

M/S. JAYASWAL NECO LTD.

A

v.

COMMNR. OF CENTRAL EXCISE, RAIPUR

(Civil Appeal No. 8554 of 2003)

B

MARCH 13, 2015

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

*Central Excise Rules, 1944: Rule 57Q – Modvat credit on capital goods – Railway track material used for handling raw materials and processed goods – Whether can be treated as capital goods u/s. 57Q – Held: The use of railway tracks is related to the actual production of goods and without the use of the said railway track, commercial production would be inexpedient – Assessee entitled to modvat credit.*

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**Allowing the appeal**

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**HELD: 1. A bare reading of rule 57Q of Central Excise Rules shows that for the purpose of allowing credit on specified duty paid on the capital goods, such capital goods are to be used by the manufacturer in his factory and are to be utilised for the purpose of manufacturing of final product. When machines, machinery, plants, equipment, etc., are used for producing or processing any good or bringing about any change in any substance for the manufacture of final product, it would qualify as 'capital goods' and MODVAT credit thereon would be permissible. Where any particular process is so integrally connected with**

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A the ultimate production of goods that but for that process, manufacture or processing of goods would be impossible or commercially inexpedient, goods required in that process would fall within the expression “in the manufacture of goods”. In the  
 B instant case, the manner in which railway track materials were used by the appellant was explained by the appellant before the Commissioner and veracity thereof was accepted by the Commissioner. The  
 C railway tracks used in transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is poured into pig casting machine for manufacture of pig iron. Secondly the system also helps in taking hot pigs from  
 D pig casting machine to pigs storage yard by the big wagon where hot pig iron are dumped for cooling and making ready for dispatchers. This Railway tracks are also used in handling of raw materials at wagon tippler to stacker reclaimer where stacking and reclaiming of  
 E raw material is taken place and required quantity is conveyed for further processing at stock house. It reflects that the appellant has installed railway tracks within the plant which is a handling system for raw material and processed material. [Paras 5 to 7, 13 to  
 F 14] [318-D,E,G-H; 319-B,C; 322-H; 323-A-E]

*M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Anr. (1965) 1 SCR 900 – relied on.*

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#### Case Law Reference

(1965) 1 SCR 900

relied on.

Para 7

H CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8554 of 2003.

JAYASWAL NECO LTD. v. COMMNR. OF CENTRAL 315  
EXCISE, RAIPUR

From the Judgment and Order dated 30.04.2003 of the A  
Customs, Excise and Gold (Control) Appellate Tribunal, New  
Delhi in Appeal No. E/303/2002-NB.

V. Lakshmikumaran, M. P. Devanath, R. Ramachandran,  
Ms. L. Charanaya, Aditya Bhattacharya, Prashanth S. B  
Shivadass, Vivek Sharma, Advs., for the Appellant.

K. Radhakrishnan, Sr. Adv., Sanjai Kumar Pathak, T. C.  
Sharma, Ms. S. Manchanda, B. Krishna Prasad, Advs., with  
himfor the Respondent. C

The Judgment of the Court was delivered by

**A. K. SIKRI, J.1.** This appeal arises out of the  
judgment/ final order dated 30.04.2003 passed by Customs,  
Excise and Gold (Control) Appellate Tribunal, New Delhi D  
(hereinafter referred to as 'CEGAT') whereby the Tribunal  
has dismissed the appeal of the appellant thereby confirming  
the order of the Commissioner insofar as it denies the  
appellant MODVAT credit on some of the capital goods and  
parts which were detailed in the show cause notice issued E  
under Rule 57Q of the Central Excise Rules, 1944  
(hereinafter referred to as 'Rules').

