# Nrc Limited Vs. Cce

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**SooperKanoon Citation** : sooperkanoon.com/14996

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

**Decided On :** Jan-11-1999

**Reported in** : (1999)(84)LC516Tri(Mum.)bai

**Judge** : J S Murthy

**Appellant** : Nrc Limited

**Respondent** : Cce

**Judgement** :

1. This is the party's appeal against the impugned order in appeal No.PCJ/640/Bom-III/94 dated 25.10.1994 praying for setting aside the same along with order-in-original dated 19.3.1993 with consequential relief and any other suitable relief.

1.1. The facts of the case are that the appellant manufactures caustic soda, which is cleared for home consumption outside the factory on payment of duty and also consumes it captively as an intermediate product. Modvat facility is being availed by taking credit of duty paid on soda ash, hydrated lime, titanium anodes and metal anodes, when used as inputs in manufacturing caustic soda. The only condition is that final production should be dutiable. If it is exempted from the whole of duty or charged to nil rate of duty, credit is not admissible. When caustic soda is captively consumed, appellant avails benefit of exemption of duty under the notification No. 217/86-CE dated 2.4.1986 when used as intermediate product in the manufacture of final product and under notification No. 9/69-CE dated

15.2.1969, when issued for purification of brine. Range Superintendent issued six show-cause notices on 30.3.1982, 14.2.1982, 2.12.1991, 26.10.1991, 23.12.1992 to recover proportionate amount of modvat credit and to impose penalty on the ground that under Rule 57C of Central Excise Rules, appellant is not eligible to avail modvat credit in the inputs used in the manufacture of caustic soda cleared for purification of brine, in relation to manufacture of caustic soda only at nil rate of duty under notification No. 217/86 and No. 9/69 for the period from June 1991 to November, 1992. The appellant filed replies to them. Personal hearing was held on 22.2.1993. Appellant, through the counsel Shri V.D.Taralagathi filed written submissions and submitted arguments. After going through all the material available on record, Additional Collector of Central Excise, Bombay-Ill passed the order-in-original on 19.3.1993 and confirmed the demand, rejecting the case of appellant.

The appeal preferred by appellant against the above order was rejected on 16.9.1994 under the impugned order by Collector of Central Excise (Appeals), Mumbai. Hence this appeal.

2. In support of the appeal, appellant through its employee Shri N.K.Rajvant has submitted in the course of arguments that Rule 57D(2) of Central Excise Rules is not properly appreciated in this case, as caustic soda was both final product and intermediate product for the manufacture of final product on which appropriate duty was being paid.

Modvat credit in respect of same inputs cannot be denied merely because such intermediate product was exempted under notification No. 9/69-CE dated 15.1.1969 under the above rules, if intermediate product is exempted from the whole of duty of excise leviable thereon or charged to nil rate of duty, where final product is dutiable. Any product coming into existence, which is further used for manufacturing in different quality can also be considered as intermediate product for the purpose of availment of modvat credit. Classification list indicating the said position, filed by the appellant, approved by the Assistant Collector is ignored. Demand of modvat credit in respect of same inputs was illegal and baseless. Impugned order is liable to be rejected. Caustic soda is made by cell electrolysis process. In the cells brine solution of 310 gms./ltr. NaCl is circulated while electrolysis the NaCl content in the brine drops down to 260/370 gms./ltr. NaCl content. To make good of the depletion brine resaturated in the saturators which are kept filled with salt (NaCl). During saturation the brine picks up impurity viz. Ca, Mg and sulphate also along with salt. This brine is not suitable for electrolysis unless the impurities are removed and brine is purified. It is not appreciated in the impugned order that caustic soda is used to purify brine water, is further used to manufacture final products, on which appropriate duty was paid. Merely because caustic soda is exempted at the intermediate stage for using for purification of brine water, the mod vat credit cannot be denied as the said is used in manufacturing final product on which excise duty is being paid. Ignoring the approved classification list under notification No. 217/86 dated 2.4.1986 which is not reviewed by Assistant Collector by issuing show-cause notice under the Central Excise Rules. in the case of Tata Chemicals Ltd. v.CCE, Rajkot is relied on. (Paras 5 and 7). The Learned DR Shri Ashokan has strongly supported the orders of lower authorities and urged that there are no satisfactory grounds to set aside the impugned order.

3. Point for consideration is whether the appeal can be allowed and orders of lower authorities can be set aside. My finding thereon is in the affirmative.

4. Perused Rule 57C, 57D(2) of Central Excise Rules and the notification No. 9/69 dated 15.1.1969 and No. 217/86 dated 2.4.1986 and in the case of Tata Chemicals Ltd. v. CCE, Rajkot Under Rule 57A of Central Excise Rules Modvat Ammonia eligible for modvat credit as an input whether used directly in manufacture of final product or used to purify brine which is further used in manufacture of final product Purification of brine from which the final product is obtained, and without which it cannot be obtained is an activity concerned with the manufacture of finished goods. The contention of the appellant that finished goods cannot be manufactured unless the brine has been purified cannot be rebutted. Manufacturing process is not required to be shown in the 57G declaration. The appellant had indicated ammonia as an input in the final product. The declaration will equally hold true whether ammonia is directly used in the final product or whether it is used to purify the brine which is soda ash, which is manufactured.

