
(2010) 02 BOM CK 0096

In the Bombay High Court

Case No : Excise Reference No. 1 of 2000 in Reference Application No. E/RA-33 of 1998

Tata Engineering and Locomotive Co. Ltd.

APPELLANT

Vs

Commr. of C. Ex.

RESPONDENT

Date of Decision : 09-02-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57B, 57C, 57D, 57E
Central Excises and Salt Act, 1944 — Section 2, 35G, 35G(1)
Customs and Central Excise Duties (Drawback) Rules, 1971 — Rule 12A
Customs Tariff Act, 1975 — Section 3, 4

Citation : (2010) 256 ELT 56

Hon'ble Judges : V.C. Daga, J;K.K. Tated, J

Bench : Division Bench

Advocate : D.B. Shroff, H.N. Vakil and S.M. Vakil, instructed by Mulla and Mulla, for the Appellant; A.S. Rao and R.B. Pardeshi, for the Respondent

Final Decision : Allowed

Judgement

V.C. Daga, J.—Introduction : Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench at Mumbai (the Tribunal for short) in exercise of powers u/s 35G(1) of the Central Excise and Salt Act, 1944 (the Act for short) arising out of the order of the Tribunal dated 6th August, 1999 passed in Reference Application No. E/RA-33/98 Bom-bay-2000 has referred the substantial questions of law for the opinion of this Court which read as under:

(i) Whether in the facts and circumstances of this case, inputs used in in-house laboratory testing and which in the course of such testing get scrapped, are used in or in relation to the final product manufactured by the applicants for the purposes of credit under Rule 57A of the Central Excise Act, 1944?

(ii) Whether the amendment to Rule 57-O by Notification No. 8/93 dated 2-11-1993 is classificatory in nature and should be given retrospective effect from 1-3-1986?

Background-Context:

2. The reference was made in the background context of the Revenue attempting to deny and recover the modvat credit availed by the applicant on inputs that have been subjected to testing in the applicant's laboratory located within the factory premises to determine its tensile strength and other qualities on the ground that inputs were not used in manufacture of the final products as after testing, some parts that get broken are removed on payment of duty as scrap.

factual Context:

3. The applicant is engaged in the manufacture of motor vehicles (final product). It has its factory at Pune (Pimpri Chinchwad) in the State of Maharashtra and at different places in different parts of the country. Motor vehicles, chassis of different models are manufactured in its Pimpri Chinchwad works.

4. In the process of manufacture of motor vehicles, the applicant uses large number of components, It is stated that before any raw materials which are used for manufacture are subjected to what is described as destructive test. These parts are subjected to stresses and strains in order to test their tensile strength and other qualities up to a point where the stress on them is greater than they have withstood and they break or get so distorted that they cannot be put to use. After testing the remnants of these parts are cleared as scrap on payment of duty appropriate to scrap. The applicants had taken Modvat credit of the duty paid on these inputs.

5. The department was of the view that the conversion of the parts which were tested into scrap did not take place during the course of manufacture and that therefore the benefit of Sub-rule (1) of Rule 57D of the Central Excise Rules, 1944 (the Rules for short) will not be available to these goods.

6. The show cause notice was issued demanding recovery of duty equal to the credit taken. This was resisted on the ground that such testing was essential for manufacture and that without such testing the applicant would not ensure the quality requirement of the finished products.

7. The Assistant Collector did not accept these contentions in his order, which was affirmed by the Collector (Appeals). The same view was confirmed by the Tribunal holding that destructive testing of inputs used by the applicants consisting of components for the manufacturer of its motor vehicles could not be processed in the course of manufacture as such the waste which arose as a result of destructive testing would not be within the scope of Rule 57D and that the credit could not be taken of the duty paid on such goods which render waste in the course of such testing.

8. Not satisfied with the order of the Tribunal, the Tribunal was requested to make a reference u/s 35G of the Act. Accordingly, the Tribunal was pleased to make a reference to seek opinion of this Court on the substantial questions of law quoted in the opening para of this judgment.

