

(1993) 12 KAR CK 0021
In the Karnataka High Court
Case No : Writ Appeal No. 1875 of 1993

Union of India

APPELLANT

Vs

Modern Mills Ltd.

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Central Excise Rules, 1944 — Rule 57K, 57P

Citation : (1994) 45 ECC 135 : (1994) 53 ECR 426 : (1994) 72 ELT 246

Hon'ble Judges : S.B. Majumdar, J; R.V. Raveendran, J

Bench : Division Bench

Advocate : Shri Mukunda Menon, for the Appellant; Shri G. Chandar Kumar, for the Respondent

Judgement

1. The Union of India and officers of Central Excise Department, functioning under the Central Excises and Salt Act, 1944 have brought in challenge in the present appeal an order dated 26-10- 1990 passed by the learned Single Judge in Writ Petition No. 18534 of 1989 moved by respondents herein before the learned Single Judge. By the impugned order, the learned Judge has allowed the petition and directed the appellants to permit to writ petitioners to utilise the accumulated credit claimed in Annexure-C to the petition subject to verification as to the correctness of the amount. The learned Judge has further observed that the writ petitioners will be entitled to accumulated credit under the earlier Notification No. 27/87 and in addition, they will be entitled to further benefit available under the subsequent Notification No. 45/89 as available to manufacturers of vegetable products under the said notification.

2. In order to appreciate the grievance of the appellant-authorities, it is necessary to note a few relevant facts leading of these proceedings.

3. The first respondent is a Public Limited Company incorporated under the Companies Act, 1956 which is engaged in the manufacture of vegetable products (Vanaspati). The second respondent - original second petitioner is a share-holder of the original first petitioner Company. It is the case of the respondents original

writ petitioners that Vanaspathi Manufactured from raw oils is subjected to various processes before latter can be converted into Vanaspathi. That u/s 3 of the Central Excise Act, the final product Vanaspathi manufactured by the respondents is excisable. That at the relevant time, for the excise duty leviable from 1st March, 1987 the appellant authorities inserted Rule 57K to 57P in the Central Excise Rules, 1944. They were inserted under a new Section AAA in Chapter V. It dealt with credit of money in respect of certain materials used in the manufacture of certain excisable goods. The case of the respondents is that in exercise of the powers conferred by Rule 57K, the Central Government issued a notification being Notification No. 27/87 on 1-3- 1987 permitting the manufacturers of Vanaspathi who utilised as input the specified fixed vegetable oils mentioned in column (2) of the Table appended to the notification, grant of certain credit and utilisation thereof at the rates mentioned in the corresponding entry in Column (3) of the said Table. It is the case of the respondents that because they manufactured Vanaspathi being the final product wherein as input they utilised fixed vegetable oils like Rice bran oil and Mahuwa oil being minor raw oils, they become entitled to earn credit as per the said notification. During the currency of the said notification from various such credit amounts earned by them, under the scheme of the notification, for every tonne of vegetable product cleared at the factory gate which attracted excise duty of Rs. 1900/- Rs. 1,000/- could be utilised by the respondents out of the accumulated credit under the notification and for that purpose necessary debit entry could be made in the credit account while balance of Rs. 900/- was to be paid per tonne in cash as per the said notification. The said Notification No. 27/87 was rescinded by the Central Government by the Notification No. 39/89 dated 15-8-1989. However, another notification of similar nature was issued on 11-10- 1989 being Notification No. 45/89. On account of rescission of Notification No. 27/87, the appellant authorities insisted that the balance of credit which had accumulated in favour of the respondents during the currency of the earlier Notification No. 27/87 got wiped off with effect from 25-8-1989 and therefore, for future clearances of every tonne of Vanaspathi, the respondents had to pay excise duty at the rate of Rs. 1900/- without debiting the duty of RG-23B, Part II account. This brought the respondents original writ petitioners to this Court by way of the aforesaid writ petition.

4. The contention of the respondents was that accumulated credit, which was earned by the respondents during the currency of the Notification No. 27/87 did not get wiped off on account of rescission of Notification No. 27/87 and can be utilised by the respondents for clearances of future vanaspathi products by effecting debits to the accumulated credit account and in any case under the new Notification No. 45/89, the respondents become entitled to get additional benefit of the said notification. According to the respondents for every tonne of Vanaspathi being final product cleared at the factory gate as against the liability of Rs. 1900/- per metric tonne of excise duty, the respondents were entitled to debit Rs. 1,000/- to the account of credit earned under new Notification No.

45/89 and the balance of Rs. 900/- could be adjusted by debiting the accumulated credit account so far as the accumulated credit under old Notification No. 27/87 was concerned and thus the respondents were not liable to pay in cash any excise duty for future clearances of final product Vanaspati oil and that the insistence of the Department that for even such future clearances despite the balance of accumulated credit under old notification, the respondents were to pay per tonne in cash Rs. 900 and could get the past accumulated credit adjusted only by debit entry of Rs. 1,000 was unjustified and illegal.

