IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 15 / 04 / 2026

JUDGMENT PRONOUNCED ON : 25 / 06 / 2026

CORAM:
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

R.C. 10 OF 2010

The Commissioner of Central Excise
Salem ... Petitioner

Vs.

1.Customs, Excise & Service Tax
Appellate Tribunal
South Zonal Bench,
26, 1st Floor, Haddows Road,
Shastri Bhavan Annex,
Chennai .

2.M/s.Tata Refectories Ltd,
Karuppur, Salem. ... Respondents

REFERENCE: Reference case filed under Section 35 H (1) of the Central Excise Act, 1944, seeking answer on the following reference: *"Whether the Hon'ble CEGAT, Chennai is legal and correct in upholding the impugned order that the credit availed in respect of the furnace oil used in the factory for the manufacture of DBM, an exempted goods, need not be reversed, due to the fact that no sale is involved in their transactions and as per erstwhile Rule 57CC(1) & 57CC(8) reversal of credit is not required?"*

For Petitioner : Mr.M.Santhanaraman
S.S.C. for GST & Customs

For Respondents : Mr.Raghavan Ramabadhran

* * *

ORDER

R.SAKTHIVEL, J.

This reference case arises out of the Reference Case Petition No.5 of 2005 filed by 'the Commissioner of Central Excise, Salem' ['Department' for convenience] under Section 35 H (1) of the Central Excise Act, 1944. This Court on April 15, 2010 passed the following Order:

> *"This is a reference application on behalf of the Revenue under Section 35 H (1) of the Central Excise Act, 1944.*
>
> *2. The following question of law has been raised in this reference case petition:-*
>
>> *"Whether the Hon'ble CEGAT, Chennai is legal and correct in upholding the impugned order that the credit availed in respect of the furnace oil used in the factory for the manufacture of DBM, an exempted goods, need not be reversed, due to the fact that no sale is involved in their transactions and as per erstwhile Rule 57CC(1) & 57CC(8) reversal of credit is not required?"*
>
> *3. Learned Standing Counsel for the petitioner submits that the Tribunal had followed the decision of the Bombay High Court in M/s.Ballarpur Industries Ltd. vs. Commissioner of Central*

Excise, Nagpur (2001 (138) ELT 94 (T-Mumbai), but, that judgment has been reversed by the Supreme Court in 2007 (8) SCC 89, allowing the appeal filed by the Department. An identical question has also been referred by this Court in R.C.P.No.27 of 2003 on 21.03.2005.

4.In view of the above, we direct the Tribunal to state a case and refer the same to us for our opinion. Accordingly, the reference case petition is closed."

2. Pursuant to the afore-extracted Order of this Court, 'the Customs, Excise and Service Tax Appellate Tribunal, Chennai' ['C.E.S.T.A.T.' for short] submitted Statement of Case.

3. Hereinafter, any reference to Rule 57CC shall be deemed to be a reference to Rule 57CC of the erstwhile Central Excise Rules, 1944.

4. Brief facts set out in the Statement of Case reads thus:

4.1. 'M/s. Tata Refractories Ltd, Karuppur, Salem' ['T.R.L.' for short], having Central Excise Registration Certificate No.6/92 are engaged in the manufacture of refractory products both exempted (Dead Burnt Magnesite, hereinafter referred to as D.B.M.) and dutiable (Refractory Motors, Ramming mass, hereinafter referred to as R.M. collectively) falling under Chapter heading 25 and 38 respectively of the Central Excise Tariff Act, 1985. The exempted goods - D.B.M. besides being used captively in the manufacture of dutiable goods -R.M., are also cleared on stock-transfer basis to their main unit without payment of duty. They took MODVAT Credit on inputs including inputs used as fuel in terms of Rule 57AB of the then Central Excise Rules, 1944 and used such fuel in the manufacture of both dutiable and exempted goods. However, they had failed to reverse the MODVAT credit taken on furnace oil used in the manufacture of exempted goods till 31/03/2000. From 01/04/2000, they had availed MODVAT Credit on the entire quantity of furnace oil consumed by them, irrespective of whether it was used in relation to the dutiable final product or not. They did not reverse the proportionate MODVAT credit on such quantity of furnace oil used in the manufacture and clearance (as stock transfer) of exempted goods -DBM.

