
(1997) 04 MP CK 0016
In the Madhya Pradesh High Court
Case No : M.C.C. No. 579 of 1990

Universal Cables Ltd.

APPELLANT

Vs

Collector of Central Excise

RESPONDENT

Date of Decision : 07-04-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 13, 140, 27, 47, 49
Central Excises and Salt Act, 1944 — Section 11A, 2, 35G

Citation : (1997) 58 ECC 5 : (1998) 98 ELT 73

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : None, for the Appellant; I. Nair, for the Respondent

Judgement

A.K. Mathur, C.J.—This is a reference u/s 35G of the Central Excises & Salt Act, 1944 (for short the Act of 1944) by the Customs, Excise & Gold (Control) Appellate Tribunal referring the following question of law for opinion of this Court:

"Whether in the facts and circumstances of this case, the Tribunal was right in holding that the petitioner was not entitled to permission under Rule 56B of the Central Excise Rules, 1944 for movement of bare copper wire without payment of duty to another factory for insulation and then being brought back to the factory of the petitioner for further processes."

2. Brief facts giving rise to this reference are that the applicant Company is a manufacturer of insulated wires and cables of various sizes and specifications. It added a new item namely copper winding wire in its range of products. The Company did not have enough insulation capacity of bare copper wires to meet the demands of its customers. Therefore, it was drawing copper wires from duty paid copper rods in the factory and thereafter wanted to send the copper wires so drawn for further processing i.e. insulation with PVC compound to another factory. The company therefore sought permission for being allowed the facility under Rule 56B for movement of the bare copper wire so drawn without payment of duty to the other factory for insulation and then being brought back to their

own factory for further processes.

3. The Collector of Central Excise by impugned order, after considering the Company's detailed arguments in its letter dated 27-8-1988 and after seeing the samples of copper wire and of winding wire, declined to give permission under Rule 56B of the Rules of 1944. The reasons given by the Collector for declining to grant permission were as follows:

"The copper wire falls under Chapter 74 and winding wire under Chapter 85 of the C.E.T. According to Rule 9 of the Central Excise Rules 1944, no excisable goods can be removed whether for captive consumption or outside, for manufacture of any other commodity, without payment of duty. It is an admitted fact that copper wire as such is classifiable under Chapter 74 and thus, it must pay duty before it can be further used for manufacture of any other commodity falling under any other heading or sub-heading."

The aforesaid order was challenged before the Tribunal which ruled against the appellant. On an application being filed, the Tribunal has referred the matter for opinion of this Court.

4. It appears that the Collector, Customs felt helpless in view of Rule 9 of the Rules of 1944 and, therefore, he declined to grant permission to the Company. We have considered the submissions of the Department and perused the record. None has appeared on behalf of the assessee. In view of the controversy involved in the matter, it would be proper to reproduce Rule 9 and Rule 56B of the Rules of 1944. Rule 9 of the Rules reads as under :

"Rule 9. Time and manner of payment of duty. - (1) No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require, and except on presentation of an application in the proper form and on obtaining the permission of the proper officer on the form:

Provided that such goods may be deposited without payment of duty in a storeroom or other place of storage approved by the Collector under Rule 27 or Rule 47 or in a warehouse appointed or registered under Rule 140 or may be exported under bond as provided in Rule 13 :

Provided further that such goods may be removed without payment or on part payment of duty leviable thereon if the Central Government, by notification in the Official Gazette, allow the goods to be so removed under Rule 49:

Provided also that such goods may be removed without payment of duty leviable thereon, if they are consumed or utilised in the place where such goods are produced or manufactured or any premises appurtenant thereto so specified under this sub-rule, either as raw material or as component parts for the

manufacture of any other commodity which -

(i) is excisable goods specified by the Central Government by notification under sub-rule (1) of Rule 56A;

(ii) is classifiable under heading No. or sub-heading No., of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), as may be specified in the notification issued under sub-rule (1)" of Rule 56A;

(iii) is neither exempt from the whole of the duty excise leviable thereon nor is chargeable to nil rate of duty:

Provided also that the Collector may, if he thinks fit instead of requiring payment of duty in respect of each separate consignment of goods removed from the place or premises specified in this behalf, or from a storeroom or warehouse duly approved, appointed or registered by him, keep with any person dealing in such goods an account-current of the duties payable thereon and such account shall be settled at intervals, not exceeding one month, and the account-holder shall periodically make deposit therein sufficient in the opinion of the Collector to cover the duty due on the goods intended to be removed from the place of production, curing, manufacture or storage.