2. The dispute has arisen in the following factual  
background. F

The appellant is engaged in the manufacture of pig  
iron falling under Chapter 72 of the Schedule to Central  
Excise Tariff Act, 1985. The appellant is availing MODVAT  
credit on various capital goods and parts thereof under Rule G  
57Q of the Rules. The respondent-authority had issued two  
show cause notices thereby proposing to deny the appellant  
the MODVAT credit availed by them under Rule 57Q on the  
following items: -

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A	S. No.	Items on which credit denied	Credit amount (Rs.)
	(a)	Pipes & fittings used outside the plant for bringing water from river Kharoon	15,83,738
B	(b)	Railway track material used for handling raw materials, process goods	16,59,987
	(c)	HDPE Tarpaulin used to avoid leakage of water from water reservoir	6,18,943
	(d)	Loudspeaker used to pass on instructions to operate various equipment due to distance	27,336
C	Total credit amount		38,90,004

The Commissioner was of the view that the aforesaid goods were not covered within the definition of "capital goods" under Rule 57Q of the Rules. After giving opportunity to the appellants to file reply to the said show cause notices and hearing the appellants, the Commissioner passed the orders dated 30.10.2001. By the said order, the demand in respect of certain capital goods was dropped. At the same time, the MODVAT credit on the aforesaid four items was denied by the Commissioner. The appellants filed appeal against the said order before the CEGAT and the CEGAT has affirmed the order of the Commissioner thereby dismissing the appeal of the appellant.

3. In the present appeal preferred by the appellants against the order of the CEGAT, the relief is confined to item (b) above alone, namely, in respect of railway track material used for handling raw materials, processed goods for which credit for sum of Rs. 16,59,987/- was claimed and was earlier allowed but reversed by the Commissioner. The question is as to whether the said item can be treated as "capital goods" under Rule 57Q of the Rules which was holding the field at the relevant time.

4. The relevant extract of the Rule 57Q, in the form in

which it existed then, is reproduced as hereinbelow: - A

RULE 57Q. Applicability.- (1) The provisions of this section shall apply to finished excisable goods of the description specified in the Annexure below (hereinafter referred to as the "final products") for the purpose of allowing credit of specified duty paid on the capital goods used by the manufacturer in his factory and for utilising the credit so allowed towards payment of duty of excise leviable on the final products, or as the case may be, on such capital goods, if such capital goods have been permitted to be cleared under rule 57S, subject to the provisions of this section and the conditions and restrictions as the Central Government may specify in this behalf: B C

Provided that credit of specified duty in respect of any capital goods produced or manufactured - D

(a) in a free trade zone and used for the manufacture of final products in any other place in India; or E

(b) by a hundred per cent export-oriented undertaking or by a unit in an Electronic Hardware Technology Park [or by a unit in Software Technology Parks] and used for the manufacture of final products in any place in India, F

shall be restricted to the extent of duty which is equal to the additional duty leviable on like goods under section 3 of the Customs Tariff Act, 1975 (51 of 1975) equivalent to the duty of excise paid on such capital goods. G

*Explanation.* -For the purposes of this section, -

(1) "capital goods" means - H



is to be used for the purpose stated therein. A

7. A direct answer to this question is given by this Court in '*M/s. J. K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and another*' [1965 (1) SCR 900]. In this case, the test which was enunciated by the Court is: B

Where any particular process is so integrally connected with the ultimate production of goods that but for that process, manufacture or processing of goods would be impossible or commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods". For goods to answer that description, it is not necessary that they must of necessity be goods which are used as "ingredient or commodity in the creation of goods", or which are "directly and actually needed for turning out or making of the goods." C  
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8. Though the court was concerned with the construction of Section 8(3)(b) of the Central Sales Tax Act, 1956, and Rule 13 framed under the said Act, the expression "in the manufacture or processing of goods for sale" appearing in Section 8(3)(b) came up for interpretation. Section 8(3)(b) authorises the Sales Tax Officer to specify goods intended for use by the dealer in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power. Rule 13 provides that such goods must be intended for use in the manufacture or processing of goods for sale or in mining or generation or distribution of power. E  
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9. The aforesaid expression interpreted by the Court, therefore, becomes relevant for our case as well. The test laid down by the Court and noticed above was explained and expanded by the Court in the following words: - H

