

COLLECTOR OF CENTRAL EXCISE ETC. ETC.

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v.

M/S. SOLARIS CHEMTECH LIMITED & ORS.

JULY 24, 2007

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

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MODVAT Rules—Rule 57 A—MODVAT credit—Entitlement to—On Low Sulphur Heavy Stock (LSHS)—Used for generating electricity, captively used for manufacture of the final product—Held: Assessee was entitled to MODVAT credit on LSHS—It is an ‘input’ falling under clause (c) of Explanation to the Rule, as it is used in relation to the manufacture of the final product—However, if the electricity generated is used for the purpose other than manufacture of final product, to that extent MODVAT credit will not be admissible—Notification No. 4/94.

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The question for consideration in the present appeals was whether the assessee was entitled to MODVAT credit under Rule 57A on Low Sulphur Heavy Stock (LSHS) and furnace oil used for generating electricity captively consumed for the manufacture of the final products such as caustic soda, cement etc.

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Dismissing the appeals of the Revenue, the Court

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HELD: 1. In the present case, the LSHS is used to generate electricity which is captively consumed. Without continuous supply of such electricity generated in the plant it is not possible to manufacture cement, caustic soda etc. Without such supply the process of electrolysis was not possible. Therefore, keeping in mind the expression “used in relation to the manufacture” in Rule 57A of MODVAT Rules, the assessee was entitled to MODVAT credit on LSHS. The present case falls in clause (c), therefore, the assessee was entitled to MODVAT credit under Explanatory clause (c) even before 16.3.95. Inputs used for generation of electricity will qualify for MODVAT credit only if they are used in or in relation to the manufacture of the final product, such as cement, caustic soda etc. [Para 8] [507-F, G]

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2. Rule 57A, has an Explanation clause which stated as to what inputs are included in MODVAT credit. Explanation clause (c) refers to “input used

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A as fuel". This clause was introduced by Notification No.4/94. At that time
the Government made it clear that inputs used as fuel were entitled to
MODVAT credit. That fuel either utilized directly or for generating electricity,
as an intermediary product, is integrally connected with several operations
which results in the emergence of the final product, namely, cement/caustic
B caustic soda. Without utilization of LSHS, it is not possible to manufacture cement/
caustic soda. The electrolysis process is dependent on continuous flow of
electricity. If there is disruption in the supply of electricity from the
Electricity Board then the entire plant of the assessee would fail and the
manufacture of cement/caustic soda would not take place. Therefore, LSHS
would come within the ambit of the expression "used in or in relation to the
C manufacture of the final product". [Para 8] [506-A, B, C]

Collector of Central Excise v. Rajasthan State Chemical Works, (1991)
55 ELT 444 SC, relied on.

3. The expression "in the manufacture of goods" indicates the use of
D the input in the manufacture of the final product. The said expression
normally covers the entire process of converting raw-materials into finished
goods such as caustic soda, cement etc. However, the matter does not end
with the said expression. The expression also covers inputs "used in relation
to the manufacture of final products". The said expression, namely, "in
E relation to" also finds place in the extended definition of the word
"manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944. It
is for this reason that this Court has repeatedly held that the expression "in
relation to" must be given a wide connotation. The Explanation to Rule 57A
shows an inclusive definition of the word "inputs". Therefore, that is a
dichotomy between inputs used in the manufacture of the final product and
F inputs used in relation to the manufacture of final products. [Para 8]

4. If manufacture of final product cannot take place without the process
in question then that process is an integral part of the activity of manufacture
of the final product. Therefore, the words "in relation to the manufacture"
have been used to widen and expand the scope, meaning and content of the
G expression "inputs" so as to attract goods which do not enter into finished
goods. [Para 8] [507-C]

*M/s. J.K. Cotton Spinning and Weaving Mills, Co. Ltd. v. The Sales Tax
Officer, Kanpur and Anr., AIR (1965) SC 1310, relied on.*

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5. In some of the cases electricity generated is consumed by the residential colony of the factory's workers' families, schools etc., to that extent MODVAT credit will not be admissible. [Para 9] [508-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6465-6475 of 2001.

From the Judgment and Order No. A/2-12/2000-NB (DB) dated 31.12.1999 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. E/1234-1236-NB, E/676/96/-NB, E/1748/96-NB, E/629/96-NB, E/1051/96-NB, E/1241/96-NB, E/1836-1837/95-NB and E/1611/96-NB.

