action for the petitioner to have approached this Court have been quashed by granting the prayers in W.P. Nos. 13564 and 13566 of 1986, no orders are necessary in the other writ petitions. Suffice it to say that if and when the third respondent or any other authority competent to take proceedings under the relevant provisions of the Act or Rules

chooses to initiate proceedings by the issue of a show cause notice to the petitioners, the petitioners can urge all their contentions in the said

proceedings and it is needless to state that the said authority would take note of the judgments reported in Calcutta Paper Mills Manufacturing Co.

Vs. Customs, Excise and Gold (Control) Appellate Tribunal and Others, ; and Kishan Lal Dalmia Vs. Collector of Central Excise and Others, ;

and Vapson Products and another Vs. Union of India and others, .

8. Learned counsel for the Department states that the following judgments are also relevant;

(i) Manindranath Chatterji v. Collector of Central Excise 1977 T.L.R. 1754 .

(ii) 1984 ECR 1610 ; and

(iii) 1985 (22) ELT 297 . It is also necessary to refer to the fact that Rule 57-I as it originally stood has been amended with effect from 6-10-1988

and the rule as it now stands incorporates the principles of natural justice and also the limitation for invoking the powers under the said Rules. With

these observations, the writ petition Nos. 15564 and 15566 of 1986 are allowed. The bank guarantee furnished by both the petitioners during the

pendency of these writ petitions will stand discharged. The writ petition Nos. 13565, 13567 of 1986 and 11938 and 11939 of 1988 are dismissed

as not necessary for the present. There will be no order as to costs in all these writ petitions.