5. The learned counsel for the appellant authorities submitted before the learned Single Judge that accumulated credit under the Old Notification No. 27/87 lapses with rescission of the old notification. So far as the new Notification No. 45/89 was concerned, the respondents were permitted to clear the final product of Vanaspati by utilising only Rs. 1,000/- from the accumulated credit and the balance of Rs. 900/- had to be paid in cash and the respondents were not entitled to submit that they can clear the manufactured vanaspati without paying any amount in cash to Department as that would go beyond the express condition No. 3 of Notification No. 45/89 and in any case it would also go contrary to condition No. 3 of the earlier Notification No. 27/87 under which earlier credits were earned and which got accumulated. The learned Single Judge rejected the contention canvassed on behalf of the appellants and accepted the contention canvassed on behalf original writ petitioners and allowed the writ petition in the terms mentioned earlier which has resulted in the present writ appeal on behalf of Union of India and departmental authorities.

RIVAL CONTENTIONS :

6. The learned Standing Counsel for the appellants vehemently submitted that the learned Single Judge had patently erred in allowing the writ petition. That the proceedings were only at the notice stage and therefore court ought not to have interfered at the stage and should have relegated the writ petitioners to the remedy under the Act by way of filing objections to the show cause notice and then following it up by further proceedings under the Act if the decision went against them. It was next contended on merits that the order of the learned Single Judge was erroneous because Notification No. 27/87 was rescinded with effect from 25-8-1989 and consequently whatever credit was accumulated by the respondents during the currency of the said notification lapsed and could not survive after the rescission of the parent notification. It was alternatively contended that even assuming that the accumulated credit continued to be available to the respondents for being adjusted against future clearances of final product namely Vanaspati, even then the utilisation of such accumulated credit had to be subject to the condition No. 3 as engrafted by the parent Notification No. 27 of 1987 and also by later Notification No. 45/89 and on a conjoint reading of these two notifications, it ought to be held that for clearances of every metric tonne of final product namely, Vanaspati, the respondents could adjust only Rs. 1,000/- by way of the debiting the same of the accumulated credit account and

Rs. 900 remaining part of the duty had to be paid in cash and the respondents cannot get double debits benefit under the said notification.

7. The learned counsel for the respondents, on the other hand submitted that the order passed by the learned Single Judge was perfectly justified, that no argument about the premature filing of the writ petition was submitted by the appellants before the learned Single Judge, that in any case, the respondents had submitted that the notification rescinding the earlier Notification No. 27/87 was ultra vires and illegal. That such a contention could not have been canvassed before the departmental authorities and therefore, the writ petition was maintainable. On merits, it was submitted that a number of High Courts namely, Gujarat High Court. Andhra Pradesh High Court, Punjab and Haryana High Court and Delhi High Court had taken the view on this very scheme of the rules and the notifications that accumulated credit under Notification No. 27/87 did not effaced nor did it lapse on the rescission of the said notification and with the advent of the new Notification No. 45/89 respondents became entitled to the benefit of both these notifications and therefore there was nothing wrong in the respondents claiming set-off of Rs. 1,000/- from the duty of Rs. 1900/- per Metric Tonne of Vanaspati oil by debiting it to the credit account under the new notification and claiming further set-off of Rs. 900 by debiting the accumulated credit account under the Old Notification No. 27/87 and that in the process, the respondents were not claiming double benefits or double debits under the very same notification namely No. 45/89.

8. In the light of the aforesaid rival contentions, the following point arise for our determination :

1. Whether the writ petition was premature and should have been dismissed as such ?
2. Whether the accumulated credit under Notification No. 27/87 lapsed with the rescission of the said notification and could not be utilised by the respondents after 25-8-1989 in connection with clearances of final product Vanaspati cleared ex-factory gate after that date ?
3. In the alternative, whether the accumulated credit under Old Notification No. 27/87 could be utilised contrary to condition No. 3 laid down by the said notification in connection with future clearances of Vanaspati oil after the rescission of the said notification and whether the respondents could legitimately urge that balance of duty of Rs. 900 per Metric Tonne of Vanaspati cleared during the currency of Notification No. 45/89 could be adjusted against the credits accumulated during the currency of earlier Notification No. 27/87 ?
4. What final order ?

Our answers to the above points for determination are as follows :

Point No. 1 - In the negative in favour of the respondents and against the appellants. Point No. 2 - In the negative in favour of respondents and against

the appellants. Point No. 3 - In the negative against the respondents and in favour of the appellants. Point No. 4 - As discussed hereafter. Before we deal with the aforesaid points for determination, it will be profitable to have a bird's eye view of the relevant statutory provisions governing this controversy.

STATUTORY BACKDROP :

9. Section 3 of the Central Excises and Salt Act, 1944 provides that there shall be levied and collected in such manner as may be prescribed, duties of excise on all excisable goods other than salt which are produced or manufactured in the India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985. The word "prescribed" is defined by Section 2 of the Act to mean prescribed by rules made under this Act. Section 37 amongst others confers rule making power to the Central Government. Sub-section (1) thereof lays down that the Central Government may make rules to carry into effect the purposes of this Act. Sub-section (2), Section 37 says; in particular, and without prejudice to the generality of the foregoing, power, such rules may (ib) provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices, requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid. In exercise of this rule making power amongst others the Central Government has framed rules called the Central Excise Rules, 1944. Chapter V of the Rules deal with manufacturer of goods other than salt. The said chapter consists of various sub-parts. AAA thereof deals with credit of money in respect of certain raw materials used in the manufacture of certain excisable goods. In this sub-part are found Rule 57K to P dealing with the manner and method by which credit of money is to be given in connection with payment of excise duty in the manufacture of certain excisable goods and raw-materials used in their manufacture. The relevant provisions of these rules are extracted here in under for easy reference :

"Rule 57K. - Applicability and extent of credit. -

Sub-rule (1) & (2) read as under :-

(1) The Central Government may by notification in the Official Gazette, specify -

(a) the finished excisable goods (hereinafter referred to as "final products") and the raw materials used in the manufacture of such final products (hereinafter referred to as "inputs"), to which alone the provisions of this section shall apply; and

(b) the rates at which the credit of money to be given for use of such inputs in the manufacture of final products.

