Jaypee Rewa Cement vs Commissioner Of Central Excise, M.P on 22 August, 2001

Equivalent citations: AIR 2001 SUPREME COURT 3935, 2001 (8) SCC 586, 2001 AIR SCW 3904, 2001 (9) SRJ 253, 2001 (6) SCALE 96, (2001) 7 JT 261 (SC), (2001) 133 ELT 3, (2001) 98 ECR 193, (2001) 6 SUPREME 753, (2001) 6 SCALE 96

Bench: B.N. Kirpal, Shivaraj V. Patil, P. Venkatarama Reddi

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           CASE NO.:
Appeal (civil)  5340-5341 of 2000

PETITIONER:
JAYPEE REWA CEMENT

RESPONDENT:
COMMISSIONER OF CENTRAL EXCISE, M.P.

DATE OF JUDGMENT: 22/08/2001

BENCH:
B.N. KIRPAL & SHIVARAJ V. PATIL & P. VENKATARAMA REDDI

JUDGMENT:
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JUDGMENT 2001 supp(2) SCR 39 The Judgment of the Court was delivered by KIRPAL, J. CA Nos. 5340-5341/2000 The appellants M/s. Jaypee Rewa Cement are manufacturers of cement in their factory at Raipur. Lime Stone is an essential raw material for the said manufacture, but in order to extract lime stone explosives are used for mining the same.

It is not in dispute that the explosives which are used are items falling under Chapter 36 of the Excise Tariff. On the said explosives, excise duty had been paid, but the lime stone which was extracted, though an excisable item, was exempt from payment of excise duty by reason of an exemption notification. In the manufacture of cement, the appellants claimed modvat credit in view of the provisions of Rule 57A of the Central Excise Rules.

The case of the appellants was that the explosives used in the mining operation must be regarded as inputs and in respect of which notification had been issued by the Central Government in the Official Gazette and credit should be allowed in terms of the said Rule. The excise authorities as well as the CEGAT did not accept the contention of the appellants. The Tribunal came to the conclusion that Rule 57F was applicable in this case as explosives had not been brought into the factory and they had been used at a place away from the cement factory. It was of the opinion that by virtue of the said provision, Rule 57A cannot be extended to take in within its ambit any goods used outside the factory for production of the final product.

Rule 57A with which we are concerned in this case reads as follows:-

> "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 under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as may be specified in the said notification (hereinafter referred to as the "specified duly) paid on the goods used in or in relation to the manufacture of the said final products [whether directly or indirectly and whether contained in the final product or not] (hereinafter referred to as the "inputs') and for utilising 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 duly may be restricted.
>
> Explanation:- For the pan poses of this rule, "inputs includes--
>
> (a) inputs winch are manufactured and used within the factory of production, in or in relation to, the manufacture or final products,
>
> (b) paints and packaging materials,
>
> (c) inputs used as fuel,
>
> (d) inputs used for generation of electricity, used within the factory of production for manufacture of final products or for any other purpose, and
>
> (e) accessories of the final product cleared alongwith such final product, the value of which is included in the assessable value of the final product, but does not include -
>
> (i) machines, machinery, plant, equipment, apparatus, toots 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 manufacturer 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 or containers, the cost of which is not included in the assessable value of the final products under Section 4 of the Act;

and

(iv) crates and glass bottles used for aerated waters."

The other Rules which are relevant are Rule 57C which provides that credit for duty is not to be allowed if final products are exempt and Rule 57D provides for credit of duty not being denied or varied in certain circumstances. Rule 57F, on which reliance is placed by the Tribunal and also by Mr. Kailash Vasudev, learned senior counsel appearing for Revenue, reads as follows:-