Rival Submissions:

9. Mr. Shroff, learned Counsel appearing for the applicant would submit that on receipt of the inputs in the factory, modvat credit is taken and before sending the raw material to the assembly line, a sample of that particular batch of raw materials is subjected to testing in their laboratory situated within the factory premises to determine its tensile strength and other qualities. In the process of testing some of the parts break or get distorted. Admittedly, appropriate duty is paid on the scrap as per Rule 57F(4) of the Rules which provides that any waste arising from the processing of inputs in respect of which credit has been taken may be removed on payment of duty as if such waste is manufactured in the factory.

10. Mr. Shroff relying upon Rule 57A of the Rules submits that modvat credit is available for all inputs used in or in relation to the manufacture of final product. According to him, it is settled law that such, credit is admissible whether or not such inputs are physically present in the finished goods so long as the inputs are used in or in relation to the manufacture of finished excisable goods.

11. In the submission of Mr. Shroff the expression used in or in relation to in Rule 57A of the Rules is very wide and broad expression and has been used to widen and expand the scope, meaning and content of the expression inputs; so as to attract the goods which do not even enter into finished goods. According to him, manufacture of final product cannot take place without the process in question i.e. without the raw material, is subjected to testing. If this be so, according to him, the testing is an integral process or part of the activity of manufacture of final product. Reliance is sought to be placed on the few judgments of the Hon"ble Supreme Court in the case of Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, ; Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, ; Indian Farmers Fertiliser Cooperative Limited Vs. Collector of Central Excise, Ahmedabad, ; and Collector of Central Excise Vs. Solaris Chemtech Limited and Others, .

12. Mr. Shroff while reiterating his earlier submission further submits that the process of testing of inputs is so integrally connected with the ultimate production of the final product but for that process of testing, manufacture or processing of the final product would be commercially inexpedient and that the final product cannot come into being. A strong reliance is placed on the judgment of the Apex Court in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, wherein Apex Court held that Rule 57A which refers to inputs are not only goods used in manufacture of final products but also goods used in relation to the manufacture of final products.

13. Mr. Shroff relying on Rule 57D(1) of the Rules submits that credit of specified duty allowed in respect of any inputs cannot be denied or varied on the ground that part of the inputs is contained in any waste, refuse or by product arising during the manufacture of the final product, whether or not such waste etc. is

specified as a final product. He sought to press into service number of judgments of the Tribunal in support of his submission so as to demonstrate the consistent judicial view of the Tribunal and in most of the cases accepted by the Revenue. Mr. Shroff also placed reliance on the CBEC Circular No. 33/33/94/CX. 8 dated 4th May 1994 issued with a view to consolidate the instructions and streamline procedure in relation to the Modvat which according to him supports his contention.

14. Mr. Shroff further submits that Rule 9(2) sought to be invoked to recover the duty of Central Excise can only be invoked in case of clandestine removal; where goods have been removed clandestinely and without any permission, without following any classification and/or without payment of duty.

In the case in hand according to him, Assistant Commissioner has accepted that there is no evidence to show that Rule 9(1) was invoked. As a sequator, in his submission Rule 9(2) cannot apply. He thus submits that despite the legal position being clear, Assistant Commissioner erroneously confirmed the demand without specifying any provision under which the demand was sought to be confirmed. He thus submits that the question of law referred to this Court needs to be answered in favour of the applicant and against the Revenue.

Per Contra:

15. Learned Counsel appearing for the respondent submits that the only question referred to by the Tribunal is : whether the applicant is entitled for modvat credit on the waste arising in the course of destructive testing of inputs which get destroyed before manufacture of final product. He submits that as per Rule 57A of the Rules, the modvat is eligible on the inputs which are actually used in the manufacture of the final product.