WITH

C.A. Nos. 6477/2001, 6075-6080/2001, 3236-3241/2007, 649/2002, 6011/2004 and 2465-2469/2001.

V. Sekhar, Sr. Adv., Rahul Kaushik, B. Krishna Prasad and P. Parmeswaran for the Appellant.

Indu Malhotra, Shashi M. Kapila, Sunita Ojha, Shilpi Kaushik, P.C. Jain, Rohina Nath, Javaid Muzaffar, Umesh Kumar Khaitan, R. Santhanam, Rejendra Singhvi, Maitreyi Singhvi, Ashok Kumar Singh, Hemantika Wahi, Preetesh Kapoor, Meenakshi Arora, V. Balachandran, Dr. Manish Singhvi, Ashok K. Mahajan, L. Maithili, K.V. Mohan, K.V. Balakrishnan, Kuldip Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra, A.R. Madhav Rao, M.P. Devanath Manish, T. Dev., P. Venugopal, Surekha Raman, Jhuma Bose (for K.J. John & Co.) Rajesh Kumar and Vibha Datta Makhija for the Respondents.

The Judgment of the Court was delivered by

KAPADIA, J. 1. Leave granted in special leave petitions.

2. In this batch of civil appeals the short question which arises for determination is : whether the assessee is entitled to MODVAT credit under Rule 57A on Low Sulphur Heavy Stock (LSHS) and furnace oil used for generating electricity captively consumed for the manufacture of the final products such as caustic soda, cement etc.

3. For the sake of convenience we may refer to the facts in the case of Civil Appeal No.6465-6475 of 2001 - Commr. Of Central Excise & others v.

A M/s. Solaris Chemtech Ltd. and others (earlier known as 'M/s. Ballarpur Industries Ltd.').

4. Low Sulphur Heavy Stock (LSHS) is used by the assesseees as fuel for generating electricity which in turn is captively consumed for the production of caustic soda and cement.

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5. Rule 57A (MODVAT Rule) reads as under:

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"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 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 duty may be restricted.

Explanation. For the purpose of this rule, "inputs" includes -

(a) Inputs which are manufactured and used within the factory of production in or in relation to manufacture of final products.

(b) Paints and Packing material,

(c) Inputs used as fuel.

(d) inputs used for the generation of electricity, used within the factory of production for manufacture of final products or for any other purpose.

but does not include -

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- (i) machines, machinery, plant, equipment, apparatus, tools 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 manufacture of the final products; A
- (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; B
- (iii) packaging materials the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products under section 4 of the Act; C
- (iv) cylinders for packing gases; C
- (v) plywood for tea (chests; or).
- (vi) bags or sacks made out of fabrics (whether or not coated, covered or laminated with any other material) woven from strips or tapes of plastics." D

6. Explanation clause (c) was added by Notification No.4/94 dated 1.3.94. This clause is the bone of contention.

7. The assessee contends that LSHS fall within the ambit of Explanation clause (c). The Department's contention is that these inputs are utilized for manufacturing electricity which is not excisable and hence cannot be considered as an input used as fuel in terms of Explanation clause (c). It is the case of the Department that LSHS does generate electricity. However, it cannot be said that LSHS has been used in or in relation for manufacture of final product, namely, caustic soda and cement. According to the Department, LSHS has been basically used in the generation of electricity which is not specified as final product and hence no MODVAT credit of duty paid on LSHS is admissible. According to the Department, generation of electricity by heating LSHS is a process which is independent of the process of manufacturing cement and caustic soda. According to the Department, LSHS generates electricity but that process does not result into manufacture of cement and caustic soda and, therefore, MODVAT credit was not admissible for the duty paid on LSHS. E
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8. In our view, there is no merit in this civil appeal filed by the Department. At the outset, we may clarify that electricity is not an excisable item. Further,

A in this batch of civil appeals we are concerned with the electricity which is generated inside the plant by heating of LSHS and which is captively consumed and used to manufacture cement/caustic soda. Rule 57A, quoted above, has an Explanation clause which stated as to what inputs are included in MODVAT credit. Explanation clause (c) refers to "input used as fuel". This

B clause was introduced by Notification No.4/94. At that time the Government made it clear that inputs used as fuel were entitled to MODVAT credit. That fuel either utilized directly or for generating electricity, as an intermediary product, is integrally connected with several operations which results in the emergence of the final product, namely, cement/caustic soda. It is important to note that without utilization of LSHS, it is not possible to manufacture