(2) When a notification has been so issued under sub-rule (1), credit at rates specified therein may be allowed for use of such inputs in the manufacture of such final products and the credits so allowed may be utilised for payment of

duty on the final products, subject to the provisions in this Section and the conditions if any, stipulated in the said notification."

Rule : 57L deals with contingency in which credit will not be allowed if final products are exempt from duty. It states :

"No credit of money on the inputs used in the manufacture of the final products shall be allowed if the final products are exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty."

Rule 57M deals with a situation where credit cannot be denied or varied in certain circumstances. Then follow Rule 59N, and 59-O which are material for our present purpose. They are therefore extracted as under :-

* * * * * As noted earlier Central Government in exercise of its powers under Rule 57K issued two notifications being Notification No. 27/87, dt. 1- 3-1987 and subsequent Notification No. 45/89. It is in the backdrop of the aforesaid provisions that the controversies posed for our consideration have to be resolved.

10. It is time now for us to take up for consideration the points for determination. Point : 1 : The learned counsel for the Revenue vehemently contended that the writ petition was moved against a show cause notice that the respondents - writ petitioners had ample remedy under the Act to file objections to show cause notice and ultimately if decision went against them, they could pursue remedy under the Act before appropriate authority. The writ petition therefore was required to be dismissed as premature. As a general proposition of law no exception could be taken to the aforesaid contention of learned counsel for the Revenue. However, on the peculiar facts and circumstances of this case it is too late to entertain such a contention in this appeal nor can such contention be entertained even on merits. The reasons are obvious. Such a contention does not appear to have been raised for consideration of the learned Single Judge who allowed writ petition after hearing learned counsel for both the sides. On the contrary it appears that both the sides joined issues on merits and invited the decision of the court thereon. Therefore, it can be said that the Revenue had not pressed this point before the learned Single Judge. Learned counsel for appellant submitted that such a contention was raised but does not appear to have been dealt with. If that is so it was open to the learned counsel for the Revenue to request the learned Judge to consider that contention which did not find place in the judgment after filing appropriate application before the learned Single Judge, but even that was not done. Hence, we must proceed on the basis that such a contention was not canvassed before the learned Single Judge for his consideration. Therefore, in this appeal we cannot allow such a contention to be raised before us for non-suiting the respondent.

11. The second reason for disallowing this contention is that the respondent-writ petitioner had challenged the vires of later Notification No. 39/89 by which the earlier Notification No. 27/87 was rescinded. Such a contention for whatever its worth could not have been canvassed before the Departmental Authorities.

Consequently, it cannot be held that the writ petition on the peculiar facts of this case was premature. The first point for determination is therefore answered in the negative against the Revenue and in favour of the respondents.

12. Point No. 2 : That takes us to the consideration of the merits of the main contentions in these proceedings. Under the scheme of Notification No. 27/87 which was holding the field from 1-3-1987 the respondent became entitled to accumulated credit as it is not in dispute that the respondent had manufactured vegetable oil by process of hydrogenation. For the said product vanaspati by way of inputs were utilised rice bran oil and Mahuwa oil as described in column No. 2 of the Table annexed to the Notification No. 27/87 and that the respondent was entitled to credit per tonne of utilised input of fixed vegetable oil viz., rice bran oil at the rate of Rs. 6500/- per tonne and the respondents were also entitled to the same rate of credit per tonne of the utilized tonne of Mahuwa oil. It is also not in dispute that the accumulated credit taken by the respondents was to be utilised for payment of duty on any individual clearance of the said final product viz., vanaspati but it had not to exceed Rs. 1000/- per tonne of vegetable products cleared, meaning thereby out of the accumulated credit earned under the said notification, during its currency, for every metric tonne of final vegetable product of vanaspati for which duty was Rs. 1900/- per tonne, respondents could debit to their accumulated credit account Rs. 1000/- per tonne in the maximum and the balance of Rs. 900/- by way of duty per tonne on finished product of vanaspati had to be paid in cash to the department. It is also to be kept in view that as per Rule 57N accumulated credit of money, allowed in respect of inputs could be utilised towards payment of duty of excise on the final products in or in relation to the manufacture of which such inputs were used. It is also not in dispute that respondents filed requisite declaration as per Rule 57-O. Chapter VII(A) deals with the removal of excisable goods on the determination of duty by producers, manufacturers or private warehouse licensees. Rule 173G deals with the procedure to be followed by the assessee. Sub-rule (1) of Rule 173G provides that :

"Every assessee shall keep an account-current with the Collector separately for each excisable goods falling under different Chapters of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), in such form and manner as the Collector may require, of the duties payable on the excisable goods and in particular such account (and also the account in Form R.G. 23, if the assessee is availing of the procedure prescribed in rule 173K) shall be maintained in triplicate by using indelible pencil and double-sided carbon, etc....."