4.2. As, in terms of Rule 57AD (1) of the then Central Excise Rules, 1944, MODVAT credit was not available on such of quantity of furnace oil used in the manufacture and clearance of exempted goods, a show cause notice dated May 3, 2001 was issued by the Deputy Commissioner of Central Excise, Salem Division, Salem proposing recovery of MODVAT Credit of Rs.42,66,972/-attributable to that quantity of furnace oil used in the manufacture and clearance of exempted goods - D.B.M. during the period from April 2000 to February, 2001. After due process of law, the Commissioner of Central Excise, Coimbatore, *vide* Order-in-Original

No.28/2002 (Comm) dated June 17, 2002 ordered recovery of the entire amount besides imposing a penalty equal to the amount of credit wrongly availed.

4.3. Being aggrieved, T.R.L. filed an appeal before the C.E.G.A.T., which *vide* Final Order' No. 1339/2002 dated December 5, 2002 allowed the appeal and set aside the Order-in-Original by applying the ratio of decision in the case of ***Ballarpur Industries -vs- C.C.E.,*** reported in ***2001 (138) ELT 94 (Tri-Mum)***.

5. Heard on either side. Perused the materials available on record.

6. As stated *supra*, the following questions of law has been framed in this reference:

> *"Whether the Hon'ble CEGAT, Chennai is legal and correct in upholding the impugned order that the credit availed in respect of the furnace oil used in the factory for the manufacture of DBM, an exempted goods, need not be reversed, due to the fact that no sale is involved in their transactions and as per erstwhile Rule 57CC(1) & 57CC(8) reversal of credit is not required?"*

7. At the outset, this Court would like to extract the relevant portions of Rule 57CC for ease of reference:

"57-CC. Adjustment of credit on inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer.—

(1) Where a manufacturer is engaged in the manufacture of any final product which is chargeable to duty as well as in any other final product which is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty and the manufacturer takes credit of the specified duty on any inputs (other than inputs used as fuel) which is used or ordinarily used in or in relation to the manufacture of both the aforesaid categories of final products, whether directly or indirectly and whether contained in the said final products or not, the manufacturer shall, unless the provisions of sub-rule (9) are complied with, pay an amount equal to eight per cent of the price (excluding sales tax and other taxes, if any, payable on such goods) of the second category of final products charged by the manufacturer for the sale of such goods at the time of their clearance from the factory.

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(7) The provisions of sub-rule (1) shall apply even if the inputs on which credit has been taken are not actually used or contained in any particular clearance of final products.

(8) If any goods are not sold by the manufacturer at the factory gate but are sold from a depot or from the premises of a consignment agent or from any other premises, the price (excluding sales tax and other taxes, if any, payable) at which such goods are ordinarily sold by the manufacturer from such depot or from the premises of a consignment agent or from any other premises shall be deemed to be the price for the purpose of sub-rule (1).

(9) In respect of inputs (other than inputs used as fuel) which are used in or in relation to the manufacture of any goods, which are exempt from the whole of the duty of excise leviable thereon or chargeable to nil rate of duty, the manufacturer shall maintain separate inventory and accounts of the receipt and use of inputs for the aforesaid purpose and shall not take credit of the specified duty paid on such inputs."

