

**Jindal Polymers Vs. Commissioner of Central Excise**

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

**Decided On :** Dec-08-2000

**Reported in :** (2001)(127)ELT431TriDel

**Appellant :** Jindal Polymers

**Respondent :** Commissioner of Central Excise

**Judgement :**

1. These two appeals arise out of the same order and, therefore they were heard together and are being disposed of by this common order.

2. The facts of the case briefly stated are that the appellants manufacture the polyester chips/yarn/fibre. The appellants used furnace oil as fuel in the factory. They accordingly took Modvat credit of Central Excise duty on furnace oil at the rate of 15% ad valorem. The Notification No. 14/97-C.E., dated 3-5-1997 issued under Rule 57A restricted the credit to 10% on furnace oil. The department alleged that the Modvat credit on furnace oil used as fuel in the factory was restricted to 10% as per Notification No. 5/94-C.E., dated 1-3-1994.

The department, however, observed that the restriction imposed by Notification No. 5/94-C.E. as amended by Notification No. 14/97-C.E. would be applicable in respect of inputs mentioned in Rule 576 also and, therefore the appellants were entitled to Modvat credit only to the extent 10% and not the entire duty paid on furnace oil.

3. Arguing the case for the appellants, Shri V. Sridharan, Id. Advocate submits that Rule 57B(1) permits for taking of credit of specified duty paid on the goods used as fuel, therefore, under Rule 57B(1) the credit equal to the duty paid on the inputs is allowed. He submits that there is no provision in Rule 57B corresponding to Rule 57A(3). He submits that this aspect is very vital and hence for an input covered by Rule 57B credit is to be allowed equal to duty paid on the inputs; that the use of expression 'specified duty' in Rule 57B is not determinative of the issue; that it does not tantamount to borrowing all terms and conditions of Rule 57A for the purpose of Rule 57B; that the definition of "specified duty" given by Rule 57A(1) is distinct and different from restriction of credit dealt with by Rule 57A(3). Ld. Advocate submits that the specified duty is defined in Rule 57A(1) as the type of duties of excise paid on inputs which may be available as Modvat credit; that for instance, basic excise duty paid under Section 3 of Central Excise Act, 1944, special excise duty paid under various Finance Acts, Additional Excise duty paid under Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 are also specified in the notifications issued under Rule 57A. Ld. Counsel submits that restriction on allowance of credit of a portion of duty paid on inputs in terms of Rule 57A(3) is not the definition of "specified duty" and that merely because Rule STB borrows the words "specified duty" used in Rule 57A, it cannot be said that all terms and conditions of Rule 57 A are borrowed or incorporated in Rule STB.4. Ld. Counsel submits that Rule 57B starts with a non-obstante clause and therefore provisions of Rule STB will prevail over the provisions of Rule 57A. He submits that the authorities below have overlooked this aspect. He submits that Notification No. 14/97 dated 3-5-1997 was issued under Rule 57A and, therefore the restrictions under the notification does not apply to Rule 57B. He submits that the items mentioned in the Notification No. 14/97 namely, naphtha, furnace oil, low sulphur heavy stock and light diesel oil are used as raw materials in the manufacture of final products. He submits that when they are so used and are described as feedstock, they will be entitled to Modvat credit not under Rule 57B but under Rule 57A. However, when naphtha, furnace oil, low sulphur heavy stock and light diesel oil can be used as fuel, also. He submits that when so used as fuel, they will be covered under Rule 57B (1) (iv). It was argued by him that Notification No. 14/97 having been issued under Rule 57A would apply to this item

if they are used as non-fuel input or as feedstock, they would be entitled to Modvat credit under Rule 57A.5. Ld. Counsel submits that the amendments were introduced as part of Budget proposals for the year 1998-99 to the effect that only 95% of the duty paid is available to the customer as Modvat credit; that Notification No. 14/98 dated 2-6-1998 was issued separately adding clause (vi) to Rule 57B providing for a similar restriction of 95% of the duty paid on the inputs covered by Rule 57B also. Ld. Advocate submits that if the restriction under Rule 57A was to ipso facto apply to Rule 57B, there was no necessity for the Government to issue a Notification No. 21/98-C.E. to specifically provide for a restriction under Rule 57B of the Rules. He also submits that condition No. 8 attached to Notification No. 4/97-C.E. which is the general omnibus exemption notification stipulated that the benefit of the notification would apply only if Modvat credit has not been availed under Rule 57A. He submits that this condition was amended by Notification No. 60/97-C.E., dated 1-9-1997 to expressly incorporate the words "No credit has been taken under Rule 57A or under Rule 57B". He, therefore submits that the above notification clearly shows that the Government has always maintained a distinction between credit availed under Rule 57A and Rule 57B. He submits that earlier Rule 57G(1) which related to Modvat declaration indicated that a person availing credit under Rule 57A has to file a declaration. He submits that this Rule was amended by Notification No. 46/97-C.E., dated 1-9-1997 to include Rule 57A or Rule 57B. He submits that this Tribunal by its final order No. A/684-89/2000-NB dated 18-8-2000 held in para 11 is as under :- "Having discussed the various aspects as above, we find that for purpose of finding the specified duty, we have invariably to go to the Notification issued under Rule 57A. Going to the Notification, we find that there is a restriction on specified duty of which credit can be taken. Having regard to the above discussions and the case law cited, we hold that Modvat credit on furnace oil will be admissible only to the extent of 10%. In this view of the matter, we do not find any legal or factual infirmity in the impugned order.