(1A) Where a person keeping an account-current under the third proviso to sub-rule (1) makes an application to the Collector for withdrawing an amount from such account-current, the Collector may, for reasons to be recorded in writing, permit such person to withdraw the amount in accordance with such procedure as the Collector may specify in this behalf.

(2) If any excisable goods are, in contravention of sub-rule (1), deposited in or removed from any place specified therein, the producer or manufacturer thereof shall pay the duty leviable on such goods upon written demand made within the period specified in Section 11A of the Act by the proper officer, whether such demand is delivered personally to him, or is left at his dwelling house, and shall also be liable to a penalty which may extend to two thousand rupees, and such goods shall be liable to confiscation.

Explanation. - For the purposes of this rule, excisable goods produced, cured or manufactured in any place and consumed or utilised -

(i) as such or after subjection to any processes; or

(ii) for the manufacture of any other commodity,

whether in a continuous process or otherwise, in such place or any premises appurtenant thereto, specified by the Collector under sub-rule (1), shall be deemed to have been removed from such place or premises immediately before such consumption or utilisation."

Rule 56B of the Rules reads as under :

"Rule 56B. - Special procedure for removal of finished excisable goods or semi-

finished goods for certain purposes. - The Collector may, by special order and subject to such conditions as may be specified by the Collector, permit a manufacturer to remove, -

(i) excisable goods which are in the nature of semi-finished goods, for carrying out certain manufacturing processes, or

(ii) excisable goods for carrying out tests, to some other premises of his or to the premises of another person and to bring back such goods to his factory, without payment of duty, or to some other registered premises of his or to the premises of another assessee and allow these goods to be removed on payment of duty or without payment of duty for export from such other registered premises of his or from the premises of such assessee to whom the goods have been sent:

Provided that this rule shall not apply to the goods known as "prototypes" which are sent out for trial or development test."

Rule 9 lays down in a general manner in which the payment of duty has to be made and it puts an embargo that no excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf. The idea is that the manufactured goods which are excisable shall not be taken out from the premises where they are to be kept and they can only be taken out after paying the excise duty. This Rule 9 was there initially. Thereafter it appears that some difficulty might have been felt by the manufacturers that all the goods excisable cannot be manufactured under one shed and it has to be taken out for further processing. Keeping this in view, Rule 56B appears to have been inserted whereby special procedure for removal of finished excisable goods or semi-finished goods for certain purposes has been provided. Rule 56B of the Rules of 1944 empowers the Collector that he may by special order and subject to such conditions as may be specified by the Collector, permit a manufacturer to remove excisable goods which are in the nature of semi-finished goods for carrying out certain manufacturing processes, or excisable goods for carrying out tests, to some other premises and to bring back such goods to the factory without payment of duty or to some other registered premises of his or to the premises of another assessee and allow these goods to be removed on payment of duty or without payment of duty for export from such other registered premises of his or from the premises of the assessee to whom the goods have been sent. It further provides that this rule shall not apply to the goods known as prototypes which are sent out for trial or development test.