> "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 under rule 57A-
>
> (i) may be used in, or in relation to, the manufacture of final products for which such inputs have been brought into the factory; or
>
> (ii) shall be removed, after intimating the Assistant Commissioner of Central Excise having jurisdiction over factory and obtaining a dated acknowledgement of the same, from the factory for home consumption or for export under bond Provided that where the inputs are removed from the factory for home consumption on payment of duty of excise, such duty of excise, shall be the amount of credit that has been availed in respect of such inputs under rule 57A.
>
> (3) Notwithstanding anything contained in sub-rule (1), a manufacturer may after intimating the Assistant Commissioner of Central Excise having jurisdiction : over the factory and obtaining dated acknowledgment of the same, 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, re-conditioning or carrying out any other operation necessary for the manufacture of the final products and return the same to his factory, for- (i) further use in the manufacture of the final product; or
>
> (ii) removing the same without payment of duty under bond for export; or
>
> (iii) removing the same after payment of duty for home consumption:
>
> Provided that the waste, if any, arising in the course of such operation is also .returned to the said factory;
>
> (b) for the purposes of manufacture of intermediate products necessary for the manufacture of the final products and return the said intermediate products to his factory, for,-

(i) further use in the manufacture of the final product; or

(ii) removing the same without payment of duty under bond for export; or

(iii) removing the same after payment of duty for home consumption:

Provided that the waste, if any, arising in the course of such operation is also returned to the said factory.

Provided further that the said waste need not be returned to the said factory after the appropriate duty of excise leviable thereon has been paid."

The other Rule which is relevant is Rule 57J which reads as follows:-

"RULE 57J Credit of duty in respect of inputs used in an intermediate product-Notwithstanding anything contained in these rules, the Central Government may, by notification in the Official Gazette, specify the inputs used in the manufacture of intermediate products received by a manufacturer for use in or in relation to the manufacture of final products, in respect of which the specified duty paid on the said inputs shall subject to the conditions and restrictions that may be specified in the notification, be allowed as credit under rule 57A."

As has already been observed, notification under Rule 57A was issued the Central Government on 1st March, 1994 specifying the final product described in the table annexed thereto in respect of which duty paid on inputs was to be allowed as credit. The said table is as follows:

S. No. Description of inputs Description of final products

1. All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following namely:-

(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;

(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act:

(iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act;

(iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.

All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following namely:-

(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;

(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;

(iii) woven fabrics classifiable under Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.

It is not in dispute that explosives fall under Chapter 36. The particular items used by the appellants come under heading Nos. 36.01, 36.02 and 36.03. Therefore, the said inputs, namely, the explosives would fall under column No. 2 of the aforesaid table while cement comes under Chapter 25 and would be a final product falling under column 3 of the aforesaid table. Therefore, both explosives as well as the cement fall under column 2 and 3 respectively of the aforesaid table.

The question which, however, arises for consideration is whether it is necessary for the explosives to be used within the factory premises where the manufacture of cement takes places.

Reading of Rule 57A clearly shows that the notification is to specify the goods used in or in relation to the manufacture of the final product whether directly or indirectly. In the present case, inputs which are used in relation to the manufacture even indirectly would be regarded as an input for the purpose of Rule 57A. Sub-rule (1) of Rule 57A does not, in any way, specify that the inputs have to be utilised within the factory premises. The explanation contained in Rule 57A is merely meant to enlarge the meaning of the word "input" and does not in any way restrict the use of the input within the factory premises nor does the said rule 57A require the inputs to be brought into the factory premises at any point of time.

The appellants could not have claimed for modvat credit in respect of lime stone because of the provisions of Rule 57C, inasmuch as there was an exemption from levy of excise duty in respect thereof. There was an exemption for a certain period and for the rest of the period the tariff itself provided that there will be nil rate of duty on the lime stone which is extracted.

