(2008) 01 MAD CK 0138

In the Madras High Court

Case No : Reference Case Petition No''s. 49 to 56 of 2001

The Commissioner of Central Excise APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal, South Zonal Bench and The Madras Aluminium Company Ltd. RESPONDENT

Date of Decision : 24-01-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57Q
Central Excises and Salt Act, 1944 — Section 35H(1)

Citation : (2008) 125 ECC 203 : (2008) 151 ECR 203

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T.S. Sivagnanam, SCGSC, for the Appellant; N. Prasad, for N. Inbarajan, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These reference case petitions are filed u/s 35H(1) of the Central Excise Act, 1944. The assessee, the Madras

Aluminium Company Ltd., is manufacturer of Aluminium and articles thereof falling under Chapter Heading No. 76 of the Central Excise Tariff

Act, 1985. It availed the credit of duty on 40 items to the tune of Rs. 77,21,450.41 declaring the same as inputs under Rule 57A of the Central

Excise Rules, 1944, on the premise that the inputs were used in or in relation to the manufacture of final products. Show cause notices were issued

proposing denial of Modvat credit and imposition of penalty inasmuch as the said goods were not considered as inputs in terms of Rule 57A of the

Central Excise Rules. The Assistant Commissioner, by his order in original in Sl. No. 112/96 dated 16.05.1996, Sl. No. 19/97 dated 01.04.1997,

Sl. No. 95/97 dated 13.11.1997 and Sl. No. 1/1998 dated 08.01.1998 disallowed the credit of Rs. 75,80,575.68 and allowed the remaining

credit in respect of lubricating oil. In respect of the issues which were disallowed by the lower authorities, the assessee filed an appeal and in

respect of the issues which were allowed, the revenue filed appeals to the Commissioner of Appeals (Trichy) who by his order dated 30.10.1998

upheld the order in original in respect of certain goods and allowed credit in respect of the remaining goods. Against that order, both, the

department and the assessee filed appeals before the CEGAT. The CEGAT by its order dated 08.12.2000 allowed the Modvat credit in respect

of certain goods and in respect of certain other items remanded the matter back to the authorities concerned for de nova consideration. In respect

of the remanded issues, the revenue has accepted the same in view of the fact that the said issues are covered by the decision of the Patna High

Court in the case of 1996 (66) ECR 1 72 . However these reference petitions are filed by the revenue by raising the following questions of law:

1. Whether the Tribunal is correct in holding that the said items are in the nature of inputs used in or in relation to the manufacture of final product

as specified under Rule 57A of Central Excise Rules, 1944, and

2. Whether declarations under Rule 57Q made would entitle the assessee to credit under Rule 57A even though a declaration was not in terms of

Rule 57A?

2. The primary contention of the revenue in this case is that the items are not used in or in relation to the manufacture of final product. The first of

the items is Hydrochloric Acid (HCL). According to the department, HCL was used to treat the effluent which was a wastage obtained and hence

it was not used in or in relation to the manufacturing process. This issue is no longer res integra as it has already been considered by the Supreme

Court in the case of Indian Farmers Fertiliser Cooperative Limited Vs. Collector of Central Excise, Ahmedabad, . In that case raw naptha was

obtained at the concessional rate and used for producing ammonia which in turn was used partly, directly in the urea plant and partly, indirectly in

the production of urea by being employed in off-site plants, namely, water treatment plant, steam generation plant, inert gas generation plant and

effluent treatment plant, all of which were part of the integral process of the manufacture of urea. After taking into consideration the earlier judgment in the case of Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd., , J.K. Cotton Spinning and Weaving Mills Co.

Ltd. Vs. Sales Tax Officer, Kanpur and Another, , Collector of Central Excise, New Delhi Vs. Ballarpur Industries Ltd., and Deputy

Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Thomas Stephen and Co. Ltd., Quilon, in paragraph 9, the

Supreme Court held as follows:

9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the

said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the

process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that

all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of

effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end product. The ammonia used in

the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha

used in the manufacture of such ammonia to be entitled to the said exemption.

