

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NOS. 5340-5341 OF 2000@  
CC

M/S JAYPEE REWA CEMENT ..... APPELLANT(S)

Versus

COMMNR. OF CENTRAL EXCISE, M.P. .... RESPONDENT(S)

( With office report )

WITH  
CA Nos.6133-6135/2000 (With office report)  
CA No. 6293/2000 (With office report )  
CA No. 6932/2000 (With appln. for stay and office report )  
CA Nos.6900-6905/2000 (With office report)  
CA Nos.7337-7340/2000, SLP(C) NO. 20785/2000,  
CA Nos.7131-7132/2000 (With office report )  
CA Nos.7195-7200/2000 (With appln. for stay and office report )  
CA Nos. 279-282/2001 (With office report )  
W.P.(C) No. 676/2000, W.P. (C) No. 29/2001,  
W.P.(C) No. 30/2001, WP (C) No. 31/2001, WP (C) No. 32/2001,  
CA No. 1628/2001, CA Nos. 1629-1630/2001,  
CA No.2368/2001 (With appln.for condonation of delay in filing  
appeal),  
CA No. 2301/2001(With appln. for permission to place addl.  
documents on record ),  
CA No. 2577/2001 (With appln. for permission to place addl.  
documents on record ),  
CA No. 2515/2001,  
SLP (C) Nos. 9441-9446/2001(With prayer for interim relief ),  
CA No. 1792/2001 (With appln for and office report )  
CA Nos.3965-3968/2001 (With appln.for ex-parte stay and office  
report),  
CA No. 4383/2001, CA Nos. 3994-3995/2001,  
CA No. 4263/2001 (With appln. for ex-parte stay),  
CA No. 4784/2001 (With appln. for ex-parte stay) and  
CA No. 3992/2001 (With appln. for permission to place addl.  
documents on record )

Date: 22/08/2001 These appeals/petitions were called on for  
hearing today.

CORAM:

HON'BLE MR. JUSTICE B.N. KIRPAL  
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL  
HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

For Appellant/  
Petitioner(s)  
in CA 5340-5341, 6932  
6900-6905, 7195-7200, Mr. V. Lakshmikumaran, Adv.  
7337-7340, 2301, 2577, Mr. M.P. Devanath, Adv.  
4383, 3994-95 & 3992 Mr. Alok Yadav, Adv.  
Mr. V. Balachandran, Adv.

in SLP 20785 Mr. Jaideep Gupta, Adv.  
Ms. Gauri Rasgotra, Adv.  
Mr. Suman J. Khaitan, Adv.

in CA 3965-68 & Mr. Jaideep Gupta, Adv.  
WP 676 Mr. Praveen Kumar, Adv.

in CA 6133-35 & Mr. Praveen Kumar, Adv.  
279-282

in CA 7131-32 & 2515 Mr. U.A. Rana, Adv.  
Ms. Shalini Mittal, Adv.  
Mr. Mainal Bharti, Adv. for  
M/s Gagrat & Co., Adv.

in CA 6293, 1628, Mr. Sanjay Grover, Adv.  
1629-30, 1792, WP 29, Mr. Rajesh Kumar, Adv.  
30, 31 & 32

in CA 2368, 4263 & 4784 Mr. Rajesh Kumar, Adv.

For Respondent(s)  
Union of India/CCE Mr. Kailash Vasdev, Sr. Adv.  
Mr. M Gaurishankar Murthy, Adv.  
Mr. Dileep Tandon, Adv.  
Mr. Pritesh Kapoor, Adv.  
Mr. B.K. Prasad, Adv.  
(Petitioners in SLP(C) 9441-9446/2001)

RR in SLP 9441-9446/01 Mr. V. Lakshmikumaran, Adv.  
Mr. V. Sridharan, Adv.  
Mr. A.R. Madhav Rao, Adv.  
Mr. Alok Yadav, Adv.  
Mr. V. Balachandran, Adv.

UPON hearing counsel, the Court made the following  
O R D E R

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CA 5340-5341/2000@@  
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For the reasons recorded in the judgment, the  
apepals are allowed and the judgment of the Tribunal is set  
aside.

CA Nos.6932, 6900-6905, 7131-7132, 7337-7340,7195-7200/2000@@  
EE  
2301, 2515, 3992, 3994-3995, 4383, 4784 and 2577/2001@@  
EE  
The principle involved in these cases is similar to  
that in the case of M/s Jaypee Rewa Cement. For the  
reasons stated therein, these appeals are allowed.