A “In our judgment if a process or activity is so integrally  
related to the ultimate manufacture of goods so that  
without that process or activity manufacture may, even  
if theoretically possible, be commercially inexpedient,  
B goods intended for use in the process or activity as  
specified in Rule 13 will qualify for special treatment.  
This is not to say that every category of goods “in  
connection with” manufacture of or “in relation to”  
C manufacture, or which facilitates the conduct of the  
business of manufacture will be included within Rule 13.  
Attention in this connection may be invited to a  
judgment of this Court in which it was held that vehicles  
used by a Company (which mined ore and turned out  
D copper in carrying on activities as a miner and as a  
manufacturer) fell within Rule 13, even if the vehicles  
were used merely for removing ore from the mine to  
the factory, and finished goods from the factory to the  
place of storage. Spare parts and accessories  
E required for the effective operation of those vehicles  
were also held to fall within Rule 13. See *Indian  
Copper Corporation Ltd. v. Commissioner of  
Commercial Taxes, Bihar and Ors.*”

10. In the process, the court also explained that there is  
F no warrant for limiting the meaning of the expression “in the  
manufacture of goods” to the process of production of goods  
only. In the opinion of the court, the expression “in the  
manufacture” takes within its compass, all processes which  
G are directly related to the actual production. It noted that  
goods intended as equipment for use in the manufacture of  
goods for sale are expressly made admissible for  
specification. The court further marked that drawing and  
H photographic materials falling within the description of goods  
intended for use as “equipment” in the process of designing

which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods". A

11. The said judgment also reflects discussion on certain other material goods which are used 'in the manufacture of goods' and depending upon the manner in which such materials are used, it may or may not be integrally connected with the ultimate production of goods. To exemplify the same, the court noted the use of building materials as well as electronics goods, by pointing out the aforementioned distinction in the following manner: C

"Building materials including lime and cement not required in the manufacture of tiles for sale cannot, however, be regarded within the meaning of Rule 13, as raw materials in the manufacture or processing of goods or even as "plant". It is true that buildings must be constructed for housing the factory in which machinery is installed. Whether a building is a "plant" within the meaning of Rule 13, is a difficult question on which no opinion need be expressed. But to qualify for specification under s. 8(3)(b) goods must be intended for use of the nature mentioned in Rule 13, in the manufacture of goods. Building materials used as raw materials for construction of "plant" cannot be said to be *used as plant* in the manufacture of goods. The Legislature has contemplated that the goods to qualify under s. 8(3)(b) must be intended for use as raw materials or as plant, or as equipment in the manufacture or processing of goods, and it cannot be said that building materials fall within this description . The High Court was, therefore, right in rejecting the claim of the Company in that behalf. H

A        The expression “electricals” is somewhat vague. But in  
a factory manufacturing cotton and other textiles, certain  
electrical equipment in the present stage of  
development would be commercially necessary. For  
instance, without electric lighting it would be very  
B        difficult to carry on the business. Again electrical  
humidifiers, exhaust fans and similar electrical  
equipment would in the modern conditions of  
technological development normally be regarded as  
equipment necessary to effectually carry on the  
C        manufacturing process. We are not prepared to agree  
with the High Court that in order that “electrical  
equipment” should fall within the terms of Rule 13, it  
must be an ingredient of the finished goods to be  
prepared, or “it must be a commodity which is used in  
D        the creation of goods”. If, having regard to normal  
conditions prevalent in the industry, production of the  
finished goods would be difficult without the use of  
electrical equipment, the equipment would be regarded  
as intended for *use in the manufacture of goods* for  
E        sale and such a test, in our judgment, is satisfied by the  
expression “electricals”. This would of course not  
include electrical equipment not directly connected with  
the process of manufacture. Office equipment such as  
F        fans, coolers, air-conditioning units, would not be  
admissible to special rates under s. 8(1).”

12. Applying the aforesaid test to the facts of this case,  
it is apparent that the use of railway tracks is related to the  
G        actual production of goods and without the use of the said  
railway track, commercial production would be inexpedient.