16. In his submission, inputs cannot be said to have been used in the manufacture of final product, if they are getting destroyed at the stage of testing itself i.e. much before the actual manufacturing process. In the circumstances of this case, hardly there is any nexus of the subject inputs with the manufacture as such the same do not qualify for modvat.

17. According to Mr. Rao, provision of Rule 57D is very clear as it deals with the waste arising during the manufacture whereas in the present case, the waste is arising at pre-manufacture stage as such it cannot be within the sweep of the said Rules.

18. Mr. Rao submits that reliance placed by the applicants on the judgments of the Tribunal and also that of the Supreme Court and High Court are not relevant for the purposes of deciding the aforesaid issue. The same is the case in respect of the circulars issued by the Government and CBEC.

19. Mr. Rao while relying on the judgment of Madras High Court in the case of Collector of Central Excise, Madras Vs. Union Carbide India Ltd., submits that if the inputs are not used directly in the manufacturing process and much before

manufacture if they get destroyed then such goods are not eligible for modvat credit. He, thus, prayed that reference may be answered in the terms of Madras High Court's decision in favour of the Revenue and against the applicant.

Statutory Provisions:

20. Before considering the rival submissions it would be appropriate to turn to the relevant statutory provisions relevant for the purpose of answering the questions referred for the opinion of this Court, they are as under:

Rule 57A : Applicability : (1) The provisions of this section shall apply to such finished excisable goods (hereinafter referred to as the final products) as 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 u/s 3 of the Customs Tariff Act, 1975 (51 of 1975) as may be specified in the said notification (hereinafter referred to as the specified duty) paid on the goods used in or in relation to the manufacture of the said final products (hereinafter referred to as the inputs) and for utilizing the credit so allowed towards payment of duty of excise leviable on the final products, whether under the Act or under any other Act, as may be specified in the said notification, subject to the provisions of this section and the conditions and restrictions that may be specified in the notification:

Provided that the Central Government may specify the goods or classes of goods in respect of which the credit of specified duty may be restricted.

Explanation : (for the purposes of this rule, inputs includes:

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

(b) paints and packaging materials 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 the 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 tea (chests; or)

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

Rule 57D : Credit of duty not be denied or varied in certain circumstances : (1) 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-product 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;

(2) Credit of specified duty allowed in respect of any inputs shall not be denied or varied on the ground that any intermediate products have come into existence during the course of manufacture of the final product and that such intermediate products are for the time being exempt from the whole of the duty of excise leviable thereon (or chargeable to nil rate of duty):

Provided that such intermediate products are:

(a) used within the factory of production (in the manufacture of a final product (other than those cleared either to a unit in a Free Trade Zone or to a hundred per cent Export Oriented Unit) on which the duty of excise is leviable whether in whole or in part; and

(b) specified as inputs or as final product under a notification issued under Rule 57A.

Rule 57F : Manner of utilisation of the inputs and the credit allowed in respect of duty paid thereon. - (1) The inputs in respect of which a credit of duty has been allowed tender 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) be removed, subject to the prior permission of the Collector of Central Excise from the factory for home consumption or for export on payment of appropriate duty of excise or for export under bond, as if such inputs have been manufactured in the said factory:

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.

(1A) Notwithstanding anything contained in clause (ii) of Sub-rule (1) , the inputs in respect of which a credit of duty has been restricted in terms of proviso to Rule 57A, may be removed subject to prior permission of Collector of Central Excise from the factory for home consumption on payment of duty of excise equivalent to the credit availed on such inputs.

(2) 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 limitation 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,

(a) for the purposes of test, repairs, refining, reconditioning or carrying out any other operation necessary for the manufacture of the final products and return the same to his factory for further use in the manufacture of the final product or remove the same without payment of duty under bond for export, provided that the waste, if any, arising in the course of such operation is also returned to the said factory.

