

PETITIONER:
M/S HYDERABAD ASBESTOS CEMENT PRODUCTS & ANR.

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 07/12/1999

BENCH:
S.P.Bharucha, R.C.Lahoti, N.S Hegde

JUDGMENT:

R.C. Lahoti, J.

C.A. No...../99 (Arising out of S.L.P.(C)
No.12722/87) -----

Leave granted.

The appellants manufacture and sell asbestos cement products such as sheets (corrugated or plain), pressure pipes, couplings etc. These products require cement and asbestos fibre as raw materials. Both the items consumed as raw materials as also the finished products manufactured by the appellants are all excisable commodities under different tariff items. Asbestos fibre is covered by Tariff item 22-F. Cement is covered by Tariff item 23. The finished products manufactured by the appellants are excisable under Tariff item 23-C. In respect of cement and asbestos fibre obtained from outside excise duties were duly paid under the relevant tariff items 23 and 22F. In respect of imported asbestos additional duty, i.e., countervailing duty equivalent to excise duty was paid. The finished products of the appellants were not exempt from payment of excise duty leviable thereon nor were they chargeable to nil rate of duty. The appellants claimed the benefit of proforma credit procedure by seeking credit for the payment of duty paid on the inputs as against the duty payable on the finished products and sought for permission of the Assistant Collector of Central Excise, Hyderabad under Rule 56A of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules') framed under the provisions of the Central Excise and Salt Act, 1944. The Assistant Collector refused to grant such permission. An appeal preferred before the Collector of Central Excise, Hyderabad failed. The appellants challenged both the orders before the High Court of Andhra Pradesh by filing writ petition under Article 226 of the Constitution which also has been dismissed. The decision of the High Court under appeal is reported as 1987 (32) ELT 28 A.P. The High Court has for itself analysed and examined the provisions of Rule 56A. The High Court has also cited in its support a division bench decision of the High Court of Gujarat in Digvijay Cement Company Limited Vs. Union of India - 1986 (25) E.L.T. 879. The aggrieved appellants have filed this special leave petition.

The sole question arising for decision is whether the benefit of proforma credit procedure specified in Rule 56A (1) is available to the appellants though the raw materials consumed by the appellants in their manufacture of the final products are excisable under tariff items different from the one under which their final products are excisable.

Rule 56A was introduced on 8.12.1962. It has undergone several changes from time to time which have been extensively noticed by the High Court of Gujarat in the case of Digvijay Cement Company Ltd. (supra). The rule as it stood at the relevant time reads as under:-

"56.A. Special procedure for movement of duty-paid materials or component parts for use in the manufacture of finished excisable goods---

(1) Notwithstanding anything contained in these rules the Central Government may, by notification in the Official Gazette, specify the excisable goods in respect of which the procedure laid down in sub-rule (2) shall apply.

(2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may from time to time be prescribed by the Central Government, permit a manufacturer of any excisable goods specified under sub-rule (1) to receive, material or component parts or finished product (like asbestos cement), on which the duty of excise or the additional duty under Section 2A of the Indian Tariff Act, 1934 (32 of 1934), (hereinafter referred to as 'the countervailing duty), has been paid, in his factory for the manufacture of these goods or for the more convenient distribution of finished product and allow a credit of the duty already paid on such material or component parts or finished product, as the case may be;

Provided that no credit of duty shall be allowed in respect of any material or component parts used in the manufacture of finished excisable goods-

(i) if such finished excisable goods produced by the manufacturer are exempted from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty, and

(ii) unless---

(a) duty has been paid for such material or component parts under the same item or sub-item as the finished excisable goods; or

(b) remission or adjustment of duty paid for such material or component parts has been specifically sanctioned by the Central Government;

Provided further that if the duty paid on such material or component parts (of which credit has been allowed under this sub-rule) be varied subsequently due to any reason, resulting in payment of refund to, or recovery of more duty from, the manufacturer or importer, as the case may be, of such material or component parts, the credit allowed shall be varied accordingly by adjustment in the credit account maintained under sub-rule (3) or in the

account-current maintained under sub-rule (3) or Rule 9 or Rule 178(1) or, if such adjustment be not possible for any reason, by cash recovery from or, as the case may be, refund to the manufacturer availing of the procedure contained in this rule."

Subsequently with effect from 1.8.1983 the rule has undergone further changes which are not relevant for our purpose.

A bare reading of the rule shows that the Central Government has been empowered by sub-rule (1) to specify by notification in the official gazette such excisable goods in respect of which the benefit of proforma credit as provided by sub-rule (2) can be taken. The excisable goods referred to in sub-rule (1) are finished products. In order to claim the benefit of the rule the conditions to be satisfied are: (i) the finished product should be specified by the Central Government by notification in the official gazette as the excisable goods in respect of which the procedure laid down in sub-rule (2) shall apply; (ii) an application must be made by the assessee to the Collector in this behalf; (iii) the material, component parts or finished products, the duty or additional duty paid whereon may be availed for the purpose of taking proforma credit, must not be used in the manufacture of such finished excisable goods as are exempt from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty; and (iv) (a) the duty as has been paid for such material or component parts must have been so paid under the same item or sub item as the finished excisable goods, or (b) if the raw material or component parts are not excisable under the same item or sub-item as the finished excisable goods, or in other words if such material or component parts are excisable under an item or sub-item other than the one under which the finished goods are excisable then the Central Government should have specifically sanctioned remission or adjustment of duty paid for such material or component parts.

The controversy centres around the interpretation and scope of proviso (ii) (b) of Rule 56A. The appellants' plea is that once the Central Government has notified the excisable goods under sub-rule (1) the benefit of proforma credit shall be available to the appellants without regard to the fact whether or not the raw material or the component parts are excisable under the same item or sub-item of Tariff. The effect of benefit extended by the main part of the Rule cannot be nullified or taken away by a proviso, submitted the learned counsel for the appellants. The plea so raised has not appealed to the High Court. We also find no merit in the plea though it has been forcefully reiterated before us.

The language of the rule is plain and simple. It does not admit of any doubt in interpretation. Proviso (i) and (ii) are separated by the use of conjunction 'and'. They have to be read conjointly. The requirement of both the provisos has to be satisfied to avail the benefit. Clauses (a) and (b) of proviso (ii) are separated by the use of an 'or' and there the availability of one of the two alternatives would suffice. Inasmuch as cement and asbestos fibre used by the appellants in the manufacture of their finished excisable goods are liable to duty under different tariff items, the benefit of proforma credit extended by Rule 56A cannot be availed of by the appellants and has been

rightly denied by the authorities of the Department.

We are in no doubt that to avail the benefit of proforma credit under Rule 56A the inputs which go to manufacture the specified finished excisable goods must be exigible to payment of duty under the same tariff item or sub item; or else, if such inputs are exigible to tax under different tariff items or sub-items then they must be covered by the specific sanction of the Central Government granting remission or adjustment of duty on those inputs as provided by proviso (ii) (b). Admittedly there is no such specific sanction. The raw materials consumed being excisable under Tariff items different from the one under which the finished products are excisable the appellants have been rightly denied benefit of proforma credit.

We find ourselves in agreement with the view taken by the High Court. The appeal is devoid of any merit. It is dismissed though without any order as to the costs. C.A. No.9159/96, C.A. Nos.2779-80/97 and SLP(C) No.13520/87.

For the same reasons these appeals and special leave petition are also dismissed though without any order as to the costs.