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C.A. No...../2001 @ SLP(C) 20785/2000@@  
EE

Leave granted.  
For the reasons stated in the case of M/s Jaypee



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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5340-5341 OF 2000@@  
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M/s Jaypee Rewa Cement ..... Appellant

Versus

Commnr. of Central Excise, M.P. .... Respondent

WITH CA NOS. 6133-6135/2000, 6293/2000, 6932/2000, 6900-6905/2000,  
7337-7340/2000, 7131-7132/2000, 7195-7200/2000, 279-282/2001, 1628/  
2001, 1629-1630/2001, 2368/2001, 2301/2001, 2577/2001, 2515/2001,  
1792/2001, 3965-3968/2001, 4383/2001, 3994-3995/2001, 4263/2001,  
4784/2001, 3992/2001 and WP (C) Nos. 676/2000, 29/2001, 30/2001,  
31/2001 and 32/2001 and CA No...../2001 @ SLP(C) 20785/2000.

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KIRPAL J.@@  
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CA Nos. 5340-5341/2000@@  
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The appellants M/s. Jaypee Rewa Cement are manufacturers of cement in their factory at Raipur. Lime Stone is an essential raw material for the said manufacture, but in order to extract lime stone explosives are used for mining the same.

It is not in dispute that the explosives which are used are items falling under Chapter 36 of the Excise Tariff. On the said explosives, excise duty had been paid, but the lime stone which was extracted, though an excisable item, was exempt from payment of excise duty by

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reason of an exemption notification. In the manufacture of cement, the appellants claimed modvat credit in view of the provisions of Rule 57A of the Central Excise Rules.

The case of the appellants was that the explosives used in the mining operation must be regarded as inputs and in respect of which notification had been issued by the Central Government in the Official Gazette and credit should be allowed in terms of the said Rule. The excise authorities as well as the CEGAT did not accept the contention of the appellants. The Tribunal came to the conclusion that Rule 57F was applicable in this case as explosives had not been brought into the factory and they had been used at a place away from the cement factory. It was of the opinion that by virtue of the said provision, Rule 57A cannot be extended to take in within its ambit any goods used outside the factory for production of the final product.

Rule 57A with which we are concerned in this case reads as follows:-

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"RULE 57A. Applicability - (1)@@  
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The provisions of this section shall

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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 in the said notification (hereinafter referred to as the "specified duty") paid on the 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 purposes of this rule, "inputs" includes -

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

(b) paints and packaging materials,

(c) inputs used as fuel,

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

(e) accessories of the final product cleared alongwith such final product, the

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value of which is included in the assessable value of the final product, but does not include-

(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;

(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;

(iii) packaging materials or containers, the cost of which is not included in the assessable value of the final products under Section 4 of the Act; and

(iv) crates and glass bottles used for aerated waters."

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The other Rules which are relevant are Rule 57C which provides that credit for duty is not to be allowed if final products are exempt and Rule 57D provides for credit of duty not being denied or varied in certain circumstances. Rule 57F, on which reliance is placed by the Tribunal and also by Mr. Kailash Vasudev, learned

senior counsel appearing for Revenue, reads as follows:-

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"RULE 57F Manner of utilisation@@  
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of the inputs and the credit allowed in@@  
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respect of duty paid thereon - (1) The@@  
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inputs in respect of which a credit of  
duty has been [allowed under rule 57A] -

(i) [may be used in], or in relation to,

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the manufacture of final products for  
which such inputs have been brought into  
the factory; or

(ii) shall be removed, after intimating  
the Assistant Commissioner of Central  
Excise having jurisdiction over factory  
and obtaining a dated acknowledgement of  
the same, from the factory for home  
consumption or for export under bond

Provided that where the inputs  
are removed from the factory for home  
consumption on payment of duty of excise,  
such duty of excise shall be the amount  
of credit that has been availed in  
respect of such inputs under rule 57A.