Hence, the HCL used to treat the effluent would qualify for the credit.

3. The other issue is that certain items are used for manufacture of Soderberg paste which is used as anode in the electrolytic cell. As the

electrolytic cell did not qualify as goods the anode which is made out of the items forming a component of the cell was not eligible for credit under

Rule 57-A. In respect of the very same item which is used for manufacture of soderberg paste which is a by-product in the manufacture of

Aluminium in the case of Indian Aluminium Co. Ltd. 1988 (98) ELT 397 (T) it has been held in favour of the assessee. Factually, the Tribunal

found that the Soderberg which is a paste and which is an intermediate product essential for manufacture of aluminium. In the light of the factual

finding that input is used essentially in or in relation to the manufacture of end product Aluminium, the finding of fact is approved and as such the

assessee is entitled to take credit.

4. The next item is Non-Ferric Alum. According to the department Non Ferric

Alum was used for recovering cryolite for recycling and also for

water treatment purposes. As Non Feric Alum was not used in or in relation to the manufacture of final product, it is the case of the department

that it would not come within Rule 57A. It is an admitted fact that the Alum was used for recovering cryolite for recycling and also for water

treatment purposes. The reasoning stated by the Supreme Court in the case of Indian Farmers Fertiliser Cooperative Limited Vs. Collector of

Central Excise, Ahmedabad, would equally apply to this issue as well.

5. In respect of M.S. Angles/Channels, etc., before the authorities, a short write up on the materials used for the fabrication of electrolytic parts has

been given and the same was taken note of. On the basis of the write up the Tribunal satisfied that these items were not used for repairing or

maintenance but actually were used in or in relation to the manufacture of the final product. We approve the finding of fact that these items are used

in or in relation to the manufacturing activity as nothing contrary has been placed before us.

6. In respect of oxygen gas, acetylene gas, electrodes, welding wire and pig iron, the Tribunal held that Modvat credit were to be allowed

following the judgment of the Tribunal in 1993 (48) ECR 262 . The issue has been covered in favour of the assessee by the decision of the apex

Court in the case of Commissioner of Central Excise Coimbatore and Others Vs. Jawahar Mills Ltd. and Others, in which the earlier decision of

the Supreme Court in the case of Indian Farmers Fertiliser Cooperative Limited Vs. Collector of Central Excise, Ahmedabad, , has been taken

note of. Incidentally with regard to all these issues, the department has contended that the case of 2000 (90) ECR 387 held in favour of the

assessee has been taken on appeal by the department to the Supreme Court and the same is pending. Now the Supreme Court in Commissioner

of Central Excise Coimbatore and Others Vs. Jawahar Mills Ltd. and Others, decided the issue in favour of the assessee.

7. The next of the items is transformer oil on which credit was given. The contention was that the transformer oil was not used in or in relation to

the manufacture of Aluminium, but used as a coolant in the transformer to provide uninterrupted power supply to the process and hence ineligible

for credit. We are not able to accept the stand of the department. Without power, manufacturing activity cannot be carried out and in order to

have an uninterrupted power, the transformer has to perform its optimum potential and in order to keep the transformer to its optimum potential the

use of coolant is necessary and hence, we concur with the fact finding authority.

8. Rodline and Alfloc, according to the department, are used in boiler water for the preparation of softening watering so that scale formations are

reduced and break down of boiler does not take place where steam is generated for use and also reduce the corrosive effects of acid in washing

the evaporator and heat exchanger. The ratio of the Supreme Court in the case of Indian Farmers Fertiliser Cooperative Limited Vs. Collector of

Central Excise, Ahmedabad, is equally applicable to this item also.

9. In view of the above, we find no substantial question of law to direct the Tribunal to state a case. The Reference Case Petitions are dismissed.

No costs.