C cement/caustic soda. The electrolysis process is dependent on continuous flow of electricity. If there is disruption in the supply of electricity from the Electricity Board then the entire plant of the assessees would fail and the manufacture of cement/caustic soda would not take place. Therefore, LSHS would come within the ambit of the expression "used in or in relation to the manufacture of the final product". Further, in the case of *Collector of Central*

D *Excise v. Rajasthan State Chemical Works*, (1991) 55 ELT 444 (SC), it has been held that any operation in the course of manufacture, if integrally connected with the operation which results in the emergence of manufactured goods, would come within the term "manufacture". This is because of the words used in Rule 57A, namely, "goods used in or in relation to the manufacture of the final products". Electricity is one form of heat. It gets

E generated in several ways. LSHS is a fuel used in the generation of electricity. Since, electricity is self-generated and since it comes into existence as an intermediary product, its utilization for production of final product is crucial. Hence, MODVAT credit on LSHS used in production of electricity cannot be denied. Lastly, we may point out that in order to appreciate the arguments

F advanced on behalf of the Department one needs to interpret the expression "in or in relation to the manufacture of final products". The expression "in the manufacture of goods" indicates the use of the input in the manufacture of the final product. The said expression normally covers the entire process of converting raw-materials into finished goods such as caustic soda; cement

G etc. However, the matter does not end with the said expression. The expression also covers inputs "used in relation to the manufacture of final products". It is interesting to note that the said expression, namely, "in relation to" also finds place in the extended definition of the word "manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944 (for short, 'the said Act'). It is for this reason that this Court has repeatedly held

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that the expression "in relation to" must be given a wide connotation. The Explanation to Rule 57A shows an inclusive definition of the word "inputs". Therefore, that is a dichotomy between inputs used in the manufacture of the final product and inputs used in relation to the manufacture of final products. The Department gave a narrow meaning to the word "used" in Rule 57A. The Department would have been right in saying that the input must be raw-material consumed in the manufacture of final product, however, in the present case, as stated above, the expression "used" in Rule 57A uses the words "in relation to the manufacture of final products". The words "in relation to" which find place in Section 2(f) of the said Act has been interpreted by this Court to cover processes generating intermediate products and it is in this context that it has been repeatedly held by this Court that if manufacture of final product cannot take place without the process in question then that process is an integral part of the activity of manufacture of the final product. Therefore, the words "in relation to the manufacture" have been used to widen and expand the scope, meaning and content of the expression "inputs" so as to attract goods which do not enter into finished goods. In the case of *M/s. J.K. Cotton Spinning and Weaving Mills, Co. Ltd. v. The Sales Tax Officer, Kanpur and Anr.*, AIR (1965) SC 1310, this Court has held that Rule 57A refers to inputs which are not only goods used in the manufacture of final products but also goods used in relation to the manufacture of final products. Where raw-material is used in the manufacture of final product it is an input used in the manufacture of final product. However, the doubt may arise only in regard to use of some articles not in the mainstream of manufacturing process but something which is used for rendering final product marketable or something used otherwise in assisting the process of manufacture. This doubt is set at rest by use of the words "used in relation to manufacture". In the present case, the LSHS is used to generate electricity which is captively consumed. Without continuous supply of such electricity generated in the plant it is not possible to manufacture cement, caustic soda etc. Without such supply the process of electrolysis was not possible. Therefore, keeping in mind the expression "used in relation to the manufacture" in Rule 57A we are of the view that the assessee were entitled to MODVAT credit on LSHS. In our opinion, the present case falls in clause (c), therefore, the assessee were entitled to MODVAT credit under Explanatory clause (c) even before 16.3.95. Inputs used for generation of electricity will qualify for MODVAT credit only if they are used in or in relation to the manufacture of the final product, such as cement, caustic soda etc. Therefore, it is not correct to state that inputs used as fuel for generation of electricity captively consumed

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A will not be covered as inputs under Rule 57A.

9. Before concluding, we may point out that in some of the cases electricity generated is consumed by the residential colony of the factory's workers' families, schools etc., to that extent MODVAT credit will not be admissible.

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10. Subject to what is stated above, there is no merit in the civil appeals filed by the Department and accordingly they are dismissed with no order as to costs.

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K.K.T.

Appeals dismissed.