(3) Notwithstanding anything  
contained in sub-rule (1), a  
manufacturer may after intimating the  
[Assistant Commissioner of Central  
Excise] having jurisdiction over the  
factory and obtaining dated  
acknowledgement of the same, remove the  
inputs as such, or after the inputs have  
been partially processed during the  
course of manufacture of final products,  
to a place outside the factory, -

(a) for the purposes of test, repairs,  
refining, re-conditioning or carrying out  
any other operation necessary for the  
manufacture of the final products and  
return the same to his factory, for -

(i) further use in the manufacture of the  
final product; or

(ii) removing the same without payment  
of duty under bond for export; or

(iii) removing the same after payment of  
duty for home consumption:

Provided that the waste, if any, arising  
in the course of such operation is also  
returned to the said factory;

(b) for the purposes of manufacture of

intermediate products necessary for the manufacture of the final products and return the said intermediate products to his factory, for, -

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(i) further use in the manufacture of the final product; or

(ii) removing the same without payment of duty under bond for export; or

(iii) removing the same after payment of duty for home consumption:

Provided that the waste, if any, arising in the course of such operation is also returned to the said factory.

Provided further that the said waste need not be returned to the said factory after the appropriate duty of excise leviable thereon has been paid."

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The other Rule which is relevant is Rule 57J which reads as follows:-

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"RULE 57J Credit of duty in@@  
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respect of inputs used in an intermediate@@  
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product - Notwithstanding anything@@  
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contained in these rules, the Central Government may, by notification in the Official Gazette, specify the inputs used in the manufacture of intermediate products received by a manufacturer for use in or in relation to the manufacture of final products, in respect of which the specified duty paid on the said inputs shall subject to the conditions and restrictions that may be specified in the notification, be allowed as credit under rule 57A."

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As has already been observed, notification under Rule 57A was issued by the Central Government on 1st March, 1994 specifying the final product described in the table annexed thereto in respect of which duty paid on

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inputs was to be allowed as credit. The said table is as follows:

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SNo.	Description of inputs	Description of final products
(1)	(2)	(3)

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1. All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the following namely, -
  - (i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;
  - (ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;
  - (iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19 (except Natural gasoline liquid) of the Schedule to the said Act;
  - (iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.

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It is not in dispute that explosives fall under Chapter 36. The particular items used by the appellants

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come under heading Nos. 36.01, 36.02 and 36.03. Therefore, the said inputs, namely, the explosives would fall under column No. 2 of the aforesaid table while cement comes under Chapter 25 and would be a final product falling under column 3 of the aforesaid table. Therefore, both explosives as well as the cement fall under column 2 and column 3 respectively of the aforesaid table.

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The question which, however, arises for consideration is whether it is necessary for the explosives to be used within the factory premises where the manufacture of cement takes place.

Reading of Rule 57A clearly shows that the notification is to specify the goods used in or in relation to the manufacture of the final product whether directly or indirectly. In the present case, inputs which are used in relation to the manufacture even directly would be regarded as an input for the purpose of Rule 57A. Sub-rule (1) of Rule 57A does not, in any way, specify that the inputs have to be utilised within the factory premises. The explanation contained in Rule 57A

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is merely meant to enlarge the meaning of the word "input" and does not in any way restrict the use of the input within the factory premises nor does the said Rule 57A require the inputs to be brought into the factory premises at any point of time.

The appellants could not have claimed for modvat credit in respect of lime stone because of the provisions of Rule 57C, inasmuch as there was an exemption from levy of excise duty in respect thereof. There was an exemption for a certain period and for the rest of the period the tariff itself provided that there will be nil rate of duty on the lime stone which is extracted.

As we have already noticed, the Tribunal has relied upon Rule 57F in coming to the conclusion that the inputs in respect of which a credit of duty is claimed must be those which are used in or brought into the factory premises. The Tribunal, however, has not referred to the provisions of Rule 57J, the opening portion of which makes it clear that the said Rule will be applicable notwithstanding anything contained in the other Rules. According to Rule 57J, when the Central

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Government by notification specified the inputs used in the manufacture of intermediate products received by the manufacturer for use in or in relation to the manufacture of final product, then all such products on which duty has been paid credit will be allowed. Pursuant to this Rule 57J, notification was issued on 20th June, 1986 which was amended from time to time. The relevant part of the notification is as follows:

