

(1993) 01 CAL CK 0007
In the Calcutta High Court
Case No : C.O. No. 5448 (W) of 1991

Singh Alloys and Steel Ltd.		APPELLANT
	Vs	
Assistant Collector of Central Excise		RESPONDENT

Date of Decision : 08-01-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 57A
Central Excises and Salt Act, 1944 — Section 4

Citation : (1993) 66 ELT 594

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Samir Chakraborty, for the Appellant; Sunil Chatterjee, for the Respondent

Judgement

Ruma Pal, J.—The point involved in this writ petition is the construction of Rule 57A of the Central Excise Rules, 1944 (referred to as the Rules). Rule 57A allows for credit of duty paid on excisable goods used as inputs on the manufactured item. The question is whether dolopatch mix, Magnesite Peas and ramming mass is an input of steel ingots.

2. The word "inputs" has been defined in the explanation to Rule 57A. The explanation reads as follows :-

"Explanation - For the purpose of this rule "inputs" includes -

(a) inputs which are manufactured and used within the factory of production or in relation to the manufacture of final products; and

(b) paints and packaging material, but does not include -

(i) Machines, machinery, plant, equipment, apparatus, tools or appliances used for producing or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products;

(ii) packaging materials in respect of which any exemption to the extent of the

duty of excise payable on the value of packaging materials is being availed of for packaging any final products;

(iii) packaging materials the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products u/s 4 of the Act.

(iv) cylinders for packing gases

(v) plywood for the tea chests, or

(vi) bags or sacks made out of fabric (whether or not coated, covered or laminated with any other material) woven from strips or tapes of plastics)."

3. The scheme by which credit of Central Excise duty is available is known as the modvat scheme and the credit is known as modvat credit.

4. Analysing the meaning of inputs as provided in the explanation it would appear that everything is an input if it is (i) manufactured and used within the factory of production or (ii) used in relation to the manufacture of the final products, and (iii) paints and packaging material. The exceptions relate to items which would otherwise have come within the inclusive definition of inputs. The need to except arose because the items would otherwise have been covered :

"Words excepting a species from a genus are meaningless unless the species in question prima facie falls within the genus. "All hats other than top hats" makes sense. "All top hats other than bowler hats" does not. Equally little does "All top hats and other articles except gloves", "if other articles" are to be read as ejusdem generis with "top hats"."

(See : Allen v. Emerson (1944) 1 All ER 344)

5. Secondly the phrase "in relation to" has a wide connotation [See Renusagar Power Co. Ltd. Vs. General Electric Company and Another, ; Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, .

6. The object of the legislature appears to me to be to exclude from the genus of inputs, the species mentioned in the excluded categories because otherwise a manufacturer would be entitled to claim modvat in respect of such inputs repeatedly as these would not be inputs which would be consumed in the process of manufacture. This is clear from a scrutiny of the excluded inputs.

7. It is not disputed that Ramming mass and dolopatch mix have been classified as miscellaneous chemical products under Chapter 38 Heading 3816.00 of the Schedule to the Central Excise Tariff Act, 1985. Magnesite peas have been classified under Heading No. 28.20 of the Schedule to the Tariff Act which deal with Manganese Oxides. Heading No. 28.20 is under Chapter 28 which deals with inorganic chemicals, organic or inorganic compounds of precious metals, or rare earth metals, of radioactive elements or of isotopes. These three items are used when ingots are manufactured. It is the admitted case that these items are first

charged into the furnace as fettling materials. The items dissolve and seal the crevices in the refractory walls of the furnace to prevent leaking of the liquid metal from the furnace and to reduce the erosion of the refractory lining of the furnace. The items lose their identity and are consumed in the process. Some part of the items remains in the liquid metal which forms the ingot and the balance forms part of the residue or slug.

8. The ingots can be manufactured in the furnace without these items. There would then be a possibility of the furnace being damaged and more down time would be required resulting in loss of productivity.

