

(1990) 10 KAR CK 0053

Karnataka High Court

Case No: Writ Petition No. 18534 of 1989

The Modern Mills Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Oct. 26, 1990

Acts Referred:

- Central Excise Rules, 1944 - Rule 57K, 57P

Citation: (1991) 32 ECC 250 : (1991) 36 ECR 458 : (1991) 55 ELT 148

Hon'ble Judges: S.R. Rajasekhara Murthy, J

Bench: Single Bench

Advocate: Sri G. Chandra Kumar, for the Appellant; Sri Ashok Harnahally, Central Govt.
Stg. Counsel, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner is a manufacturer of vegetable products. By virtue of Notification 27/87 dated 1-3-1987 the petitioner was entitled to set off on fixed vegetable oils used in the manufacture of vegetable products. The fixed vegetable oils on which set off is allowed are mentioned in the table annexed to the notification. On the basis of the said notification the petitioner earns a cash credit equivalent to Rs. 1,000/- on each tonne of vegetable product cleared from the factory. Any amount payable in excess of Rs. 1,000/- is debited to his PLA account and thus he earns a credit of Rs. 1,000/- per tonne and this credit earned by the petitioner on each tonne of vegetable product cleared, is credited to Account RG 23B Part II.

2. Chapter AAA was inserted in the Central Excise Rules with effect from 1-3-1987 and special Rules were framed to implement the scheme and the notifications issued under Rule 57K. Rules 57K to 57P prescribe the procedure to be observed by the manufacturer to earn the credit and also for utilisation of the said credit and for disallowance of the credit and other related matters. Under the scheme provided in Rules 57K to 57P the rates of cash credit to be given for use of notified inputs in the

manufacture of final products, is to be specified in the notification to be issued by the Central Govt., under Rule 57K.

3. Under sub-rule (2) of Rule 57K credits so allowed is permitted to be utilised for payment of duty on the final products subject to the provisions of the Section and the conditions stipulated in the Notification.

4. Rule 57-O prescribes the procedure to be observed by the manufacturer like filing of the declaration of the final products, taking credit on the inputs, maintenance of account relating to the credit in Form RG 23B, Part I and II and filing of monthly returns indicating particulars of the inputs used during the month and the amount of credit taken etc.

5. Rule 57P provides for disallowance of credit in cases of wrong credit or excess credit etc. Credits allowed under the Rules is permitted to be utilised for payment of duty on the final products subject to the conditions stipulated in the notification. The important condition stipulated in the notification is that the credit taken during any calendar month shall be utilised for payment of duty on the final products only after the commencement of the succeeding month.

6. An illustration of the petitioner's case is given in paragraph-5 of the writ petition which is reproduced :-

"Heading No. 15.04, sub-heading No. 1504.00 in Chapter 15 of the schedule to the Central Excise Tariff Act, 1985 provides as follows :-

Heading No.	Sub-heading No.	Description of goods	Rate of duty
15.04	1504.00	Vegetable fats and oils and their fractions, partly or wholly hydrogenated, inter- esterified, re-esterified or elaidinised, whether or not refined but not further prepared.	Rs. 1,900/-per tonne."

7. Applying the Notification the petitioner earned a credit of Rs. 1,000/- on the fully duty Rs. 1,900/- payable on each tonne of vegetable product produced. Under the scheme of the notification, as per the table annexed to the notification, the rates and credit per tonne to which the manufacturer is entitled is mentioned against each type of fixed vegetable product notified in the table. Though the manufacturer earned the credit on each tonne of fixed vegetable product utilised as input for producing the vegetable product he was allowed a set off of only Rs. 1,000/- per

tonne under the notification. Whatever is paid in excess of this Rs. 1,000/- viz., Rs. 900/- was debited to RG 23 account at the time of each clearance.

8. In respect of the clearances made upto 25-8-1989 as per the calculations given in Annexure-C, the petitioner earned a total credit of Rs. 47,58,093.90. The correctness of this amounts is, however, subject to verification by the department. Notification 27/87 dated 1-3-1987 was rescinded by Notification 39/89 dated 25-8-1989. The petitioner claimed adjustment/set off of the accumulated credit which he had earned upto 25-8-1989 by setting it off against the duty payable by it under the Central Excise Act on the final product in the succeeding months. An endorsement was issued to the petitioner on 5-9-1987 as per Annexure-G which reads thus :

"Notification No. 27/87-C.E., dated 1/3/1987 and 192/87-C.E., dated 12-8-1987 were rescinded by Notification No. 39/89 [CEX (NT)], dated 25-8-1989. As a result of which credit of money for use of minor oils in the manufacture of vanaspati and soap is not available with effect from 25-8-1989.

You are required to pay the Central Excise Duty at the rate of Rs. 1,900/- per tonne on the clearance of V.P. with effect from 25-8-1989 without debiting the duty to RG 23B Part-II. The duty amount paid by RG 23B Part-II on clearance of VP from 25-8-1989, if any, be made good by paying through PLA."

