

**Wipro Ltd. Vs. C.C.E.**

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

**Decided On :** Jan-12-1996

**Reported in :** (1996)(83)ELT610Tri(Mum.)bai

**Appellant :** Wipro Ltd.

**Respondent :** C.C.E.

**Judgement :**

1. All the aforesaid six Appeals involve consideration of the same issue and hence, with the consent of both the sides, are disposed of by this common order.

2. The appeals are against the orders-in-appeals noted against each as per details below :-----APPEAL NO.

ORDER	IN	APPEAL	NO.	BY	COLLR.
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(A)-----				E/634/625/94	(Two
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Appeals) Order in Appeal No. A-249/94, dated 19-8- 1994 passed by Collector (A)

Pune.E/895/95 Order in Appeal No. A-310/95, dated 25-7- 1995 passed by Collr.

(A) Pune.E/430/95 Order in Appeal No. A-83/95, dated 28-2- 1995 passed by

Collr. (A) Pune.E/350/95 291 /94 (90-Raj) CE/Collr. (A) dated 16-4-1994 passed

by Collr. (A) Ahmedabad.E/358/95 109-110/92 (32-Raj) AHD/CE 1 Collr. (A) Ahd.

passed by Collr. (A) Ahmedabad.

3. The appellants are engaged in the manufacture of Vanaspati (in short referred to as V.P.). They manufacture V.P. where in certain specified minor Oils [Vide Notf. 45/89-(N.T.) C.E., dated 11-10-1989] were used, in respect of which they

claimed Money Credit as per the provisions of the above notification read with the provisions of Rule 57-K of the C.Ex. Rules, 1944. There is no dispute before us on the rate of Money Credit or on the eligibility of any of these Oils for money credit. The only dispute before us is whether Money Credit can be taken in respect of the quantity of raw oil taken, which, after undergoing certain processes like refining, degumming, bleaching, filtering etc. (in which process about 10-15% of raw oil is lost) is subsequently subject to hydrogenation as contended by the appellants or only on the quantity of processed minor oil, which is actually subject to hydrogenation. The Department objected to the taking of money credit on the entire quantity of raw oil, by holding the view that the Notification allows money credit only on the quantity of oil subjected to the process of hydrogenation and the notification does not contemplate taking of credit on quantity of raw oil drawn for making V.P. In that view, it was alleged that Money Credit was taken on excess quantities and demands, for reversal of Money Credit were confirmed by the Collector (Appeal). In some cases, the Asstt. Collector originally dropped the demand, which was reviewed by the Collector and appeals were filed before the Collr. (A), who confirmed the demands. Hence, the present appeals are before us.

4. The main tenets of the arguments of Shri Ravindran the Ld. Counsel on behalf of the appellant, can be summed up as below : (i) Referring to the provisions of Rule 57K, he points out that in this case, by a notification issued under Rule 57K against V.P. certain minor oils have been specified. The Notification 45/89 does not specify that only refined oils are eligible for money credit.

What is specified in the Table to the Notfn. is the description of the oil and the rate at which money credit is to be taken. In the case of minor oils covered by these appeals, solvent extracted Oil is specified. When once the input satisfies the description in the table, and its usage in V.P., through hydrogenation, is established, the entire quantity so used is to be taken into account for extending money credit.

(ii) There is no prescription in the Table referring to refined oil, specifying the sub-heading applicable to refined oil. Refining is a 'must', before oil is subjected to hydrogenation and any loss arising in the process to render the oil fit for

hydrogenation should be eligible for money credit. In this context, he refers to the provisions of Rule 57M, wherein it is envisaged the money credit cannot be varied or denied on the ground that part of input is contained in any waste, refuse or by-product arising during the manufacture of final product.

(iii) The Under Secretary in the Ministry of Finance has filed an affidavit in the Supreme Court in their own case on the issue relating to the date, on which Money Credit is to be taken, agreeing that the action of the Asstt. Collr. in dropping the S.C.Ns. covered in the present appeals, is in accordance with the notification. He refers to the relevant portion of the affidavit in this regard. He also referred to the S.C.Ns. referred to in this affidavit, the orders of the Asstt. Collector and the order of the Collr. (A) which order is now challenged before the Tribunal. He would therefore, plead that the Department, after giving an affidavit before the Supreme Court in the above manner, are estopped from contending otherwise, before the Tribunal.