(b) for the purpose of manufacture of intermediate products necessary for the manufacture of the final products and return the said intermediate products to his factory for further use in the manufacture of the final product or remove the same without payment of duty under bond for export, provided that the waste, if any, arising in the course of manufacture of such intermediate products is also returned to the said factory:)

(provided that the said waste need not be returned to the said factory if the appropriate duty of excise leviable thereon has been paid.)

(3) Credit of specified duty allowed in respect of any inputs may be utilized towards payment of duty of excise,-

(i) on any of the final products in or, in relation to the manufacture of which such inputs are intended to be used in accordance with the declaration filed under Sub-rule (1) of Rule 57G; or

(ii) on the waste, if any, arising in the course of manufacture of the final products; or

(iii) on the inputs themselves if such inputs have been permitted to be cleared under Sub-rule (1):

Provided that the credit of specified duty in respect of inputs used in the final products cleared for export under bond or used in the intermediate products cleared for export in accordance with Sub-rule (2), shall be allowed to be utilized towards payment of duty of excise on similar final products cleared for home consumption (or for export) on payment of duty and, where for any reason, such adjustment is not possible, by refund to the manufacturer subject to such safeguards, conditions and limitations as may be specified by the Central Government in the Official Gazette:

Provided further that no such refund of credit of duty shall be allowed if the manufacturer avails of drawback allowed under the Customs and Central Excise Duties (Drawback) Rules, 1971 or claims rebate of duty under Rule 12A in respect of such duty:

Provided also that the credit of specified duty in respect of inputs used in the final products cleared either to a unit in a Free Trade Zone or to a hundred per cent Export Oriented Unit under bond shall be allowed to be utilized towards

payment of duty of excise on similar final products cleared for home consumption on payment of duty.

(4) Any waste, arising from the processing of inputs, in respect of which credit has been taken may:

(a) be removed on payment of duty as if such waste is manufactured in the factory; or

(b) be removed without payment of duty where it belongs to such class or category of waste as the Central Government may from time to time by order specify for the purpose for being used in the manufacture of the class or categories of goods as may be specified in the said order, subject to the procedure under Chapter X being followed; or

(c) be destroyed in the presence of proper officer on the application by the manufacturer, and if found unfit for further use or not worth the duty payable thereon, the duty payable thereon being remitted:

Provided that such waste may be destroyed by the manufacturer governed by Chapter VIIA after informing the proper officer in writing regarding the quantity of such waste and the date on which he proposes to destroy, at least seven days in advance and after observing all such conditions as may be prescribed by the Collector of Central Excise by a general or special order with regard to the manner of disposal of such waste.

(5) No part of the credit of duty allowed shall be utilized save as provided in Sub-rule (3).

(6) On an application made by a manufacturer, the Collector may, subject to such conditions and limitations as he may impose, permit a manufacturer having credit in his account in form R.G. 23A and lying unutilized on account of shifting of the plant or factory, belonging to the manufacturer, to another site, to transfer the credit in the account aforesaid to such factory of the same manufacturer.

21. Having seen the aforesaid statutory provisions, modvat is basically a duty collecting procedure, which aims at allowing relief to a manufacturer on the duty element borne by him in respect of the inputs used by him. It was introduced with effect from 1st March, 1986. The said scheme was regulated under Rules 57A to 57J of Central Excise Rules, 1944. Rule 57A entitled a manufacturer to take instant credit of the Central excise duty paid on the inputs used by him in the manufacture of finished product, provided that the input and the finished product were excisable commodities and fell under any of the specified chapters in the tariff schedule. Under Rule 57G, every manufacturer was required to file a declaration before the jurisdictional Assistant Collector, declaring his intention to take Modvat credit after paying duty on the inputs. The object behind Rule 57A read with Rule 57G and Rule 57-I was utilization of credit allowed towards payment of duty on any of the final products in relation to manufacture of which such inputs were intended to be used in accordance with the declaration under

Rule 57G. Rule 57-I referred to consequences of taking credit wrongly. The object of the Modvat scheme was to reduce cost of final product by taking credit for the duty paid on the inputs. With a view to consolidate the instructions and streamline of procedures, the instructions are issued by the Central Board of Excise and Customs on 4th May 1994 regarding Modvat Scheme details of which are referred to at the appropriate stage of the judgment.