13. When we turn to Form RG 23, we find that in Part-II of the said Form, a format is laid down regarding maintenance of Entry Book of Duty Credit. That deals with Rule 56A. But a similar format is provided for maintaining the accumulated credit account under notifications issued under Rule 57A. This is made clear by sub-rule (2A) of Rule 173G which says :-

"Every assessee shall file with the proper officer the duplicate copies of the gate

passes or like documents issued,

(a) during first ten days of a month, on or before the twelfth day of the same month;

(b) during the next ten days of the month, on or before the twenty- second day of the same months; and

(c) during the remaining days of that month, on or before the fifth day of the following month,

along with a covering list showing the serial number of such gate passes as well as opening balance, credit, debit and closing balance in his account-current and in his account maintained in Form RG 23A, Part II."

14. When we turn to Form RG 23A Part II, we find provided therein, a format regarding maintenance of entry book of duty credit, as per Rule 57A. Similar scheme regarding maintenance of forms in connection with the working out of Rule 57K onwards is found in Form RG 23B. That format is prescribed in connection with Rule 57-O. Part II deals with Entry Book of Duty Credit. Column 3 deals with opening balance of duty in credit. Column 4 deals with description of input used, Column 5 deals with quantity of input eligible for credit, Column 6 deals with rate of credit, Column 7 deals with credit taken. Column 4 to 7 described by the title "Fresh Credit Allowed". Then follows the Debits permitted. Column 8 deals with total credit available, Column 9 deals with AR I/GP I/other approved document No. and date, Column 10 deals with amount of duty debited, Column 11 deals with Balance of Credit, Column 12 deals with Excise Officer's Initials and Column 13 refers to Remarks. A conjoint reading of these forms RG 23, 23A and 23B leaves no room for doubt that the accumulated credits earned by manufacturer of excisable commodity under the various provisions of the Act and the Rules get reflected in one and single running current account for each of the schemes of rebate relating to concerned excisable commodity manufactured by the assessed. One such consolidated credit account exists reflecting accumulated credit available to a manufactured of finished products so far as notification under Rule 57K is concerned. It is difficult to appreciate how the balance of credit as found computed in Column XI of Part II of RG Form 23(B) would get automatically wiped off the moment the parent notification under Rule 57K gets rescinded. No Rule to that effect is found under Part AAA of Chapter V of the Central Excise Rules. On the contrary Rules 57N and 57-O r/w Form RG 23(B) Part II clearly indicate that such accumulated credit earned by a manufacturer during the currency of notification under Rule 57K enures for his benefit and becomes available as a reservoir, by utilising which, future, clearance of finished products which have used permissible inputs could be effected.

Permissible debit entries could be made by the manufacturer in this running current account so long as accumulated credit balance is available for the purpose. It is therefore not possible to agree with the contention of the learned counsel for the appellant that the moment Notification No. 27/87 got rescinded,

the entire balance of accumulated credit lying in the current account maintained during the currency of notification got wiped off and lapsed. On the scheme of the relevant statutory rules and statutory forms as considered above such a contention is contra-indicated and cannot be countenanced.

15. In fact this very view is taken in connection with the very same notification by number of High Courts in the country. We may now refer to these judgments. In the case of Dipak Vegetable oil Industries Ltd. Vs. Union of India, a Division Bench of Gujarat High Court, consisting of G.T. Nanavati and J.U. Mehta, JJ. following judgments of Bombay High Court and Supreme Court laid down as under :

"Rules 57K to 57P came to be inserted into the Central Excise Rules by inserting Section AAA in Chapter V of the said Rules. In order to achieve the object of inserting Section AAA in Chapter V, the Government issued certain notifications under Rule 57K, namely Notification Nos. 27/87-C.E. and 40/87-C.E., specifying the final products, minor vegetable oils and rates at which credit was to be given for use of such minor oils in manufacture of vanaspati and soap respectively. Notification No. 40/87-C.E. was superseded by Notification No. 192/87. The Central Government on 25-8-1989 withdrew Notifications No. 23/87 & 192/87 by issuing Notification No. 39/89. The combined effect of Rules 57K and 57N and the notifications is that if the manufacturer of vanaspati or soap used notified vegetable oils as inputs, then he becomes entitled to credit of money at the notified rate and the said credit could be utilised for payment of duty on the final products, after the commencement of the succeeding month. Neither Rule 57N nor the notifications provided the period during which the credit so earned was to be utilised. The right to utilise the credit so earned did not come to an end the moment the said notifications were rescinded. It is pertinent to note that only the aforesaid notifications have been rescinded and not Rule 57N which confers a right to utilise the credit already earned. A right conferred by a rule could not have been taken away by the Government by merely rescinding the notifications which had brought the said right into existence. Therefore, even after the aforesaid notifications came to be rescinded with effect from 25-8-1989, the credit of money, which was earned by the manufacturers of Vanaspati and soap could be utilised by them in terms of the rules and the notifications for payment of excise duty on Vanaspati and soap manufactured by them after 25-8-1989."