9. The petitioner No. 1 manufactures ingots and uses these items for the manufacture. The petitioner No. 1 claimed modvat credit in respect of the items. On 30th December, 1987 and 22nd March, 1988 the Assistant Collector of Central Excise held that the petitioner No. 1 was not entitled to any modvat credit in respect of the items as the items were not inputs within the meaning of Rule 57A. The petitioner No. 1 preferred two appeals. The Collector of Central Excise allowed the appeals and by two orders dated 29-8-1988 and 28-9-1988 held that the items were inputs within the meaning of Rule 57A. However, for a subsequent period the petitioner No. 1 was called upon to show cause why the modvat credit should not be disallowed in respect of the items for the periods November 1988 and February 1989 and a demand was raised for the Excise duty payable by reason of the disallowance of the credit. The petitioner replied to the show-cause notices. An order was passed by the Assistant Collector again holding that the items were not inputs as far as the manufacture of steel ingots was concerned. In holding against the petitioner No. 1, the Assistant Collector ignored the orders of the Collector dated 29-8-1988 and 28-9-1988 but relied on two decisions of the Customs, Excises and Gold (Control) Appellate Tribunal (referred to as the Tribunal), being *Satya Steel Strips Pvt. Ltd. v. Central Excise* : 1988 (39) E.L.T. 485 and 1990 (48) ELT 552

10. Challenging this order, on 10th April, 1991 this writ petition was filed. An interim order was passed by which the accumulated demand by way of refund of modvat credit under the order dated 17-9-1990 was stayed subject to the petitioners securing the amount by a bank guarantee. As far as the future clearances of the ingots were concerned, the petitioners were allowed to remove the ingots without taking into account the modvat credit but without prejudice and subject to the final order in the writ petition.

11. Affidavits have been filed. The parties have relied upon various decisions in respect of their rival contentions. Before considering the merits of the contentions, it is necessary to deal with the preliminary objection raised by the respondents. The respondents say that the writ petition should not be entertained by reason of the alternative remedy available to the petitioner No. 1 under Central Excises and Salt Act, 1944 (referred to as the Act). I am unable to uphold this objection for several reasons. The first is that the writ application has been pending in this Court for two years. The matter is now being finally heard

after the filing of affidavits. It would be iniquitous to relegate the petitioners to any alternative remedy under the Act. (See : L. Hirday Narain Vs. Income Tax Officer, Bareilly, Secondly the outcome of the petitioner's case has really been predetermined by the Tribunal in view of its earlier decisions in the matter. To force the petitioner to prefer an appeal under the Act would be to compel it to avail of a remedy where there would be no chance of success. Thirdly, there is no disputed question of fact. The matter is one of interpretation. That there is confusion on this issue is clear from the different stands taken by the Collector in his orders dated 29th August, 1988 and 28th September, 1988 and the decisions of the Tribunal. The Supreme Court in the case of Union of India (UOI) and Others Vs. The Tata Iron and Steel Co. Ltd., has held that such a lack of uniformity or controversy cannot be permitted in fiscal legislation and it is the duty of the Court to determine the issue otherwise there would be scope for arbitrary assessments at the hands of different authorities.

12. Finally the Division Bench of this Court has held that where the problem is of a recurring nature the remedy under the Act was not an appropriate alternative (See : Collector of Central Excise and Others Vs. Madura Coats Ltd., ; Superintendent of Central Excise v. R.K. Chemical Industries Pvt. Ltd. - 1987 (30) E.L.T. 641.

13. For all these reasons the preliminary objection of the respondents is rejected.

14. As far as the merits of the case are concerned, there is no dispute that the items in question are inputs within the meaning of the explanation to Rule 57A but according to the respondent authorities the items come within the excluded items. It is said that the items in question form part of the machinery because they are really used to protect the machinery and not for the manufacture of the ingot itself.

15. In the case of Satya Steel Strips (supra) the Tribunal held that the ramming mass was used to coat the bricks with which the furnace was lined in order to withstand the degree of heat in melting iron. This being so, according to the Tribunal, ramming mass was essentially a part of the furnace and would therefore, be in the nature being part of the machinery/equipment used for producing the final product.

16. Similarly, in the case of Mukund Iron (supra) the Tribunal held that the items Were more in the nature of structural material required for lining the machines and equipment than in the nature of material fed into the furnace for chemical reaction or for improving the quality of steel making. The Tribunal held that the items were not consumable inputs in the manufacture of steel but were really a part of the machinery and as such excluded from the definition of inputs. It was stated that the items cannot be said to be taking part in the chemical process in steel manufacturing but were used for the maintenance of the machines or for making the machine operational. The third decision relied upon by the respondents at the hearing is 1990 (48) ELT 552 The Tribunal followed its earlier

decisions and rejected a claim to Modvat benefit in respect of the items.