The Ruling Authority:

22. We need not flutter this judgment with all the cases cited at the Bar by rival parties but would like to refer to the decisions of the Apex Court.

23. In the case of *Vikram Cement Vs. Commnr. of Central Excise, Indore*, the Apex Court held that cenvat credit on explosives cannot be denied on the ground that they cannot be used as inputs in the factory. In the case of *MIL India Ltd. Vs. Commissioner of Central Excise, Noida*, , the Apex Court on analysis of the scheme relating to Modvat credit, held that the erection of a plant by assembling certain items at site could constitute manufacture under excise law if bought out items were dutiable assessee was entitled to benefit of modvat credit.

In the case of *Collector of Central Excise Vs. Solaris Chemtech Limited and Others*, , the Apex Court ruled that the expression in the manufacture of goods indicates the use of the input in the manufacture of the final product. The said expression normally covers the entire process of converting raw materials into finished goods. The Apex Court went a step ahead and remarked that the said expression also covered inputs used in relation to the manufacture of final products and observed that the said expression, namely; in relation to also finds place in the extended definition of the word manufacture and observed that the expression in relation to must be given a wide connotation.

In the case of *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another*, , the Apex Court held that Rule 57A referred to inputs which are not only goods used in the manufacture of final products but also goods used in relation to the manufacture of final products.

In the case of *Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan*, , the Apex Court held that any operation which results in the emergence of manufactured goods, would come within the term manufacture. This is because of the words used in Rule 57A, namely, goods used in or in relation to the manufacture of final products.

In the case of *Birla Corporation Ltd. Vs. Commnr. of Central Excise*, the Apex Court held that spares of ropeway used for transporting crushed limestone from mines located 4.2 k.m. Away from the factory entitled, to Modvat credit under Rule 57Q of the erstwhile Central Excise Rules, 1944.

In another case of *Birla Corporation Ltd. v. Commissioner of Central Excise, Raipur* reported in 2007 (212) E.L.T. 162 (S.C.) reiterates the above view and placed reliance on Another judgment of the Apex Court in the case of *Commnr. of*

Importance of Quality Control:

24. Quality control is a process employed to ensure a certain level of quality in a product or service. It may include whatever actions a business deems necessary to provide for the control and verification of certain characteristics of a product or service. The basic goal of quality control is to ensure that the products, services, or processes provided meet specific requirements and are dependable, satisfactory, and fiscally sound.

25. The quality control essentially involves examination of a product, service, or process for certain minimum levels of quality. The goal of a quality control is to identify products or services that do not meet a company's specified standards of quality. If a problem is identified, the job of a quality control team or professional may involve stopping production temporarily. Depending on the particular service or product, as well as the type of problem identified, production or implementation may not cease entirely.

26. In majority of the industries quality inputs is examined with respect to its quality and strength much before the input is used in final product. In some industries, quality check is undertaken after manufacture of final product. In some cases quality check is undertaken at both stages i.e. before and after manufacture of finished product such as pharmaceutical products wherein input undergoes quality test before it is used in manufacture of final product and thereafter again after final product is tested vis-a-vis its quality and potency.

27. In the present case, the raw material used for testing in a laboratory located within the factory premises much before actual manufacture of final products needs to be considered, keeping in mind, the expression the goods used in or in relation to the manufacture of such final product and inputs which are manufactured and used within the factory of production, in or in relation to the manufacture of final product appearing in Rule 57A of the Rules and explanation thereof.