16. A Division Bench of Punjab & Haryana High Court consisting of J.V. Gupta, Ag. C.J. & M.S. Liberhan, J., in the case of Amrit Banaspati Co. Ltd. and Another Vs. Union of India (UOI) and Others, speaking through M.S. Liberhan, J., held that such accumulated credit during the currency of notification of R. 57K would be available to the concerned manufacturer under the doctrine of promissory estoppel. It was observed that it is unconscionable and unjust not to allow the petitioners to utilise the credit already earned towards the payment of excise duty in terms of the Scheme as prevalent when the credit was earned.

17. In the case of Agarwal Industries Ltd. Vs. Union of India, , a Division Bench

of the Andhra Pradesh High Court consisting of Yogeshwar Dayal, CJ, (as he then was) and Upendralal Waghray, J., also considered this very scheme and agreeing with the view of the Gujarat, Delhi and Punjab & Haryana High Courts held that Rule 57N r/w Notification No. 27/87, dt. 1-3-1987 conferred a right on the petitioner to utilise the credit accumulated to its account for having purchased minor oils and having used in the production of the vanaspati, even after the rescission of the notification. Petitioners were entitled to use it in the manner indicated in the notification and that these benefits will be available to the petitioners in addition to the benefits which have again been made available to them under Notification Nos. 45/89 and 46/89, dt. 11-10-1989.

18. We may mention at this stage that the Revenue had filed SLP in the Supreme Court against the Gujarat High Court judgment but the SLP was dismissed by the Supreme Court. We may also mention as noted by the Division Bench of Andhra Pradesh High Court in the aforesaid decision, that in the Civil Writ No. 90/1990, (Hindustan Lever Ltd. v. Union of India) decided on 30-11-1990 by a Division Bench of the Delhi High Court consisting of M.C. Jain, CJ., and Arun Kumar, J., has also taken the same view.

19. We respectfully agree with aforesaid decisions of Gujarat High Court, Punjab & Haryana High Court, Andhra Pradesh High Court and Delhi High Court. In our view on the other conclusion is possible in this connection in the light of the scheme of the statutory rules as discussed by us earlier. Point No. 2 will therefore have to be answered in the negative i.e., against the Revenue and in favour of respondent-petitioner. That takes us to point No. 3.

20. Point No. 3 : So far as this point is concerned the question arises as to whether after the rescission of Notification No. 27/87, on 15-8-1989 and its re-enactment by Notification No. 45/89 on 11-10- 1989, the manufacturer of vanaspati would be entitled to utilise two separate account of accumulated credit, one under rescinded Notification No. 27/87 and another under new Notification No. 45/89 and could effect double debits in these accounts. It is true that the Delhi High Court and the Gujarat High Court have observed that benefits of accumulated credit under Notification No. 27/87 would be in addition to the benefits of accumulated credits which if again had been made available to them under Notifications No. 45/89 and 46/89, dt. 11-10-1989. Placing strong reliance on these observations learned counsel for the respondent-petitioner submitted that a manufacturer of vanaspati who has utilised permissible inputs and earned credits can effect double debits and may not be required to pay in cash any amount of excise duty. This submission can be highlighted by taking the following example :

If Rs. 5000/- stand to the credit of the manufacturer of vanaspati, which he has earned during the currency of earlier Notification No. 27/87 and a further amount of Rs. 5000/- is earned by way of credit under the new Notification No. 45/89, when such manufacturer of vanaspati wants to clear one tonne of finished product of vanaspati the duty leviable on this one tonne would be Rs. 1900/- per

tonne. For discharging this duty liability the manufacturer could debit maximum amount of Rs. 1000/- to the accumulated credit account under new Notification No. 45/89. While the balance duty of Rs. 900/- can be discharged by his effecting a further debit entry of Rs. 900/- to its accumulated credit account under the earlier Notification No. 27/87, meaning thereby so far as these two sources of accumulated credit accounts are available to him, he need not pay any duty in cash for the cleared final product and can discharge his duty liability by effecting these two debits".

This according to the learned counsel for the respondent-petitioner is the effect of double benefit available to the manufacturer of finished products under both these notifications.

21. Learned counsel for the appellant-Revenue on the other hand submits that even if credit might have been accumulated under old notification and might not have lapsed after the rescission of old notification, so far as question of utilisation of such credit is concerned there is an outer limit of maximum Rs. 1000/- per tonne and the balance had to be paid in cash. If that was the limitation attaching to the accumulated credit under the old notification, during its currency, that fetter cannot vanish after the rescission of parent notification and a limited permissible utilisation of accumulated credit cannot become of unlimited nature if the parent notification ceases to exist. It was also contended that looking at scheme of rules and statutory formats regarding maintenance of current account there is only one current account showing total balance of credit earned as seen by Form RG 23B Part II and there are no separate and independent credit accounts in the light of the earlier notification and later notification as wrongly assumed by the Id. counsel for the respondents. That the respondents cannot have best of the both of worlds. If accumulated credit under old notification does not lapse as contended by Id. Counsel for respondents, then utilisation of such accumulated credit must be done according to the conditions attached to its utilization by the parent notification under which it was earned and consequently for every metric tonne of finished product of vanaspati cleared during the currency of later Notification No. 45/89 the maximum debit which can be effected in the accumulated credit account, which is one and single account, would be Rs. 1000/- per metric tonne and the balance of Rs. 900/- will have to be paid in cash.