(iv) He also points out that in the case of Sesame Oil, (Til Oil), it can be added only after hydrogenation for meeting the requirements of Vegetable Oil Products Control Order, 1947. Hence, it cannot be the intention of the legislature that by specifying Sesame Oil in the table, only that quantity of oil actually subject to hydrogenation is to be given credit. The provisions of Notfn.

issued under Rule 57K are to be read in the context of the requirements under Vegetable Oil Control Order. Since the credit scheme is extended only in respect of oils hardened rendering fit for human consumption, the requirement specified for such V.P. fit for human consumption as laid down under the Vegetable Oil Products Control Order cannot be ignored and the Money Credit Scheme considered in isolation. It is specified [Vide Para No. 2(1)(1)] under the heading requirements in the First Schedule to be Vegetable Oil Control Order, 1975 as below : "The said oils shall be neutralised with alkali and bleached with bleaching earth or activated Carbon or both, prior to and after the process of hydrogenation and thereafter the deodorised with steam".

When V.P. is manufactured using these oils as inputs, they are to satisfy the requirements of Vegetable Oil Control Order, which stipulates that prior processing

of raw oil is to be done before subjecting them to hydrogenation. Hence, the stipulation in Notfn.

45/89 to the effect "credit shall be taken only in respect of quantity of Oil or fat, as the case may be, subject to hydrogenation" can only mean such quantity of oil subjected to hydrogenation for making Vegetable Product for human consumption as per the requirements of Vegetable Oil Product Control Order, the words 'only in respect of Oil subject to hydrogenation' are to be given the meaning that quantity of oil drawn for hydrogenation, which, cannot be hydrogenated without refining at the first stage.

They are not clearing any refined oil at the intermediate stage. The entire quantity of raw oil drawn for hydrogenation is subject to hydrogenation. Refining is a necessary first stage to be undergone before hydrogenation. There is therefore, no warrant to presume that only the actual quantity of refined oil subject to hydrogenation is to be given Money Credit, ignoring the provisions of Rule 57M.5. Shri K.M. Mondal, the Ld. S.D.R. on behalf of both the Collectors, pleaded as below: (i) Sub-heading 15.02 of the Central Excise Tariff refers to raw oil, whereas processed oil is sought to be covered by sub-heading 1503.10. V.P. is covered by sub-heading 15.04. Though Tariff subheading in respect of inputs is not specified in the Notf. 45/89, the Tariff sub-heading for V.P. is specified in the Notification.

That does not mean that money credit can be straightaway taken on the entire quantity of raw oil received or on the entire quantity of raw oil drawn for hydrogenation. It is also laid down that such credit can be taken only on the date of hydrogenation. Hence, it necessarily implies that on the date, when hydrogenation takes place, whatever quantity was subjected to hydrogenation, would only be eligible for Money Credit.

(ii) Til Oil, which is merely added to V.P. for meeting the statutory requirement of V.O.P. Control Order is not given money credit by the department, on the ground that it is not subject to hydrogenation. However, this quantity is not deducted from the quantity of V.P. for adjusting money credit towards duty payable on V P, (Vide Bombay Collectorate Trade Notice No. 47/89, dated 5-5-1989).

(iii) From the above, it cannot be said that whatever is prescribed in the V.O.P. Control Order would be ipso facto applied for extending money credit. Money Credit is not like Modvat Credit.

Modvat Credit is intended to avert the cascading effect of the duty paid on inputs. Money Credit is given as an incentive for encouraging use of certain inputs in the final product. Such inputs may or may not be dutiable. It is in the nature of advancing some monetary subsidy to facilitate payment of duty on the final product, where certain specified inputs are used. Hence, the Govt. can prescribe the date on which money credit is to be given. It can also prescribe the quantity for which subsidy is to be given. The Notification clearly stipulates that "Credit shall be taken only in respect of the quantity of oil or fat, as the case may be, subjected to hydrogenation for the manufacture of the said final products and the credit may be taken only on the-date on which the said oil or fat, as the case may be, has been so hydrogenated. (emphasis supplied by the Ld. DR). From the above, it would appear that subsidy is given only in respect of the quantity subjected to hydrogenation and that too only on the date, on which the oil has been hydrogenated. It is not necessary to read the provisions of V.O.P. Control Order in to the money credit scheme. It is not given in respect of inputs used in or in relation to the manufacture of final product, where marketability criterion of the final product can be read into. In the case of Modvat Scheme, they could have taken the credit on the entire quantity of raw oil, the moment they received the quantity in their factory and also are entitled to use such Credit instantaneously. But in the case of Money Credit, it is not so contemplated, because it is a scheme of monetary subsidy, and such subsidy can be given, at the discretion of the Govt.

prescribing conditions, they may deem it proper, for extending such subsidy.