Consideration:

28. Having heard rival views; the expression in relation to was the subject matter of judicial consideration in the case of Doypack Systems Pvt. Ltd. Vs. Union of India (UOI) and Ors, wherein the Apex Court observed as under:

....The expressions pertaining to, in relation to and arising out of, used in the deeming provision are used in the expansive sense...

47. The words arising out of have been used in the sense that it comprises purchase of shares and lands from income arising out of the Kanpur undertaking. We are of the opinion that the words pertaining to and in relation to have the same wide meaning and have been used interchangeably and for among other reasons, which may include avoidance of repetition of the same phrase in the

same clause or sentence, a method followed in good drafting. The word pertain is synonymous with the word relate, see *Chorpus Juris Secundum*, Volume 17, page 693.

48. The expression in relation to (so also pertaining to is a very broad expression which presupposes another subject matter. These are words of comprehensiveness which might both have a direct significance as well as an indirect significance depending on the context, see *State Wakf Board, Madras Vs. Abdul Azeez Sahib and Others*, , following and approving *Nitai Charan Bagchi Vs. Suresh Chandra Paul*, , (*Sahu*) *Shyam Lal Vs. M. Shayamlal*, and 76 *Corpus Juris Secundum* 621. Assuming that the investments in shares and in lands do not form part of the undertakings but are different subject matters, even then these would be brought within the purview of the vesting by reason of the above expressions. In this connection reference may be made to 76 *Corpus Juris Secundum* at pages 620 and 621 where it is stated that the term relate is also defined as meaning to bring into association or connection with. It has been clearly mentioned that relating to has been held to be equivalent to or synonymous with as to connecting with and pertaining to. The expression pertaining to is an expression of expansion and not of contraction.

29. In the case of *Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan*, it has been held that any operation in the course of manufacture is to integrally connected with the further operations which result in the emergence of manufactured goods would come within the term manufacture. This is because the words used in Rule 57A are goods used in or in relation to manufacture of final products.

30. In the case of *Collector of Central Excise Vs. Solaris Chemtech Limited and Others*, , Hon'ble Shri Justice S.H. Kapadia while assigning meaning to expression in the manufacture of goods observed as under:

....in the case of *Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan*, it has been held that any operation in the course of manufacture, if integrally connected with the operation which results in the emergence of manufactured goods, would come within the term manufacture. This is because of the words used/in Rule 57A, namely, goods used in or in relation to the manufacture of final products...

....Lastly, we may point out that in order to appreciate the arguments advanced on behalf of the Department one needs to interpret the expression in or in relation to the manufacture of final products. The expression in the manufacture of goods indicates the use of the input in the manufacture of the final product. The said expression normally covers the entire process of converting raw materials into finished goods such as caustic soda, cement etc. However, the matter does not end with the said expression. The expression also covers inputs used in relation to the manufacture of final products. It is interesting to note that the said expression, namely, in relation to also finds place in the extended

definition of the word manufacture in Section 2(f) of the Central Excises and Salt Act, 1944 (for short, the said Act). It is for this reason that this Court has repeatedly held that the expression in relation to must be given a wide connotation. The explanation to Rule 57A shows an inclusive definition of the word inputs. Therefore, that is a dichotomy between inputs used in the manufacture of final product and inputs used in relation to the manufacture of final products. The Department gave a narrow meaning to the word used in Rule 57A. The Department would have been right in saying that the input must be raw materials consumed in the manufacture of final product, however, in the present case as stated above, the expression used in Rule 57A uses the words in relation to the manufacture of final products. The words in relation to which find place in Section 2(f) of the said Act has been interpreted by this Court to cover processes generating intermediate products and it is in this context that it has been repeatedly held by this Court that if manufacture of final products cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words in relation to contained of the expression inputs so as to attract goods which do not enter into finished goods. In the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, , this Court has held that Rule 57A refers to inputs which are not only goods used in the manufacture of final products but also goods used in relation to the manufacture of final products. Where raw material is used in the manufacture of final product it is an input used in the manufacture of final product. However, the doubt may arise only in regard to use of some articles not in the main stream of manufacturing process but something which is used for rendering final product marketable or something used otherwise in assisting the process of manufacture. This doubt is set at rest by use of the words used in relation to manufacture.

