

(1996) 04 BOM CK 0036

In the Bombay High Court

Case No : Writ Petition No. 3231 of 1987

Impact Containers Pvt. Ltd.

APPELLANT

Vs

Asstt. Collector of C. Ex., Bombay

RESPONDENT

Date of Decision : 08-04-1996

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (1996) 85 ELT 213

Hon'ble Judges : M.B. Shah, J;A.V. Savant, J

Bench : Division Bench

**Advocate : Shri Rohan Shah, instructed by M/s. Amin and Co, for the Appellant;
Shri S.M. Shah, for the Respondent**

Judgement

A.V. Savant, J.—Heard both the learned Counsel.

2. This is a Petition for challenging the letter/order dated 23rd September 1987, at Exhibit "H" issued by the first respondent, Assistant Collector of Central Excise. Under the said Order, the petitioners have been informed that at all stages of production the concerned units have been availing Modvat credit at each stage of the clearance of the goods on payment of duty on job charges. The petitioners were, therefore, directed to follow the procedure under Rule 57F of the Central Excise (Valuation) Rules of 1975 for clearing inputs from one unit to another unit and clearing goods finally i.e., to say plain aluminium collapsible tubes or printed aluminium collapsible tubes on payment of appropriate central excise duty to be determined u/s 4 of the Central Excises and Salt Act, 1944. Under the impugned letter, the petitioners have been further directed to forthwith stop sending goods to the respective units for doing job work and paying duty/availing Modvat at respective stages and thereafter to follow the procedure laid down by Rule 57F right from procuring of sheets/ingots till the finished goods viz. plain aluminium collapsible tubes/printed collapsible aluminium tubes are obtained by the petitioners. Finally, the petitioners have been informed that all clearances effected after issuance of the said letter dated

23rd September, 1987 would be in compliance with the said letter and any clearance effected in breach of the same would be treated as breach of the Central Excise Rules and would be dealt with accordingly and appropriate action under the Act would be taken.

3. The petitioners - Impact Containers Pvt. Ltd. is a Private Limited Company engaged in the manufacture of variety of aluminium products. The flow Chart produced before us shows that the petitioners receive aluminium ingots as actual users from the producers of primary aluminium. On the said ingots purchased by the petitioners, excise duty is paid by the petitioners who then supply the said aluminium ingots to certain other units - undertakings such as -

(i) The Western Metal Industries, Pune; or

(ii) Gujarat Metal Rolling Mills, Bhagwada,

and similar other units - job workers - for conversion of said aluminium ingots into aluminium sheets. After the ingots are converted into aluminium sheets by the said Units, the aluminium sheets are directly sent for manufacture of aluminium slugs to another concern like Patel Aluminium Private Limited. However, at the stage of aluminium sheets being cleared either by (i) Western Metal Industries, Pune, or (ii) by Gujarat Metal Rolling Mills, Bhagwada, or other job workers, excise duty is paid and Modvat credit is taken for setting off the duty paid earlier. When aluminium sheets are converted into aluminium slugs by job workers like Patel Aluminium Private Limited, the same are cleared again on payment of duty. At this stage, again Modvat credit is taken in respect of the duty paid at the earlier stage. From Patel Aluminium Private Limited, the aluminium slugs are supplied to the Lans Metal Private Limited for manufacture of plain aluminium tubes. After the aluminium slugs are converted into plain aluminium tubes, at the time of clearance of the plain aluminium tubes, excise duty is paid and obviously Modvat credit is taken for the duty paid earlier. The plain aluminium tubes manufactured by Lans Metals Pvt. Ltd. are then received by the petitioners for the manufacture of either lacquered aluminium tubes or printed aluminium tubes which are then cleared by the petitioners and sold to its customers. The excise duty is again paid, but subject to the Modvat credit in respect of the duty paid earlier. This is the procedure which the petitioners follow from initial purchase of aluminium ingots to the final product viz. manufacture of either lacquered aluminium tubes or printed aluminium tubes. There is no dispute before us that all inputs and final products fall under Chapter 76 or 83 of the Central Excise Tariff Act, 1985 and are clearly eligible inputs and final products under Rule 57A read with Notification No. 177/86 issued on the 1st March, 1986 which has been produced at Exhibit "A" to the Petition.

4. Our attention is invited to Rule 57F dealing with the manner of utilisation of the inputs and the credit allowed in respect of the duty paid thereon. Sub-rule (1) of Rule 57F clarifies that the inputs in respect of which a credit of duty has been allowed under Rule 57A may -

(i) be used in, or in relation to, the manufacture of final products for which such inputs have been brought into the factory; or

(ii) shall be removed, after intimating the Assistant Collector of Central Excise having jurisdiction over factory and obtaining a dated acknowledgement of the same, from the factory for home consumption or for export under bond, as if such inputs have been manufactured in the said factory.