(iv) Rule 57M is a general rule applicable to all items notified under Rule 57K. If in this case, no waste occurs in the Oil, during the process of hydrogenation, that cannot be a ground for claiming the benefit in respect of wastage occurring, during refining of Vegetable Oil. In the case of items like soap, there could be losses at different stages of processes, where Rule 57M can be applied, provided the notification issued under Rule 57K does not prescribe the stage at which money

credit is to be taken or the quantity on which credit is to be taken. Rule 57K itself stipulates that the conditions prescribed in the section as well as the condition stipulated in the notification are to be satisfied. Hence, they can claim the benefit of Rule 57M, only if there is a loss in process, either during hydrogenation or after hydrogenation and not on quantity of loss in regard to oil, lost prior to hydrogenation.

(v) He also referred to the decision of the Supreme Court decision in the case of Liberty Oil Mills - 1995 (75) E.L.T. 13 (S.C.). He points out that it was also case of V.P. where rebate was claimed for the entire quantity of V.P. wherein they have used only certain percentage of Cotton seed oil. The Supreme Court rejected the contention of the assessee. In the Judgment, they held that even if there is an ambiguity, benefit should go to the State. Hence, the principle underlying this decision should be applied in a case, when the Government gives a subsidy in the form of money credit, where benefit of ambiguity (if any) has to be given to the State and not to the claimant for subsidy.

(vi) Referring to the affidavit of the Under Secretary, he would plead that it is an uncalled for statement on a non-issue. This should not be construed as a promise made before the Supreme Court or an affirmation of the legal position on the issue that was being considered by Supreme Court. The very same S.C.Ns., which were dropped by the Asstt. Collector, were challenged by way of appeals, even before the affidavit was filed by the Under Secretary. They have now come before the Tribunal. In the circumstances, plea of estoppel or having made any concession before the Supreme Court on the issue under consideration by Apex Court, cannot be accepted.

This, inadvertence has crept in only due to communication gap between the Collectorate and the Ministry.

6.1 After hearing the rival contentions ably presented by both the sides, it would be necessary to set out the relevant portion of Notfn.

45/89, dated 20-3-1990 for appreciating the arguments from both the sides.

"In exercise of the powers conferred by Rule 57K of the Central Excise Rules, 1944, the Central Government hereby specifies.

(i) the inputs, namely, vegetable oils or fats of the description in column (2) of the Table hereto annexed and used in the manufacture of the final products, namely, vegetable products falling under subheading No. 1504.00 or margarine 1 (and bakery shortening) falling under sub-heading No. 1508.90 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) and (ii) the rates in the corresponding entry in column (3) of the said Table as the rate at which credit may be granted for use of such inputs in the manufacture of the said final products.

for the purposes of Section AAA of Chapter V of the said Rules and stipulates that the grant of credit and utilisation thereof shall, in addition to the provisions of the said section, be subject to the following conditions, namely : (i) the credit shall be taken only in respect of the quantity of oil or fat, as the case may be, subjected to hydrogenation on (or after the 11th day of October, 1989) for the manufacture of the said Final Products, and the credit shall be taken only on the date on which the oil or fat, as the case may be, has been so hydrogenated .... " 6.2 From the above, we find that credit is contemplated to be given only in respect of the quantity of oil subject to hydrogenation and such a credit can be taken only on the date, on which such oil has been hydrogenated.

6.3 The other view pleaded by Shri Ravindran is plausible in the context of Modvat scheme, where credit of duty paid on inputs can be taken, the day on which such inputs are received in the factory and accounted in RG23A Part I. Money Credit Scheme, unlike Modvat Scheme, is a scheme of extending a monetary subsidy providing credit in the prescribed account for use towards payment of duty on the final product. Prior to the introduction of this scheme, the objective of encouraging usage of minor oils was done through exemption Notification issued under Rule 8(1) of the Central Excise Rules. Hence, we are of the view that the scheme, replacing an exemption, has to be read strictly, unless otherwise stated. Moreover, the State giving the subsidy is entitled to specify the quantity eligible for subsidy and the date on which the subsidy can be taken. We, therefore, feel that the principle laid down by the Supreme Court in Liberty Oil Mills case would be more

applicable in such a situation.