17. In my view, in all three cases, the Tribunal has committed an error in interpreting the definition of inputs in the explanation to Rule 57A. The question which should have been raised by the Tribunal was : Are the items inputs at all in respect of steel ingots ? If the answer to this question is in the affirmative, the next question should have been are the items within the excluded inputs? The definition of inputs is, as already seen, a very wide definition. There can be no dispute that the items are used in relation to the manufacture of steel ingots. In fact the Tribunal in the case of 1990 (25) ECC 125 said that it was not disputed that the items were required for the manufacture of steel. The answer to the first question posed above therefore is in the affirmative.

18. The next question is are the items plant, machine, machinery, appliances etc? In my view, they are not.

19. The items certainly do not come within the dictionary meaning of machines or machinery or instruments or appliances. The items are chemicals and have been classified as such in the Tariff Act. Merely because chemicals are used for the machinery do not make the chemicals, machinery. It does not matter that the items are used in the Machinery or for the purpose of the Machinery. To repeat, the only relevant question is are they used in or in relation to the manufacture of ingots. It was sought to be argued that the items were "appliances", meaning something that is applied. There is no warrant to give this strained meaning to the word. In common terms an appliance is a device. In technical terms an appliance has been defined as "a piece of equipment that draws electric or other energy and produces a desired work-saving or other result such as an Electric Heater, a Radio or an Electronic Range". (McGraw-Hill Dictionary of Scientific and Technical Items, 3rd Edition).

20. Furthermore if there were any doubt, I hold that appliance must be read ejusdem generis with the preceding words. The words preceding constitute a specific category or a distinct genus and if there were any doubt as to the meaning of the word of appliance, which in my view there is not, the same must be construed with reference to that genus or category. The preceding words have been defined in Mc-Graw Hills dictionary as follows :-

"Apparatus A compound instrument designed to carry out a specific function. Appliance A piece of equipment that draws electric or other energy and produces a desired work-saving or other result. Such as an Electric heater, a radio or an electronic range. Equipment One or more assemblies capable of performing a complete function. Machine A mechanical, electric, or electronic device, such as a computer, tabulator, sorter or collator. Machinery A group of parts or machines arranged to perform a useful function. Plant The land, buildings, and equipment used in an industry. Tool Any device, instrument, or machine for the performance of an operation, for example, a hammer, saw, lathe, twist drill, drill press, grinder, planner, or screw driver. To equip a factory or industry for

production by designing, making and integrating machines, machine tools, and special dies, jigs, and instruments so as to achieve manufacture and assembly of products on a volume basis at minimum cost."

21. None of these definitions would include items like chemicals such as the items in question. It may be noted that as far as the Tariff Act of 1985 is concerned, Plant, Machinery, Machines, Equipment, Apparatus, Tools and Appliances are all classified under Headings and Sections which are totally different from the Headings and Section under which the items are classified.

22. The Tribunal has erred in seeking to limit the meaning of the word "inputs" to those items which go into the steel ingot completely overlooking the phrase "in relation to" in the definition in the major clause of the explanation.

23. The respondents then argued that steel ingots could be manufactured even without the items. That may be so, but that is immaterial. The definition of inputs is not dependent upon what ought to be used but what is in fact used. There is no dispute that the petitioner No. 1 had in fact, used and uses the items in the manufacturing of ingots. The Supreme Court has also held that manufacture would include a process which was commercially expedient in the production of goods [See : Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd., ; Collector of Central Exise, Jaipur v. Rajasthan State Chemical Works : AIR 1991 SCC 2222] . That the process in question is commercially expedient has not been doubted.

24. For the reasons aforesaid the impugned order of the Assistant Collector cannot be sustained, and is accordingly quashed. The bank guarantee furnished by the petitioner in respect of the demand made under the impugned order is discharged. The claim of the petitioner for refund of any payment made pursuant to the interim order dated 10th April, 1991 may be obtained by the petitioners u/s 11B of the Act from the respondent authorities subject to the provisions of that section and in accordance with law. Such application must be disposed of within a period of eight weeks from the date of the communication of the order.

Let a xerox copy of the judgment passed today be given to the learned advocate appearing for the petitioners, on his usual undertaking.