Therefore modvat credit is available in respect of Ammonia which is used by the purification of Brine and .

5. Perused the show-cause notices, reply, written submission, orders in original and appeal, and copies of orders of the Tribunal in and and classification list 2.4.1986 revised NRC/34/86, and approval by department on 12.1.1988.

Exemption from payment of duty under notification is granted under notification No. 217/86 dated 2.4.1986, with the condition that if the products for which exemption is claimed are used as inputs within the factory of production in or in relation to the manufacture of final products covered by the table annexed to the said notification. Caustic soda is shown at serial No. 3 in the list of the goods manufactured in the factory under chapter No. 28, on 2.9.1987. In part II at serial No.6 under the heading particulars of all excisable goods (including wholly exempted) manufactured warehoused at serial No. 8, caustic soda in column No. 2 as item of the goods produced 2804.820 and at column No. 9 notification No. 273/86, 9/69 is are (sic) indicated as relevant notification, issued having bearing on rate of duty, and in remarks in column 10 it is mentioned for the use of purification of brine.

6. The department's case as per the show-cause notices is that "appellant manufacture and clear caustic soda at nil rate of duty, under the notification No. 9/69 and 217/86, by using inputs, soda ash, hydrated lime and titanium and metal Anodes, and taking modvat credit on them, and certain quantities of caustic soda is cleared on payment of duty and certain other quantity is cleared without payment of duty.

As per Rule 57C, appellant is not eligible for modvat credit on the inputs used in manufacture of caustic soda, which are cleared under nil rate of duty under the above notification, and sought for recovery of proportionate quantity of modvat credit and for imposing penalty". The appellant's case in that regarding and, as per the reply to show-cause notice is that "Rule 57C should be read with Rule 57C(i) which expressly lays down that "credit allowed in any input shall not be denied or varied on the ground that any intermediate product have come into existence during the course of manufacture of final products, and that such intermediate products for the time being, exempt from the whole of duty leviable thereon or charged to nil rate of duty, under two conditions or such intermediate products are used within the factory of production in the manufacture of final product in which duty is leviable in whole or in part, and specified as inputs or as final products. In this case the caustic soda consumed at nil rate of duty is used as intermediate product in the manufacture of Rayon Yarn and ARS and in the modvat declaration they have declared the above inputs as such i.e. inputs in the manufacture of rayon yarn and ARS, and caustic soda as an intermediate product in such case, and also as final product, in case where they are cleared on payment of duty. Caustic soda cleared under nil rate of duty under the two notifications referred above for the manufacture of rayon yarn and ARS is covered under modvat rules under Rule 57D(i), as also the caustic soda cleared under notification No. 9/69 for the purification of brine in relation to the manufacture of caustic soda".

7. As per order-in-original, page 3 para 8 accepts the case of the appellant, and in para 9, appellant's case is negative regarding notification No. 9/69 benefit, and has held that Notification No.154/88, similar to above Notification benefit is denied in the case of CCE v. M/s. Dhmngadhra Chemical Works Ltd., by the Tribunal, and adopting it reversal of credit taken on inputs used in the manufacture of caustic soda cleared without payment of duty is ordered. In the impugned order in paras 5 to 8, Collector (Appeals) has discussed all the contentions raised by the appellant, and has rejected the appeal, on the ground that "caustic soda is not an intermediate product, when used for purifying the brine, instead of directly using it further in the manufacture of final product. That is the reason why caustic soda, when used for purifying brine is not extended exemption under Notification No. 217/86. If caustic soda is declared as input for the manufacture of other final product, duty paid on such caustic soda may be utilised for payment of duty. However, in the appellant's case, caustic soda used in such manner is exempt from duty under Notification 9/69.

8. As contended by the appellant the conclusion of the Collector of Central Excise (Appeals), is not correct, in view of the above para, showing different ground for rejection of benefit under Notification No. 9/69. The order-in-original is not clear about the identical nature of the two Notifications. Even the Tribunal decision

referred is also not clear about the identical facts of the case, and there is no citation to verify the correctness of the decision. As cited by the appellant in the case of Tata Chemicals Ltd. v. CCE, Rajkot, clearly supports case of the appellant, as ammonia was used to purify brine which is further used in the manufacture of final product and modvat credit is available, when used as input. Same situation arises in this case also as caustic soda is used to purify brine, which is used in manufacture of final product. Apart from that, reply of appellant to show-cause notice also shows that in the declarations filed before concerned authorities in respect of the input and final product caustic soda, and another declaration zvas also filed for inputs caustic soda and final product anhydrous sodium sulphate and rayon yarn. Both inputs and final products are specified. This is not replied by the department denying it. In the absence of it, in view of the above position, and also as per the latest case laws appellant is entitled to benefit even under Notification No. 9/69 dated 15.1.1969, Rule 57D(2) also coming to the aid of appellant. So also 57C(i). So the contention of the appellant is upheld and point raised is answered in the affirmative. Hence I pass the following order.

For the reasons discussed above, appeal allowed with consequential relief according to law, setting aside the orders of lower authorities so far as denying the benefit of exemption under Notification No. 9/69.