The proviso reads as under :-

"Provided that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty of excise shall in no case be less than the amount of credit that has been allowed in respect of such inputs under Rule 57A".

Under sub-rule (2) of Rule 57F it is provided that -

"Notwithstanding anything contained in sub-rule (1), a manufacturer may, with the permission of the Collector of Central Excise and subject to such terms and conditions and limitations as he may impose, remove the inputs as such, or after, the inputs have been partially processed during the course of manufacture of final products, to a place outside the factory -,"

On a proper construction of the above provision, it would be clear that sub-rule (2) of Rule 57F would apply only in respect of inputs which have been brought into factory by the assessee. This is apparent from the use of the word "removed" and from the words "outside the factory" appearing in sub-rule (2). In the instant case, there is no dispute that the inputs are delivered directly to job workers and do not come within the petitioners' factory.

5. It is contended by Mr. Rohan Shah, learned Counsel for the petitioners that as per the flow Chart, all inputs and final products fall under Chapter 76 or Chapter 83 of the Central Excise Tariff Act, 1985 and are clearly eligible inputs and final products under Rule 57A read with Notification No. 177/86 dated 1st March, 1986. He further contended that Rule 57F(2) applies only in respect of inputs which have been actually brought into the factory of the assessee. In the case of the petitioners, admittedly the inputs are delivered directly to job workers and do not come within the petitioners' factory. Hence, Rule 57F(2) can have no application. Counsel also pointed out that the rigour of Rule 57F(2) has been reduced by the legislature by an amendment which came into force on 2nd November, 1993. Prior to 2nd November, 1993, permission of the Collector was required. However, after 2nd November, 1993 one is only required to intimate the proper officer. Finally, our attention was invited to the fact that a specific query was made on 23rd September, 1987 by the All India Manufacturers' Organisation with the Chairman, Central Board of Excise and Customs, New Delhi (Exhibit "K"/page 62). The reply to the said query is at Exhibit "C" dated 17th October, 1988 to the affidavit of Shri R. Ganesh. The said reply dated 17th October, 1988 received from the Secretary, Central Board of Excise and Customs,

makes it clear that it was entirely the option of the assessee whether to avail of Rule 57F(2)(b) read with Notification No. 214/86 or not.

6. As against the above, it is contended by Mr. S. M. Shah, the learned Counsel appearing for the respondents that the compliance with Rule 57F(2) is mandatory to ensure that Modvat credit is properly taken and the interests of the Revenue are safeguarded. Since the petitioners are adopting the system of sending the goods to their job workers to enable them to take the benefit of Rule 57B, it is necessary for them to comply with the procedure of Rule 57F(2) strictly. It was also pointed out that the waste generated at each stage is required to be properly accounted for and hence, adherence to Rule 57G is also necessary.

7. In rejoinder, it was pointed out on behalf of the petitioners that the provisions of Rule 57G(4) required the filing of monthly returns, which procedure has been complied with by the petitioners and such returns have been duly scrutinised. As far as the provisions of Rule 57B is concerned, it was contended that the petitioners have followed the system of sending the goods directly to the job workers only with a view to saving time and improving efficiency. It was further pointed out that even the waste generated at each stage has been cleared by the job workers on payment of duty.

8. We are inclined to accept the petitioners' contentions. A perusal of the flow Chart would show that each of the inputs and final product in the process of manufacture would fall either under Chapter 76 or Chapter 83 of the Central Excise Tariff Act, 1985. The Table attached to the Notification No. 177 of 1986 gives the description of the input in column 2 in which there is a mention of Chapter 76 under which the inputs fall. Similarly, column 3 of the said Table gives the description of the final product in which both Chapter 76 and Chapter 83 have been mentioned under either of which the final products fall at each of the stages of manufacture. It is clear from the said Notification that the final product described in column 3 of the Table in respect of which the duty of excise/special duty/additional duty has been paid on the inputs described in the corresponding entry in column 2 of the Table shall be allowed as credit when used in or in relation to the manufacture of the said final products or, as the case may be, if such inputs have been permitted to be cleared under Rule 57F of the said Rules.