13. In the instant case, the manner in which railway track  
materials have been used by the appellant was explained by  
H        the appellant before the Commissioner and veracity thereof

was accepted by the Commissioner. Therefore, without any A  
fear of contradiction, we may note the exact process that is  
involved :

“These railway tracks used in transporting hot metal in B  
ladle placed on ladle car from blast furnace to pig  
casting machine through ladle car where hot metal is  
poured into pig casting machine for manufacture of pig  
iron. Secondly the system also helps in taking hot pigs  
from pig casting machine to pigs storage yard by the  
big wagon where hot pig iron are dumped for cooling C  
and making ready for dispatchers. This Railway tracks  
are also used in handling of raw materials at wagon  
tippler to stacker reclaimer where stacking and  
reclaiming of raw material is taken place and required D  
quantity is conveyed for further processing at stock  
house.”

14. It reflects that the appellant has installed railway E  
tracks within the plant which is a handling system for raw  
material and processed material.

15. The aforesaid process squarely meets the test laid F  
down by this court in *M/s. J. K. Cotton Spinning & Weaving  
Mills Co. Ltd.*'s case. It is clear that the railway tracks are  
installed not only within the plant, but the main objective and  
purpose for which the capital expenditure on laying these  
railway tracks is incurred by the appellant is for transporting  
hot metal in ladle placed on ladle car from blast furnace to  
pig casting machine through ladle car where hot metal is  
poured into pig casting machine for manufacture of pig iron. G  
It is clear from the above that the use of railway tracks inside  
the plant not only form the process of manufacturing, but it is  
inseparable and integral part of the said process inasmuch  
as without the aforesaid activity for which railway tracks are  
used, there cannot be manufacturing of pig iron. H

A 16. We find from the order of the Commissioner that in  
spite of taking note of the aforesaid use of the railway tracks  
and accepting the same as correct, the Commissioner  
denied the relief to the appellant on an extraneous ground,  
i.e., railway tracks were used for other purposes as well,  
B namely, apart from conveying hot metal and hot pigs, it was  
used for carrying raw materials and finished goods as well.  
This can hardly be a ground to deny the relief inasmuch as  
by incidental use of the railway tracks for some other  
innocuous purpose, it does not lose the character of being  
C an integral part of the manufacturing process. The  
Commissioner has further observed in his order that the  
railway track is not utilised directly or indirectly for producing  
or processing of goods or bringing about any change for  
D manufacture of final product. This conclusion, obviously, is  
completely erroneous and amounts to misreading of the  
process. Such an error has occurred because the  
Commissioner did not keep in mind the principle of law laid  
down by this Court in *M/s. J. K. Cotton Spinning & Weaving*  
E *Mills Co. Ltd.*'s case, highlighted above.

17. When we read the order of the CEGAT, we find that  
CEGAT has not even adverted to and examined the issue  
from the aforesaid angle, which was the only method for  
arriving at a finding as to whether the railway tracks installed  
F within the plant would come within the definition of capital  
goods under Rule 57Q of the Rules or not. The order of the  
CEGAT is stoically silent. It has affirmed the order of the  
Commissioner by simply observing that the Commissioner  
G has arrived at the conclusion that these goods are not being  
used directly or indirectly for producing or processing the  
goods or for bringing about any change for the manufacture  
of the final product. We have already pointed out that the  
aforesaid conclusion of the Commissioner is not only  
H factually incorrect and perverse but legally unsustainable as

well.

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18. Resultantly, we set aside the order of the Commissioner as well as of CEGAT insofar as it pertains to item "railway track material used for handling raw materials, process goods" and hold that the appellant has rightfully claimed for MODVAT credit in respect of this item which credit is wrongly reversed by the authorities below. To that extent, order of the Commissioner as well CEGAT is set aside and the present appeal is allowed in the aforesaid terms. No order as to costs.

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Devika Gujral

Appeal allowed.