6.4 Bombay Collectorate Trade Notice referred to by Shri Mondal, the Ld. SDR, does not allow money credit on the quantity of Til oil merely added to V.P. to prevent adulteration. It is not subject to hydrogenation. It is added after hydrogenation. While the position may be acceptable to us, we may not be able to agree that minor oils hardened for human consumption by any other process other than hydrogenation could be denied money credit, by citing condition (i) of Notification; Because explanation to the Notification clearly indicates that V.P. can be obtained by hydrogenation or by any other process. On account of this position, there could be a case for providing a suitable criterion in such cases, where V.P. is obtained by process other than hydrogenation. That cannot lead us to a conclusion that money credit is not available in the case of minor oils hardened by any other process nor can it lead us to believe that because of absence of such a condition to cover V.P. obtained from minor oils through other process, there is a case for giving credit on the raw oil drawn for processing prior to hydrogenation.

6.5 We also looked into the provision of exemption Notification, which was predecessor to the Money Credit Scheme, Notn. No 115/86-C.E., dated 1-3-1986 was the one prevalent prior to introduction of the Rules relating to Money Credit Scheme. Explanation (3) of the said Notification is reproduced below : "The percentage of cotton seed oil or specified minor oils used in the manufacture of vegetable product shall be calculated with reference to the weight of such oils and the total weight of the mixture of oils immediately before such mixture is subject to the process of hydrogenation for conversion into the said vegetable product." From the above, we find that all along the Government's intention was to give exemption only with reference to the weight of minor oils present in the total weight of mixture of oils immediately before such mixture is subject to the process of hydrogenation for conversion to V.P. It did not extend to the percentage calculated with reference to the quantity of raw oil drawn for hydrogenation. What was given by way of an exemption in the above manner is now given by way of money credit scheme. Hence, the Notification No. 45/89 issued under Rule 57K cannot be held to be otherwise, as pleaded by Shri Ravindran, merely because of the provision of Rule 57M or because of the stipulation in the Vegetable Oil Products Control Order.

Rule 57M could be pressed into service, if there is a loss in hydrogenation or thereafter. It cannot come into play, where the Notification does not allow money credit for the quantity of raw oil taken for processing, before hydrogenation.

Notification No. 45/89 read in the context of the preceding exemption Notification No. 115/86-C.E. leaves no doubt that the Government's intention had been all along to give exemption or credit only in respect of the quantity of oil subject to hydrogenation. We, therefore, hold that either going by the position as reflected in the notification prevalent prior to introduction of money credit or going by straight reading of condition (i) of Notification No. 45/89, the quantity eligible for money credit can only be the quantity subject to hydrogenation and not the quantity of raw oil subject to processing before hydrogenation.

6.6 Before parting with this order, we are to deal with the objection from Shri Ravindran pointing out that the affidavit filed by the Under Secretary to plead that the Department is estopped from contesting this appeal.

6.7 The affidavit from the Under Secretary cited by the Id counsel, no doubt, indicates that the Assistant Collector's action dropping the show cause notice (on the issue now before us), is correct in the context of Notification No. 45/89. All the same, these orders have not been accepted by the Collector and they have been challenged by way of appeals before the Collector (Appeals), who has allowed the Department's appeals and confirmed the demands. These are now challenged by way of appeals before us. It is also revealed, during the hearing, that the appeals have already been filed, even before the affidavit was filed by the Under Secretary. In the circumstances, it is quite plausible that there might have been a communication gap between the Collector and the Ministry. Be that as it may, we find that the issue before the Supreme Court is the relevant date for taking money credit and not the quantity of oil eligible for money credit. Hence, it cannot be said that a concession has been made before the Supreme Court on the issue now before us, which can be pleaded as an estoppel. There can be no estoppel against law and when the appeals have been filed challenging the orders of the Assistant Collector dropping the demand, we are bound to consider the issue on merits.

6.8 On such a consideration, for the reasons discussed, we find that the appeals merit rejection. Accordingly, we dismiss all the six appeals.

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