9. It is clear in the present case that aluminium ingots have been classified under Tariff Heading 7601. Aluminium sheets manufactured out of aluminium ingots have been classified under Tariff Heading No. 7606.10. Aluminium slugs manufactured out of aluminium sheets have been classified under Tariff Heading 7606.10. As far as final product mentioned in column 3 of the said Table is concerned, it mentions the goods classified under the heading of Chapters mentioned therein. We are in the present case concerned with goods falling either under Chapter 76 or Chapter 83. Aluminium ingots, aluminium sheets and aluminium slugs have been classified under Chapter 76, both in column 2 as also

in column 3 of the Table attached to the said Notification. The plain aluminium tubes would fall under Tariff Heading 8312. Admittedly, the petitioners receive the plain aluminium tubes falling under TH 8312 which are then converted into either lacquered aluminium tubes falling under Chapter 83 or printed aluminium tubes also falling under Chapter 83. There is, thus, no dispute before us that the inputs at each of the stages of the process of manufacture fall under Tariff Heading 76 which finds a specific mention in column 2 of the Table annexed to the said Notification under Rule 57A of the Rules.

10. Sub-rule (4) of Rule 57G requires a manufacturer to submit a monthly return to the Superintendent of Central Excise indicating the particulars of inputs received during the month and the amount of duty taken as credit along with the Extracts of Part I and II of Form R.G. 23A and to make available documents evidencing the payment of duty on the inputs. There is no dispute before us that at each of the stages of manufacture, right from the stage of aluminium ingots to the stage of the petitioners manufacturing lacquered aluminium tubes or printed aluminium tubes, the procedure laid down in Rule 57G(4) has been complied with by the different units.

11. As stated earlier, on purchase of aluminium ingots, they are sent to different units like Western Metal Industries or Gujarat Metal Rolling Mills, Bhagwada, for manufacture of aluminium sheets. When the aluminium sheets are cleared by the said Units, they are sent to Patel Aluminium Pvt. Ltd. for manufacture of aluminium slugs and when aluminium slugs are cleared, they are sent to Lans Metal Pvt. Ltd. for manufacture of plain aluminium tubes and it is the plain aluminium tubes which are received by the petitioners for manufacture of lacquered aluminium tubes or printed aluminium tubes. Thus, at every stage of the manufacture, duty has been paid by every unit referred to earlier after complying with the procedure laid down in the Rules stipulated. In our view, therefore, there is no justification for issuance of the letter Exhibit "H" dated 23rd September, 1987.

12. In this connection, Counsel for the petitioners, has invited our attention to the letter dated 23rd September, 1987 issued by the All India Manufacturers' Organisation to the Chairman of Central Board of Excise and Customs. It was pointed out in the said letter that under Rule 57A an assessee is allowed to bring any duty paid material which is used in or in relation to the manufacture of final product and claim therefrom credit of the duty paid on such inputs. Many assessees get the raw materials delivered directly to the job workers and accompanying documents showing payment of duty are also prepared in the name of the job workers. In such cases, the job workers take proforma credit of the duty paid on the raw materials and clear the finished goods (which may be used as an input by another manufacturer) on payment of duty on the value assessed after taking into consideration job charges as well as the excise duty and original manufacturers' profit etc. Such duty of excise paid by the job worker is taken proforma credit by the factory receiving such material. All

through the transaction, the ownership of the material rests with the original manufacturer only. Secondly, it is pointed out that in the process of recycling the scrap to bring the same into usable form, any waste and scrap generated in the assessee's factory is also cleared on payment of appropriate duty. It is relevant to note that in reply to this letter dated 23rd September, 1987, the Secretary, Central Board of Excise and Customs, by his letter dated 17th October 1988 made it clear that it was entirely the option of the assessee whether to avail of the procedure laid down in Rule 57F(2) or not.

13. In our view, on a proper construction of the scheme of Rule 57F it is clear that the procedure provided for by Rule 57F(2) is only a facility which could be availed of by the manufacturer at his option if he so desired and it was not at all compulsory or mandatory for him to comply with the said procedure. The assessee cannot be compelled to follow the said procedure laid down in Rule 57F(2) and it was open for the assessee not to follow the said procedure laid down under Rule 57F(2) and, instead, to pay the excise duty on the goods cleared from his factory after claiming the benefit of Modvat credit of the duty paid on the inputs against the duty payable on the finished excisable goods. In our view, there is nothing in Rule 57F(2) which would in any way indicate that if a manufacturer wants to avail of the benefit of Modvat facility under Rule 57A, it is obligatory on him to follow the procedure laid down in Rule 57F(2).

14. In view of our findings as above, there are no merits in any of the contentions raised by the respondents. Accordingly, the petitioners are entitled to succeed. Hence, the impugned letter at Exhibit "H" dated 23rd September, 1987 is quashed and set aside to the extent that it requires the petitioners to follow the procedure laid down in Rule 57F(2) for the purpose of claiming the benefit of Modvat facility under Rule 57A.

15. Rule is made absolute as above, with no order as to costs.