22. Learned counsel for the respondents on the other hand submitted that if this view is taken the benefit of the first notification after its rescission would be practically lost and would remain a paper benefit only and that would in substance amount to lapsing of the accumulated credit under old notification which on the scheme of the statutory rules is contra-indicated. That with the lapsing of the earlier notification the fetter on the utilisation of credit as contained in condition (iii) of the said notification got exhausted and could not be pressed in service in connection with utilisation of accumulated credit under the old notification after its rescission.

23. Having given our anxious considerations to the rival contentions we have reached the conclusion that there is lot of substance in what is submitted by the learned counsel for the appellant and it is not open to manufacturer of Vanaspathi to insist on clearing his finished product without paying any amount of cash duty by merely effecting two debit entries in the same accumulated credit account maintained as per Form RG 23(B) Part II.

24. We now proceed to amplify our aforesaid conclusion.

The credit accumulated under earlier Notification No. 27 of 1987 itself provides that the grant of credit and utilisation thereof, shall, in addition to the provisions of the said Section, meaning Section AAA of Chapter V be subject to the following conditions, namely (i), (ii) and (iii).

(i) the credit shall be taken only in respect of the quantity of oil subjected to hydrogenation on or after the 1st day of March, 1987 for the manufacturer of the said final products and the credit shall be taken only on the date on which the oil has been so hydrogenated;

(ii) the credit taken during any calendar month shall be utilised for payment of duty on the said final products only after the commencement of the succeeding month;

(iii) the quantity of credit utilised for payment of duty on any individual clearance of the said final products shall not exceed rupees one thousand per tonne of vegetable products cleared and the excess credit, if any, available in the credit account shall not be refunded to the manufacturer or adjusted against or utilised for payment of duty on any excisable goods under any other circumstances;

(iv) Where the description in column (2) of the Table specifies solvent extracted variety of the oil, the manufacturer shall within 5 months from the date of taking credit, or such extended period as the Assistant Collector of Central Excise may allow in this behalf produce a certificate from an officer not below the rank of Deputy Director in the Directorate of Vanaspathi, vegetable oils and Fats in the Ministry of Food and Civil Supplies of the Government of India to the effect that the said oil has been manufactured by the solvent extraction method; and

(v) the credit shall be taken only in respect of indigenous inputs.

It becomes, therefore, clear that whatever credit is earned during the currency of this notification is to be utilised subject to the conditions laid down in the notification. Amongst others, the third condition is that the quantity of credit utilised for payment of duty on any individual clearance of the said final products shall not exceed Rs. 1,000/- per tonne of vegetable products cleared. That condition attaches to the utilisation of the accumulated credit under Notification 27/87. Utilisation of such credit can be at any time even during the currency of the notification or after its rescission, but such accumulated credit has to be so utilised as not to exceed Rs. 1,000/- per tonne of the final product Vanaspathi in the present case. It is also pertinent to note in this connection that Rule 57K sub-

rule (ii) in terms provides that the credits so allowed may be utilised for the payment of duty on the final products subject to the provisions of this Section meaning Section AAA and the conditions if any stipulated in the said notification. Thus utilisation of the accumulated credit is necessarily hedged in and fettered by the conditions in the said notification. Therefore, condition No. (iii) governing the limit of utilisation of such accumulated credit cannot be ignored while deciding the question as to how the accumulated credit is to be utilised. It is also pertinent to note that under new Notification 45/89 similar condition like condition No. (iii) is imposed. It is not possible to agree with the contentions of the learned counsel for the respondent-petitioners that on the rescission of parent Notification No. 27/87, condition (iii) regarding the manner of utilisation of accumulated credit would cease to exist and the fetter on the utilisation of accumulated credit would not survive. It is nowhere provided in the relevant rules or the notification that the accumulated credit can be utilised after the rescission of the notification in any unlimited manner. In this connection, it is necessary to note that the accumulated credit account is only one and single account as seen from Form No. RG 23(B) Part. II which shows only one running current account where at any time there is only one balance amount of accumulated credit. It is, therefore, difficult to appreciate the contention of the learned counsel for the respondents that qua finished product two debits can be effected under two accounts namely, one account pertaining to accumulated credit under earlier notification and another account pertaining to accumulated credit under the new notification. If there is one solitary accumulated credit account, whether the accumulated credit is carried forward from the time of earlier notification which is rescinded or the said account gets swelled by further inflow of accumulated credit under the new notification, the accumulated credit account remains the same and to that account for every clearance of one tonne of vegetable oil, only one debit is contemplated both under the old notification and also under the new notification. On the aforesaid statutory scheme the contention of the learned counsel for the respondents that double debits are permissible with the result, that on every tonne of finished vegetable product, no amount of cash excise duty is to be paid, cannot be countenanced.