9. The petitioner being aggrieved by this endorsement has challenged the same in this writ petition. The prayer in the writ petition is to direct the respondents to permit him to utilise the accumulated credit of Rs. 47,58,093.90 earned upto 25-8-1989, towards the excise duty payable on its final products during the period beyond 25-8-1989.

10. A statement of objection is filed on behalf of the respondents opposing this claim made by the petitioner. The case of the department is that by virtue of the rescinding of the Notification 27/87 with effect from 25-8-1989, the petitioner is not entitled to utilise the accumulated credit beyond that date. The argument is that the notification under which the petitioner earned the credit was no longer in existence and from the date it was rescinded he loses the right to claim set off or adjust it against other liabilities under the Act and the accumulated credit lapses.

11. In support of the contentions urged by the petitioner he has relied upon judgments of Gujarat and Punjab & Haryana High Courts. Photo copies of the two judgments in M/s. Dipak Vegetable Oil Industries Ltd. v. Union of India (Spl. Civil Application Nos. 6495/89 and connected cases - Gujarat High Court) and in case Amrit Banaspati Co. Ltd. v. Union of India (Civil Writ Petition No. 11654/89 - Punjab and Haryana High Court) are produced by the petitioner. Both the High Courts have held that the manufacture of vegetable product who earned the credit under the Notification 27/87 can utilise the credit even after it was rescinded. Similar contention urged on behalf of the department in those cases was rejected by both the High Courts. It was held, on interpretation of the rules framed in implementing

the Notification 27/87, that the manufacture would be entitled to utilise the money credited/earned, for payment of duty on the final products notwithstanding the withdrawal of the notification. Both the High Courts have taken the view, having regard to the intendment of the notification, which conferred a right on a manufacturer for claiming a set off of the credit earned under the scheme of the notification, the right to utilise the same is continued even though the said notification was rescinded with effect from 25-8-1989.

12. It would be relevant to mention that by subsequent notification 45/89 dated 11-10-1989, the Notification 27/87 was again restored and that is a verbatim replica of the earlier Notification 27/87. Therefore, the disallowance of utilisation of the accumulated credit would affect the clearance during the period 25-8-1989 and 11-10-1989.

13. For the reasons which weighed with their Lordships of the Gujarat and Punjab and Haryana High Courts with which I agree, the petitioner in this case also has to succeed. The scheme was introduced for the purpose of granting incentives for production of edible oils from non-conventional oils like rice bran oil, mahua oil, watermelon seeds etc. and a rebate was offered as an incentive on the use of such oils as inputs in the manufacture of vegetable products. The accumulated credit does not cease or vanish the moment the notification is rescinded. All rights that had accrued to the manufacturers are saved. The principle of promissory estoppel does apply to the facts of this case.

14. It is futile for the department to take an unreasonable stand in spite of the clear enunciation of the law by two High Courts and especially in view of the notification having been restored within two months. It is also stated by Shri Chander Kumar, the SLP filed by the department against the decision of the Gujarat High Court was dismissed on 9-10-1990. The view taken by the Gujarat High Court has thus received approval of the Supreme Court.

15. Therefore, the argument advanced on behalf of the Central Govt. about the applicability of principles of promissory estoppel to the Notification issued under the Central Excise Rules is not necessary to be considered. However, it would not be out of place to refer to the decision of this Court which arose under similar circumstances in Dharmendra Trading Co. & Others v. Asstt. Commissioner of Commercial Taxes (Asstt.) Dharwar and Others [ILR 1979 Kar1909]. The question that arose in the batch of cases which were allowed by this Court was, whether the Govt. could take away the right of the small scale industries which were governed by the incentive schemes issued by the Govt. from time to time, and altered to their disadvantage by a subsequent notification. This Court, applying the principles of promissory estoppel to the notification issued under the KST Act, held that the Govt. cannot take away the concessions earned by the small scale industrialists by way of refund of sales tax under the notifications of the Govt. This order of the learned Single Judge was confirmed by the Division Bench and the appeals filed by the State

were dismissed by the judgment of the Supreme Court reported in Asstt. Commissioner of Commercial Taxes (Asstt.) Dharwar and Others v. Dharmendra Trading Co. [70 STC 59 SC]. The denial of utilisation of the credit earned by the petitioner and other manufactures of vegetable products under the Notification 27/87 is similar to the denial of the incentives to small scale industries which was the subject matter in Dharmendra Trading Company's case. The decision of the Supreme Court upholding the view of the High Court in those cases, shall apply to this case also.

16. For the reasons stated above, the writ petition is allowed and I direct issue of a writ of mandamus to allow the petitioner to utilise the accumulated credit claimed in Annexure-C subject to verification as to the correctness of the amount.

17. Shri Chander Kumar wants this Court to make a mention about the Notification 45/89 which was issued on 11-10-1989 and to say that the benefits available to the petitioners under the said notification would be in addition to the benefits earned by him under earlier Notification 27/87. Since the Notification 27/87 is restored by the subsequent notification 45/89 whatever benefit is restored to manufacturers of vegetable products under the notification would be in addition to the accumulated credit that is already earned upto the date it was rescinded.