As we have already noticed, the Tribunal has relied upon Rule 57F in coming to the conclusion that the inputs in respect of which a credit of duty is claimed must be those which are used in or brought into the factory premises. The Tribunal, however, has not referred to the provisions of Rule 57J, the opening portion of which makes it clear that the said Rule will be applicable notwithstanding anything contained in the other Rules. According to Rule 57J, when the Central Government by notification specified the inputs used in the manufacture of intermediate products received by the manufacturer for use in or in relation to the manufacture of final product, then on all such products on which duty has been paid credit will be allowed. Pursuant to this Rule 57J, notification was issued on 20th June, 1986 which was amended from time to time. The relevant part of the notification is as follows:

S.No. Description of Inputs Description of Intermediate products Description of final

products (1) (2) (3) (4) All goods falling I. All the goods falling All goods falling within the Schedule to within the Schedule to within the Schedule to the Central Excise the Central Excise Tariff the Central Excise Tariff Act, 1985 (5 of Act, 1985(5 of 1986, tariff Act, 1985 (5 of1986), other than following namely:-

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(i) goods classifiable (i) goods classifiable under any heading of under any heading of Chapter 24 of the Schedule to the said Act;

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(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;

(ii) goods classifiable (ii) goods classifiable (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;

(iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except natural gasoline liquid) of the Schedule to the said Act;

(iv) high speed disesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.

under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;

(iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except natural gasoline liquid) of the Schedule to the said Act;

(iv) high speed disesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.

under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;

(iii) woven fabrics classifiable Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.

Explosives would fall under column (2) being a tariff item in Chapter 36; the intermediate product, namely, lime stone would fall under column 3 being covered by Chapter 25; and the final product, namely, cement would also fall under Chapter 25 and would fall under column 4. The reading of Rule 57J alongwith the aforesaid notification can leave no manner of doubt that even in respect of inputs used in the manufacture of intermediate product which product is then used for the manufacture of a final product, the manufacturer would be allowed credit on the duty paid in

respect of the input. On the explosives a duty had been paid and the appellants would be entitled to claim credit because the explosives were used for the manufacture of the intermediate product, namely, lime stone which, in turn, was used for the manufacture of cement.

We are, therefore, in agreement with the learned counsel for the appellants that the wide language used in Rule 57A entitles the appellants to claim the benefit when the said Rule is read alongwith Rule 57J.

For the aforesaid reasons, these appeals are allowed and the judgment of the Tribunal is set aside.

CA Nos. 6932/2000, 6900-6905/2000, 7131-7132/2000, 7337-7340/ 2000, 7195-7200/2000,2301/2001, 2515/2001, 3992/2001, 3994-3995/2001, 4383/2001, 4784/2001, 4784/2001 and 2577/2001.

The principle involved in these cases is similar to that in the case of M/s Jaypee Rewa Cement. For the reasons stated therein these appeals are also allowed.

C.A. No....6064..../2001 @ SLP (C) No. 20785/2000 Leave granted.

For the reasons stated in the case of M/s Jaypee Rewa Cement the appeal is allowed. Reference is now answered in favour of the assessee and the decision of the Tribunal is upheld.

CA Nos. 3965-3968/2001 The challenge in these appeals relates to the validity of the show cause notice whereby modvat was proposed to be disallowed on the use of high speed diesel and explosives and grinding media for the manufacture of cement.

Learned counsel for the appellant states that the Tribunal has given the benefit of allowance of modvat regarding grinding media. With regard to the other two items, namely, explosives and high speed diesel, the appellant does not contest the decision of the Tribunal insofar as high speed diesel is concerned. He, however, restricts his appeal to the validity of the decision of the Tribunal in disallowing the modvat qua the use of the explosives as an input in the manufacture of same. In view of the decision of this Court in CA Nos. 5340-5341/2000, these appeals are allowed insofar as the input of explosives in the manufacture of cement, is concerned.

The appeals are allowed in view of the decision in CA Nos. 3965-68/ 2001.

WP (C) Nos. 676/2000, 29/2001, 30/2001, 31/2001 and 32/2001. The writ petitions are dismissed as withdrawn. C.A. No. 4263/2001 We have gone through the decision of the Tribunal. In view of the provisions of Rule 57Q, the appellant is not entitled to any relief. The appeal is dismissed.

CA Nos. 279-282/2001, 2368/2001, 1628/2001, 1629-1630/2001 and 1792/2001.

The appeals are dismissed as not pressed.