25. It is now time for us to consider one submission strongly relied upon by the learned counsel for the respondents. He submitted that Gujarat High Court as well as the Andhra Pradesh High Court have in terms held that benefit of accumulated credit under the old Notification No. 27/87 can be utilised in addition to the benefit of credit available under the new Notification No. 45/89 and that if only one debit entry upto Rs. 1,000/- is permitted to be effected in the accumulated credit account then the earlier accumulated credit under the old notification would remain only a paper credit and would not be effectively available to the manufacturers of finished product. We do not agree. It has to be kept in view that none of the aforesaid High Courts had an occasion to consider the exact effect of the operation of the earlier Notification No. 27 of 1987 and the later Notification No. 45/89 and the further question whether the manufacturer

of finished product during the currency of the later notification could be permitted to have double debits to the current account. But even apart from that, both the High Courts have in terms held that the utilisation of the accumulated credit under the old Notification No. 27/87 has to be made according to the terms and conditions of the notification. It is not held by these High Courts that the utilisation of accumulated credit under old Notification No. 27 of 1987, which has been rescinded, cannot be subject to the condition of utilisation of credit as found in the parent Notification No. 27 of 1987.

26. So far as the contention of the Id. Counsel for the respondents that if this view is taken, earlier accumulated credit would be merely a paper credit also does not stand scrutiny. The additional benefit under the new notification 45 of 1989 when made available would mean that accumulated credit account would be further hiked by the credits which are earned during the currency of the later notification. Thus the earlier accumulated credit account would get inflated from time to time by the influx of additional credits earned during the currency of the later Notification 45 of 1989. Thus the entry point would remain open so far as the accumulated credit account is concerned. But so far as exit point is concerned namely, the debiting of this accumulated credit account, it will be governed by the express terms and conditions of both these notifications. The learned Counsel for the respondent submitted that even if the manufacturer is permitted to effect double debits to the accumulated credit account, he would not be committing breach of any of the conditions of both these notifications. In so far as utilisation of accumulated credit is concerned, he tried to illustrate his submission in the following manner.

When during the currency of the second Notification 45 of 1989, one metric tonne of finished product namely, Vanaspathi is cleared the revenue would be entitled to payment of excise duty of Rs. 1900/-. The manufacturer will meet this payment by making one debit entry in the accumulated credit account to the tune of Rs. 1,000/- which would be a debit permitted under the new Notification No. 45/89. It will meet the requirement of condition No. 3 in that notification. Now for the balance of Rs. 900 by making a debit entry the manufacturer is utilising the old accumulated credit so far as earlier Notification No. 27 of 1987 is concerned and that debit of Rs. 900/- is within the permissible limit of Rs. 1,000/- per tonne as allowed by even the earlier Notification No. 27 of 1987 and therefore, there is no breach of any of these conditions. It is not possible to agree with this submission as it is over-simplification of the matter. The learned counsel for the respondents would have been right, if under the scheme of the rules two separate credit accounts were permitted, one under the old notification and another under the new notification. But that is not so. There is only one running current account showing at a given point of time an exact balance of accumulated credit till date. If any debit is to be effected to that credit balance, which is one and indivisible, only one debit entry as permitted by condition No. 3 of Notification 45 of 1989 can be effected and not two debit entries can be effected. Even otherwise, assuming that debt entry is to be effected from the

accumulated credit under the old notification, condition No. 3 of the old Notification 27/87 would get violated if the manufacturer is permitted by means of this double debits to avoid payment of any excise duty in cash, as condition No. 3 of the Notification 27/87 in terms provides that the quantity of credit utilisation for payment of duty on any individual clearance of the said final products shall not exceed Rs. 1,000/- per tonne of vegetable products cleared meaning thereby that for every tonne of vegetable products cleared, maximum amount of Rs. 1,000/- of duty can be debited to the accumulated credit account and the balance of Rs. 900 per tonne has to be paid in cash. That condition would stand violated the moment it is insisted that the manufacturer of such final product need not pay anything in cash and can discharge his tax liability by effecting two debits. It is also not possible to agree with the contention of the learned counsel for the respondent that in such a case accumulated credit under the old notification would remain a paper credit. The following illustration will amply demonstrate how that contention cannot be accepted and how the benefits of both the notifications regarding accumulated credit can be made available to the manufacturer of final product.

Supposing under the old Notification No. 27 of 1987 Rs. 5,000/- are in balance as accumulated credit. If that notification is rescinded and is not followed by a new notification of similar nature, then this Rs. 5,000/- can be utilised by the manufacturer for clearing any future 5 tonnes of vegetable Vanaspathi and for these five clearances on every occasion, he can pay Rs. 900 in cash out of Rs. 1,900/- being the total duty per tonne and can effect a debit of Rs. 1,000/- per tonne in the accumulated credit account. The result will be that five metric tonnes of vegetable oil can be cleared by the manufacturer by utilising the accumulated credit. The moment these five tonnes clearances are completed, the entire accumulated credit balance would get wiped off on account of five debit entries of Rs. 1,000/- each. Thereafter, for the clearance of the 6th metric tonne of finished product Vanaspathi, the manufacturer will have to pay not only Rs. 900 but entire Rs. 1,900/- in cash to the Department, as he will have nothing to fall back upon in terms of accumulated credit balance in the account. But if in the meantime the new notification comes into effect namely 45/89 and supposing under the new notification Rs. 5,000/- more are earned by way of accumulated credit at a given point of time, the credit balance in the accumulated credit account would get enlarged to Rs. 10,000/-. This will enure for clearing not only five metric tonnes, but 10 metric tonnes of Vanaspathi. Thus because of additional benefit available under the new notification, the credit balance would get inflated. With the result, more future clearances of final product would be covered by the available credit balance and could enable the manufacturer to clear instead of 5 metric tonnes 10 metric tonnes of finished products by paying Rs. 900 only per metric tonne in cash and the rest can be subject to the adjustment in the accumulated credit account by effecting instead of 5 debits of Rs. 1,000/- each 10 debits of Rs. 1,000/- each. This process can go on further so long as the further credits are earned under the new Notification 45/89 and so