8. First, when D.B.M. excisable at nil-rate is cleared as such from a factory of a manufacturer with no sale involved, it has to be seen whether it is cleared for consumption within the same entity. If the D.B.M. so cleared is consumed in the manufacture of a final product in another factory of the same manufacturer, it would be classified as an intermediary product. When the final products manufactured from such D.B.M. are all completely excisable, then there is no bar to claim MODVAT input credit for the fuel - furnace oil, provided that the fuel - furnace oil is either (i) used solely in the production of such D.B.M. or (ii) used in the production of such D.B.M., along with any other dutiable final products with or without any intermediate products within the same entity. In such a scenario, all the final products being dutiable in nature and so long as duty is paid on the final product, Rule 57CC would not come into picture at all, as Rule 57CC is concerned only with input utilised for the manufacture of either (i) exempted / nil-rated final product, or (ii) dutiable final product along with exempted / nil-rated final product.

9. On the other hand, if D.B.M. is cleared as such to any other factory or to a third party, that is to say, when it is not consumed within the same entity, it classifies as a final product. The final product - D.B.M. being excisable at nil-rate of excise duty, attracts the provision of Rule 57CC. On a bare reading of Rule 57CC, the usage of the words "other than inputs used as fuel" therein, would show that the mechanism of adjustment or maintenance of separate accounts provided thereunder applies only to non-fuel inputs and inputs used as fuel are exempted therefrom. In other words, when the MODVAT input credit is claimed is in respect of a fuel used in production of (i) an exempted / nil-rated final product or (ii) exempted / nil-rated final product along with dutiable final product, the said mechanism provided under Rule 57CC would not be applicable. There is no question of adjustment or maintenance of separate accounts when MODVAT input credit is claimed in respect of a fuel input. Consequently, no MODVAT input credit can be availed or any such credit availed will have to be reversed.

10. At this point, this Court deems fit to refer to the Judgment of Hon'ble Supreme Court in ***Escorts Limited -vs- C.C.E.***, reported in ***2004 (171) E.L.T. 145 (S.C.)***. Facts of the case are captured in Paragraph Nos.2 and 3 of the Judgment passed therein, which read thus:

> *"2. Briefly stated, the facts are as follows:*
>
> *The appellants are manufacturers of tractors. They claimed MODVAT credit in respect of duties paid on inputs used in the manufacture of parts. Those parts were then cleared to another factory of the appellants, without payment of duty, by virtue of Notification No. 217/86-CE dated 2-4-1986. The parts were then used to manufacture tractors on which duty was paid.*
>
> *3. The respondent issued a show-cause notice on the ground that MODVAT credit was not admissible as the final goods i.e. the parts were cleared without payment of duty. The appellants claimed that the final products were not the parts but the tractors. The appellants claimed that duty was being paid on the tractor and, therefore, MODVAT credit was available under Notification No. 217/86-CE dated 2-4-1986."*

10.1. In the above factual matrix, the Hon'ble Supreme Court rendered the following findings:

> *"6. It is the contention of the respondent, which has been accepted by CEGAT, that Rule 57-C would become applicable as the parts are cleared from one factory to another without payment of duty. In our view, this reasoning cannot be*

accepted. The underlined portion of the notification, set out hereinabove, shows that the inputs may be used within the factory of production or in any other factory of the same manufacturer. Thus merely because parts are cleared from one factory of the appellants to another factory does not make the parts the final product. It is not denied that the parts, which are manufactured from the duty-paid inputs, are used in the manufacture of tractors and that the duty is being paid on the tractors.

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8. It is to be seen that the whole purpose of the notification and the Rules is to streamline the process of payment of duty and to prevent the cascading effect if duty is levied both on the inputs and the finished goods. <u>Rule 57-D(2), which has been extracted hereinabove, shows that in the manufacture of a final product an intermediate product may also come into existence. Thus in cases where an intermediate product comes into existence, even though no duty has been paid on the intermediate product as it is exempted from whole of the duty or is chargeable to nil rate of duty, credit would still be allowed so long as duty is paid on the final product.</u>

