(1995) 05 AHC CK 0021

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1434 of 1991

Jay Ess Engineers (P) Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:
Central Excise Rules, 1944 — Rule 57A, 57D(1)

Citation : (1995) 79 ELT 193

Hon'ble Judges : Om Prakash, J;D.K. Seth, J

Bench : Division Bench

Judgement

1. Petitioners are engaged in the manufacture of Acid slurry, for which Sulphuric acid 70% concentrated, a raw-material, which was purchased by the petitioners having taken the benefit under Modvat Scheme.

2. The petitioners were allowed full benefit under Modvat scheme, on sulphuric acid. Thereafter, the impugned show cause notice dated 29-10-1991, Annexure-A6 to the writ petition, was served on the petitioner calling upon the petitioners to show cause why excess benefit availed under the Modvat scheme, be not recovered from it.

3. The contention of learned counsel for the petitioners is that once the entire sulphuric acid, in respect of which benefit under Modvat scheme was taken, is put to use in the manufacturing process then no part of benefit can be recovered from the petitioners, notwithstanding some quantity of sulphuric acid in diluted form remained unconsumed in the manufacturing process. It is said that once the entire sulphuric acid was put to use for manufacturing process, that becomes spent acid and therefore the petitioners cannot be subjected to any recovery of excess amount on the ground that part of the spent acid in diluted form, was saleable commodity.

4. Our attention has been drawn to Rule 57D(1) of the Central Excise Rules, 1944 which states that credit of specified duty allowed in respect of any inputs

shall not be denied or varied on the ground that part of the inputs is contained in any waste, refuse or by-products arising during the manufacture of the final product whether or not such waste, refuse or by-product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty or is not specified as a final product under Rule 57A.

5. This rule was considered by a Bench of this Court of which one of us (Om Prakash) was a member in Varuna Sulphonators Pvt. Ltd. Vs. Union of India (UOI), and then it was held that once it is proved by the manufacturer that the entire duty-paid input was put to use, then he becomes entitled to full benefit under Modvat scheme, notwithstanding that part of spent acid remained unconsumed.

6. Learned counsel for the petitioners submits before us that the facts of the instant case and those in the case of Varuna Sulphonators Pvt. Ltd. (supra) are similar and the said decision is fully applicable to the petitioner''s case.

7. However, it is note worthy that our decision in the case of Varuna Sulphonators Pvt. Ltd. (supra) was not available when the impugned show cause notice dated 29-10-1991 Annexure A6 to the writ petition, was issued to the petitioners. No doubt, the respondents are authorised to issue show cause notice to the petitioners.

8. Upon hearing learned counsel for the parties, we disposed of the writ petition finally, taking into consideration the fact that our decision in Varuna Sulphonators Pvt. Ltd. (supra) was not before the respondents, while the impugned show cause notice was issued. The concerned authorities are directed to decide the matter in issue, afresh taking into consideration the judgment of this Court in Writ Petition No. 1580 of 1991 Varuna Sulphonators Pvt. Ltd. v. Union of India, a copy of which will be supplied by the petitioners alongwith a copy of this instant order within ten days from today.

9. Until decision, as aforesaid, the recovery pursuant to the impugned notice dated 29-10-1991, Annexure-A6 to the writ petition, shall remain stayed.

10. Let a copy of this order be given to the learned counsel for the petitioners on payment of usual charges within three days.