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S.No.	Description of inputs	Description of intermediate products	Description of final products
(1)	(2)	(3)	(4)
1.	All goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), other than the	All the goods falling within the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) other than	All goods falling within the Schedule to the Central Excise Tariff Act, 1985

following, namely, -	the following, namely	(5 of 1986), other than the following, namely
(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;	(i) goods classifiable under any heading of Chapter 24 of the Schedule to the said Act;	~(i) goods classi- fiable under any heading of Chapter 24 of the Schedule to the said Act;
(ii) goods classifiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;	(ii) goods classifiable under heading Nos.36.05 or 37.06 of the Schedule to the said Act;	(ii)goods classi- fiable under heading Nos. 36.05 or 37.06 of the Schedule to the said Act;
(iii) goods classifiable under sub-heading Nos. 2710.11, 2710.12, 2710.13 or 2710.19	(iii)goodsclassifiable under sub-heading Nos 2710.11, 2710.12,	~(iii) woven fabrics classifiable  ....11/-

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(except natural gasoline liquid) of the Schedule to the said Act;	2710.13 or 2710.19 (except natural gaso- line liquid) of the Schedule to the said Act;	Chapter 52 or Chapter 54 or Chapter 55 of the Schedule to the said Act.
(iv) high speed diesel oil classifiable under heading No. 27.10 of the Schedule to the said Act.	(iv)high speed diesel~ oil classifiable under heading No.27.10 of the Schedule to the said Act.	

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Explosives would fall under column (2) being a tariff item in Chapter 36; the intermediate product, namely, lime stone would fall under column 3 being covered by Chapter 25; and the final product, namely, cement would also fall under Chapter 25 and would fall under column 4. The reading of Rule 57J alongwith the aforesaid notification can leave no manner of doubt that even in respect of inputs used in the manufacture of intermediate product which product is then used for the manufacture of a final product, the manufacturer would be allowed credit on the duty paid in respect of the input. On the explosives a duty had been paid and the appellants would be entitled to claim credit because the explosives were used for the manufacture of the intermediate product, namely, lime stone which, in turn, was used for the manufacture of cement.

We are, therefore, in agreement with the learned

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counsel for the appellants that the wide language used in Rule 57A entitles the appellants to claim the benefit when the said Rule is read alongwith Rule 57J.

For the aforesaid reasons, these appeals are allowed and the judgment of the Tribunal is set aside.

CA Nos. 6932/2000, 6900-6905/2000, 7131-7132/2000,@@  
CC  
7337-7340/2000, 7195-7200/2000, 2301/2001, 2515/2001,@@  
CC  
3992/2001, 3994-3995/2001, 4383/2001, 4784/2001 and@@  
CC  
2577/2001 @@  
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The principle involved in these cases is similar to that in the case of M/s Jaypee Rewa Cement. For the reasons stated therein, these appeals are also allowed.

C.A. No....6064.../2001 @ SLP(C) No. 20785/2000@@  
EE

Leave granted.

For the reasons stated in the case of M/s Jaypee Rewa Cement the appeal is allowed. Reference is now answered in favour of the assessee and the decision of the Tribunal is upheld.

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CA Nos. 3965-3968/2001@@  
EE

The challenge in these appeals relate to the validity of the show cause notice whereby modvat was proposed to be disallowed on the use of high speed diesel and explosives and grinding media for the manufacture of cement.

Learned counsel for the appellant states that the Tribunal has given the benefit of allowance of modvat regarding grinding media. With regard to the other two items, namely, explosives and high speed diesel, the appellant does not contest the decision of the Tribunal insofar as high speed diesel is concerned. He, however, restricts his appeal to the validity of the decision of the Tribunal in disallowing the modvat qua the use of the explosives as an input in the manufacture of same. In view of the decision of this Court in CA Nos. 5340-5341/2000, these appeals are allowed insofar as the input of explosives in the manufacture of cement, is concerned.

CA Nos. 6133-35 and 6293/2000@@  
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The appeals are allowed in view of the decision in CA Nos. 3965-68/2001.

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WP(C) Nos. 676/2000, 29/2001, 30/2001, 31/2001 and@@  
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The writ petitions are dismissed as withdrawn.

C.A. No. 4263/2001@@  
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We have gone through the decision of the Tribunal. In view of the provisions of Rule 57Q, the appellant is not entitled to any relief. The appeal is dismissed.

CA Nos. 279-282/2001, 2368/2001, 1628/2001,1629-1630/2001~@@  
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and 1792/2001@@  
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The appeals are dismissed as not pressed.

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.....J  
(B.N. KIRPAL)

.....J  
(SHIVARAJ V. PATIL)

New Delhi,  
August 22, 2001.

.....J  
(P. VENKATARAMA REDDI)