The impugned order is, therefore, upheld and the appeals are rejected." 6. Ld. Counsel submits that in that case while arguing the appellants did not bring it to the notice of this Tribunal that the emphasis in Rule 57B was on to take credit of specified duty paid on the following goods. He submits that this Rule clearly

provided that the credit will be equal to the duty paid. He submits that since this point was not pressed specifically before the Tribunal in the case of Jindal Polyester cited above, the matter may be referred to the larger bench of this Tribunal. He submits that since it was an interpretation of law, therefore, no penalty was warranted. He, therefore prays that the appeals may be allowed by setting aside the impugned order.

7. Shri M.M. Dubey, Id. JDR reiterates the findings of the lower authorities.

8. Heard the rival submissions. We have perused the Rules and the notifications cited and relied upon. We find that the short point for determination in this appeal is whether the provisions of Rule 57A(3) shall apply to the provisions of Rule STB insofar as the amount of credit is concerned. Sub-rule (3) of Rule 57A provided that the Central Government may also specify in the said notification the goods or class of goods in respect of which the credit of specified duty may be restricted. Rule 57B reading as "(1) Notwithstanding anything contained in Rule 57A, the manufacturer of final products shall be allowed to take credit of the specified duty paid on the following goods, used in or in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final products or not." 9. The emphasis of the Counsel for the appellants was on the words "to take credit of the specified duty paid" very important in Rule 57B. His contention was that there is no prohibition or restriction in taking credit of an amount equal to the duty paid whereas the contention of the respondent Commissioner was that the specified duty has been defined in the Rule 57A and that Sub-rule (3) of Rule 57 A specifically says that the credit of the specified duty may be restricted. The Counsel for the appellants submitted that the provisions of Rule 57A(3) shall not be applicable to Rule 57B inasmuch as Rule 57B starts with a non-obstante clause. He submitted that later on the Government issued separate notifications, if the provisions of Rule 57A or Rule 57B were both required to be applied. We find that under Rule 57B no notification has been issued to specify the duty. Rule 57B speaks of credit of specified duty paid. Since the duty has been specified only under Rule 57A, therefore, for the purpose of harmonious construction we have to read the provisions of Rule 57A in Rule 57B wherever it facilitated the understanding of the provisions. Rule STB speaks of credit of specified duty paid.

Sub-rule (3) of Rule 57A speaks of credit of specified duty though the word 'paid' is not there yet it is to be read. Since the credit of the specified duty paid has been restricted by issue of Notification No. 5/94 as amended by Notification No. 14/97, therefore, we have to read for the harmonious construction of the words "credit of the specified duty paid" as those set out in Sub-rule (3) of Rule 57A. This clearly shows that Sub-rule (3) of Rule 57A is an aid for interpreting the words "credit of the specified duty paid" under Rule 57B. Since the Government is authorised to restrict the credit of specified duty paid, therefore we have to read this in Rule 57B. We find that similar view was taken by this Tribunal in the case of the appellants themselves. We do not see any reason either to refer the matter to the Larger Bench or to disagree with the findings in that order. We, therefore, follow the ratio of the decision of that order and held that Modvat credit of the specified duty paid shall be restricted to 10% in the instant case.

10. Insofar as the penalty is concerned, we find that in the instant case, the penalty imposed is equal to the amount of the duty. Since the duty has arisen out of the interpretation of the provisions of law, therefore, the penalty appears to be harsh. Looking to the facts and circumstances of the case, the penalty in appeal No. E/2801/98-NB is reduced to Rs. 1 lakh and the penalty in appeal No. E/2802/98-NB is reduced to Rs. 2 lakhs. The appeals are disposed of in the above terms.

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