5. Rule 56B of the Rules of 1944 is an enabling provision and Rule 9 is a general rule providing for manner of payment of duty that no excisable goods shall be taken out from the premises of the factory. Rule 56B of the Rules of 1944 confers power on the Collector to permit a manufacturer to remove semi-finished goods if required to be further processed, to another factory or his own factory. The Collector has taken a view that in view of Rule 9, copper wire is also classified as

excisable goods under Chapter 74; therefore, it is a manufactured goods and it cannot be taken out without payment of duty. True, it is an excisable goods in itself as classified in Chapter 74 of Central Excise Tariff, but nonetheless, from the record before us, it appears that the assessee wanted to send the goods for further processing i.e. insulation with PVC compound. That has also been classified as marketable commodity in Chapter 85. Simply because this goods can itself be marketed as a manufactured goods, that is not the end of the story. In the present case, copper winding wires drawn from duty paid copper rods were semi-finished goods or intermediate produce used in the manufacture of insulated winding wires falling under Chapter 85.44 (sic) and the Company takes out the cable wire to another factory for further processing of insulation with PVC compound and brings back to the factory for further finishing and ultimately it acquires the status of finished marketable commodity. Therefore, Rule 56B which has been carved out as an exception to general Rule 9 enables the Collector of Customs to examine the matter whether such goods which has been taken out are excisable goods. If the Collector is satisfied then he can grant permission to the assessee to remove the goods from the factory premises for further processing, then no part of Rule 9 shall operate against such removal. If it is to be taken that Rule 9 is a complete bar, then the very purpose of enacting Rule 56B would be frustrated. Rule 9 was in existence and it appears that Rule 56B was later on amended and modified so as to facilitate the manufacturers to take out the excisable goods for further processing without paying duty. Therefore, both the provisions have to be read harmoniously and not in conflict with each other as the framers have done it consciously with the purpose and that purpose should not be frustrated by interpreting both these rules to be in conflict with each other. Hence, we read Rule 9 and Rule 56B of the Rules of 1944 harmoniously and Rule 56B enables the Collector to permit removal of goods, on the basis of facts available, out of factory premises to another factory or premises for further finishing processes and to bring them back to the original factory for further processing or for marketing therefrom. Therefore, we are of the opinion that the view taken by the Collector that Rule 9 imposes a total bar on him to grant permission under Rule 56B just because an intermediary item itself is a classified item for duty is not the correct approach.

6. In this connection our attention was invited to a decision of Allahabad High Court in the case of Lohia Machines Ltd. Vs. Union of India (UOI) and Others, . In that context, their Lordships observed that Section 2(f) of the Central Excise Act defines the words "manufacture" to include any process incidental or ancillary to the completion of a manufactured product. Therefore, it is amply clear that a product which comes into existence at one stage is a product known to the market and is saleable as such it becomes a manufactured product which attracts excise duty. In that case it was found that that the company manufactured nylon filament yarn from caprolactum which is the basic raw material, and new and different product i.e. POY has a distinctive name, character and use. It was therefore held that POY is not a semi-finished product and on that basis, their

Lordships held that Rule 9 puts an embargo to discharge excise duty and permission under Rule 56B can not be granted. That case appears to be more on the questions of fact. But in the present case, we are satisfied that the assessee is taking out the copper winding wire for further processing of insulation with PVC compound and wants to bring it back for further finishing and such act of the assessee can be legitimately termed as intermediary act and the Collector can grant permission under Rule 56B of the Rules. There is no prohibition for the Collector under Rule 9 of the Rules of 1944 in exercising his discretion.

7. So far as the view taken by the Collector that Rule 9 of the Rules of 1944 is a bar for granting such permission is concerned, it is totally misled. If Rule 9 is read with Rule 56B of the Rules of 1944, then it is open for the Collector to grant permission. So far as the case of Lohia Machines Ltd. (supra) is concerned, with great respect, we do not agree with the reasoning that Rule 9 is a total bar. No rule which has been incorporated by the framing authorities should be read to mean that it is redundant. The rules which have been framed by the authorities with the conscious application of mind should be viewed to effectuate the purpose of the Act and the Rules. If harmonious approach is adopted, we are of the opinion that Rule 9 can co-exist with Rule 56B of the Rules of 1944 and is not redundant. The Collector is quite competent in exercise of his power under Rule 56B to grant permission if he is satisfied that the product is intermediary or semi product and there is no prohibition under Rule 9 for the same.

8. The question of law is answered accordingly.