9. <u>In cases of manufacturers like the appellants, the final product is the tractor. The intermediate product would be parts which are manufactured for being used in the tractor. In such a case the parts would not be the final product. Thus Rule 57-C would have no application.</u> The mere fact that the parts are cleared from one factory of the appellants to another factory of the appellants would not disentitle the appellants from claiming benefit of Notification No. 217/86-CE dated 2-4-1986. As stated above, the notification itself clarifies that the inputs can be *used within the factory of production or in any other factory of the same manufacturer.*

10. Mr Lakshmikumaran relied upon the decision of this Court in the case of CCE -vs- Hindustan Sanitaryware & Industries [(2002) 7 SCC 515 : (2002) 145 ELT 3] wherein, in respect of this very notification, this Court has held that so long as duty is paid on the final product, the mere fact that duty was not paid on the intermediate product would not disentitle the manufacturer from the benefit of Notification No. 217/86-CE dated 2-4-1986. In that case, the input was plaster of Paris, the intermediate product was moulds made out of the plaster of Paris, the final product was sanitaryware. In our view, the facts of that case are identical to the facts of the present case. The ratio laid down therein fully applies to this case."

[*Emphasis supplied by this Court*]

10.2. *Escorts Limited Case* clarifies that in cases where an intermediate product chargeable at nil-rate of excise duty comes into existence during the process of manufacturing, credit would still be allowed so long as duty is paid on the final product. It further clarifies that merely because D.B.M. which is an intermediary product in the manufacture of certain final products, is cleared from one factory of a manufacturer to their another factory for consumption within the same entity, it does not make it the final product for the purpose of availing input credit.

11. Upon paying due consideration to the Judgment of Hon'ble Supreme Court in ***CCE v. Ballarpur Industries Ltd***., reported in ***(2007) 8 SCC 89*****,** this Court is of the view that the same is not applicable to the reference as it deals with non-fuel inputs. As the instant reference concerns only fuel input, and as fuel input is exempted from the mechanism under Rule 57CC, *Ballarpur Industries Case* does not apply to the instant reference. Moreover, in the facts of the given case, all the final products are dutiable in nature as explained *infra* and therefore, *Ballarpur Industries Case* would not apply.

12. In the facts of the given case, D.B.M. was manufactured by T.R.L. in their Salem factory by utilising the fuel - furnace oil. Some of the D.B.M. was consumed in the Salem factory itself for manufacture of dutiable final products and the remaining was stock-transferred to their another unit at Belpahar again for manufacture of dutiable final products. As long as all the D.B.M. (intermediate product) manufactured from the total amount of the fuel - furnace oil in respect of which MODVAT input credit is claimed, is utilised for production of dutiable final goods, irrespective of within the same unit or at another unit of T.R.L., there is no bar to avail MODVAT input credit and there is no reason to reverse the credit availed.

13. In view of the foregoing narrative, the question of law is answered thus : *C.E.G.A.T. is legal and correct in upholding the impugned order that the credit availed in respect of the fuel - furnace oil used in the factory for the manufacture of D.B.M., an exempted good, need not be reversed, due to the fact that no sale is involved in their transactions and as per erstwhile Rule 57CC(1) & 57CC(8) reversal of credit is not required*. The reference is answered accordingly. The CESTAT shall take up the answer to the reference and proceed accordingly.

[DR. G.JAYACHANDRAN, J.] **[R.SAKTHIVEL, J.]**

25 / 06 / 2026

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
TK

To

1.Customs, Excise & Service Tax
Appellate Tribunal
South Zonal Bench,
26, 1st Floor, Haddows Road,
Shastri Bhavan Annex,
Chennai .

2.Customs, Excise and Gold (Control)
Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe,
1st Floor, No.26, Haddows Road,
Chennai – 600 006.

DR.G.JAYACHANDRAN, J.
AND
R.SAKTHIVEL, J.

JRS/TK

PRE-DELIVERY ORDER MADE IN
R.C. NO.10 OF 2010

25 / 06 / 2026

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