long as accumulated credit balance account goes on swelling. A time may come ultimately if new Notification 45/89 is rescinded and is not followed by a fresh notification of a similar nature, when the entire running balance of accumulated credit in RG 23B Part II account may get exhausted and then for future clearances of finished products no debit entries can be made to this account. So long as that does not happen, credit balance will go on swelling by entry of newly earned credits and it will enable the manufacturer to have sufficient balance in the accumulated credit account to cover larger number of future clearances of Vanaspathi. It is in this sense that it can be said that the manufacturer is entitled not only to the benefit of accumulated credit which accrued to him under the old Notification No. 27 of 1987 but also will be entitled to the further benefit of accumulated credit that accrued to him under the new Notification 45 of 1989. It is, therefore, not possible to agree with the contention of the learned counsel for the respondents that the accumulated credit under the old notification would remain a paper credit and would be of no real effect to the manufacturer, in such a case. It has to be kept in view that notifications under Rule 57K are in the nature of concessions given to the manufacturers of excisable commodity to pay off the excise duty in the manner provided by the notifications. The chargeable event is the manufacture of excisable commodity. Once it is manufactured, the charge settles. It becomes effective so far as collection of duty is concerned when the manufactured item leaves the factory gate. It is at that stage that the charge is enforced. While enforcing that charge, if the Rule making authority has given any concession in the mode of collection of duty as per notification under Rule 57K, it is only that mode subject to the conditions imposed therein, that will be operative and no manufacturer can insist that the concession given to him under the notification should be permitted to be utilised de hors the fetters imposed by the said notification granting the concession. Consequently, it is not possible to agree with the contention of the learned counsel for the respondents that during the currency of the second Notification No. 45 of 1989, the manufacturing of Vanaspathi is entitled to clear the manufactured finished product without paying any amount of duty in cash and can be permitted to effect double debits to the accumulated credit account existing in the light of both these notifications. Point No. 3 for determination, therefore, will have to be answered in the negative that is, against the respondents and in favour of the appellants. It must be held that even while clearing the finished product Vanaspathi during the currency of the Notification No. 45 of 1989, the manufacturer has to pay in cash Rs. 900 per metric tonne and can effect debit to the accumulated credit account upto the limit of only Rs. 1,000/- per metric tonne and not more nor is he entitled to insist that instead of paying balance of Rs. 900 in cash, he would effect further debit entry in the accumulated credit account to the tune of Rs. 900 per tonne and should be permitted to clear the finished product Vanaspathi without paying any part of excise duty in cash.

27. Point No. 4 : Now it is time for us to take stock of the situation. In view of our findings on points 1 to 3, it becomes obvious that the respondents-

petitioners would be entitled to only partial relief and not to the full relief as claimed in the petition and as awarded to them by the learned Single Judge. Consequently, the order passed by the learned Single Judge allowing the writ petition in absolute terms will stand set aside and will be substituted by the order that the respondents will be entitled to a writ of mandamus directing the appellants to permit the respondents-petitioners to utilise the accumulated credit under the old Notification No. 27 of 1987 claimed in Annexure-C subject to the verification as to correctness of the amount and also subject to the rider that the utilisation of the accumulated credit per every metric tonne of finished product Vanaspathi cleared will be subject to the upper limit of Rs. 1,000/- per tonne and the balance of Rs. 900/- per tonne will have to be paid by the respondent-petitioners in cash to the Department and for covering this amount of Rs. 900 per metric tonne, respondents will not be entitled to effect any further debit to the accumulated credit account. It will also be directed that the benefit of subsequent Notification No. 45 of 1989 in so far as it entitles the manufacturer to earn further credit under the said notification will be available to the respondents-writ-petitioners but the utilisation of the accumulated credit under both the Notifications 27/87 and 45/89 will be subject to the upper limit of Rs. 1000/- per metric tonne of finished product cleared at the factory gate and not more. Both the sides will be accordingly required to adjust the equities, rights and liabilities in connection with payment of excise duty on the cleared final finished product Vanaspathi in the light of the aforesaid directions. It will be open to the Department to take appropriate steps for recovering the Duty payable on the cleared consignments of Vanaspathi pending these proceedings to the extent of the Duty which exceeds Rs. 1000/- per MT. of the cleared consignment. As and when such proceedings are initiated after hearing the respondents appropriate orders can be passed in the light of the present order, and if any recoveries are effected corresponding credit entries will have to be made in the accumulated credit accounts which may enure for the respondents in the light of the concerned notification holding the field.

28. The writ appeal will stand accordingly allowed in part to the aforesaid extent and the writ petition will also stand allowed in part as aforesaid.

29. There will be no order as to costs all throughout.