31. Central Board of Excise and Customs, New Delhi has also issued a Circular No. 33/33/94/CX. 8 dated 4th May 1994. The relevant part of which reads as under:

Subject : Instruction regarding Modvat Scheme.

1....

2. With a view to consolidate the instructions and streamline of procedures, the following instructions are issued in supersession of all the instructions issued on or before 31st December, 1993, in relation to Modvat -(i) Modvat credit is available for all excisable goods used as inputs in or in relation to the manufacture of finished goods. It is, therefore, clarified that the input credit is admissible whether such input is physically present in the finished excisable goods or not so long such inputs are used in or in relation to the manufacture of finished excisable goods. In this connection definition of the term manufacture as propounded by the Supreme Court in the Empire Industries Limited and Others Vs. Union of India and Others, and Collector of Central Excise, Jaipur Vs. Rajasthan State Chemical Works, Deedwana, Rajasthan, are quite relevant.

(Emphasis supplied)

32. Reading of the above part of the circular unequivocally goes to show that whether input is physically present in the finished excisable goods or not so long as such inputs are used in or in relation to the manufacture of finished goods modvat credit is available.

33. Having seen the judicial pronouncements expanding the scope of Rule 57A and accepted by the Board vide its Circular dated 4th May, 1994 referred to hereinabove, one has to put a question, can it be said that input or material on which Modvat credit is taken, if subjected to testing in a laboratory to determine tensile strength and other quality but not physically used in the manufacture of the final product would not fall within the sweep of the words in relation to the manufacture of finished goods appearing in Rule 57A of the Rules.

34. In order to answer the above question, at the cost of repetition, once again turning to the importance of the quality control in the age of global competition, no manufacturer could afford to push its product in the national or international market without achieving certain level of quality in the product. The quality control has become integral part of the manufacturing process, which is required to be undertaken either before the commencement of actual production or subsequent thereto depending upon the nature of the product.

35. Laboratory test or quality check is always in relation to the manufacture of finished goods. It is immaterial whether or not the input is physically present in the final finished product as such, in our considered view, the laboratory test in relation to the manufacture of final product is a part of manufacture.

36. Having said so, the laboratory of manufacturer has to be located within the factory of production is the mandate of Rule 57A. The word within means inside the limits of as held by the Kerala High Court in 1988 (2) K.L.T. 913 (917). So far as the location of the laboratory of the applicant is concerned, it is not in dispute that the same is located in the factory of production. Therefore, location of the laboratory also answers the requirement or mandate of Rule 57A.

37. So far as the subject goods are concerned, it is not in dispute that the finished goods are excisable.

38. The weight of the judicial pronouncements has gone to the extent of holding that inputs need not always be utilized in the factory premises. The explosives for blasting mines to produce lime stone for use in manufacture of cement in the factory at some distance away from the mine has been held to be inputs for manufacture of final products within the within the factory of production in the case of Vikram Cement (cited supra). The spares of rope way used for transporting crushed lime stone from mines located at 4.2 k.m. away from the factory were held entitled to Modvate credit in Birla Corporation Ltd. (supra). The very same judgment has been followed in the subsequent judgment in the case of the same assessee M/s. Birla Corporation Ltd. relying on the earlier judgment

of the Supreme Court in the case of Commnr. of Central Excise, Nagpur Vs. Manikgarh Cement Ltd., .

39. The case in hand stands on a better footing. As already recorded the laboratory is located within the premises of factory of production and as observed hereinabove the laboratory test is part of manufacturing process. As far as the subject goods are concerned it is not in dispute that the finished goods are excisable. In this view of the matter the questions referred are answered in favour of the applicant/Assessee and against the Revenue-respondent.