

(2002) 07 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ No. 3510 of 2000

Shree Cement Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57J

Citation : (2003) 161 ELT 94

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Advocate : Vineet Kothari, for the Appellant; Pankaj Bohra, on behalf of Ravi Bhansali, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—The petitioner M/s. Shree Cement Ltd., Beawar is engaged in manufacture of cement and clinker falling under Chapter sub-heading 2502.29 and 2502.10 respectively of the Schedule appended to the Central Excise Tariff Act, 1985.

2. According to the respondent-revenue, the assessee has incorrectly availed the Modvat credit amounting to Rs. 6,37,523/- under Rule 57A of the Central Excise Rules, 1944 during the period September, 1999 to January, 2000. Thus, by the impugned show cause notice dated 18-2-2000 (Annexure 4), the petitioner has been called upon to show cause as to why the amount recovered under Rule 57-I of the Central Excise Rules, 1944 and the amount of Rs. 20,941/- be not appropriated in the Government account and further the interest and the amount so determined under Rule 57-I(1) should not be recovered under Rule 57-I(3) of the Rules. The petitioner has also been called upon to show cause as to why the penalty should not be imposed upon him under Rule 173-Q(1)(bb) of the Rules.

3. It is not in dispute that the petitioner was using explosives for blasting mines. It further appears that a particular type of explosive is used for blasting the

queries using Ammonium Nitrate and Fuel Oil (ANFO). The department took the view that mining of lime stone is not an integrated part of the process of manufacturing cement and hence explosives cannot be held as inputs in or in relation to the manufacturing of cement.

4. The controversy is now been settled by the decision of the Apex Court in M/s. Jaypee Rewa Cement Vs. Commissioner of Central Excise, M.P., The Apex Court considering the Rule 57A(1) of the Central Excise Rules found that the said Rules does not in any way specify that the inputs have to be utilised within the factory premises. Dealing with Rule 57-J the Court expressed that even in respect of inputs used in the manufacture of intermediate product which product is then used for the manufacture of the final product, the manufacturer would be allowed credit on the duty paid in respect of the input.

5. The ratio laid down in the case of M/s. Jaypee Rewa Cement (Supra) fully applies to the instant case. For the reasons and conclusions arrived at in the said case, we allow this writ petition and set aside the notice Annexure 4.

6. Consequently, we allow the writ petition and set aside the notice dated 18-2-2000 (Annexure 4)