

NOTICE UNDER SECTION 130 (1) OF THE CUSTOMS ACT, 1962/35-C(1) OF THE CENTRAL EXCISE SALT ACT, 1944.

CUSTOMS, EXCISE AND GOLD (CONTROL) APPELLATE TRIBUNAL

WEST BLOCK NO. 2, R.K. PURAM, NEW DELHI - 110066.

F. No. E/2514/OD-NB (SM) with 2/ misc/556/00-100 Dated 15/3/2001 ^{BENCH NB(SM)}

From : The Registrar,
CEGAT, New Delhi.

To,

CCE Delhi - II

In the Matter of :-

CCE Delhi - II

APPELLANT

Vs.

M/s Duracell (India) Pvt. Ltd.

RESPONDENT

I am directed to transmit herewith a certified copy of Final Order No. A/3196/01-NB (SM)
misc. order No. M/70/01-NB (SM) Dated 7-3-2001
passed by the Tribunal under Section 129-B of the Customs Act, 1962, 35-C(1) of the Central Excise & Salt Act, 1944.

Copy to :-

Assistant Registrar

1. Respondent: M/s Duracell India Ltd.,
Vill. Naharpur Kasan
Manesar Gurgaon (HR)
2. Advocate/Consultant: Shri Ashok Dhirga, Adv.
C/o Respondent
3. C. C./C.C.E. (APPEAL): New Delhi
4. Asst. Registrar, ERB, CEGAT, Calcutta.
5. Asst. Registrar, SRB, CEGAT, Chennai.
6. Asst. Registrar, WRB, CEGAT, Mumbai.
7. Director of Publication, Customs & Central Excise, C. R. Building, I.P. Estate, New Delhi.
8. Centax Publication (P) Ltd. 1512, Bhisham Pitamah Marg, Opp. Sachdeva P. T. College, Defence Colony, New Delhi.
9. M/s. Cen-Cus Publication, C-7, Main Market, Vasant, Vihar, New Delhi.
10. M/s Capital Law House, 500/7-N, Pandav Road, Vishwas Nagar, Delhi-32
11. M/s. Deeparchie Publications, M-93, Marg-44, Saket, New Delhi.
12. The U.S. (Judicial), CBEC, Min. of Finance, Dept. of Revenue, North Block, New Delhi.
13. J. C. D. R.
14. S. D. R.
15. Library, CEGAT, New Delhi.
16. Bar Association.
17. Guard File
18. Office Copy
19. Hon'ble Members (1) Shri V.K. Agarwal, M (T)
20. M/s Law InfoTech Resources (P) Ltd. (2)

Asst. Registrar

NB (S)

IN THE CUSTOMS, EXCISE & GOLD (CONTROL) APPELLATE TRIBUNAL
NEW DELHI

E/MICS/556/2000/NB(SM) in
Appeal No. 2514/2000/NB(SM)

(Arising out of Order-in-Original ^{Appeal No} 254-CE/DLH/2000, ^{dated 14.3.2000} passed by
the Commissioner (Appeals) Central Excise, New Delhi)

COMMISSIONER CENTRAL EXCISE, DELHI III APPELLANTS
Represented by Shri A. K. Jain, JDR

VS.

M/S DURACELL (INDIA) PVT. LTD RESPONDENT
(Now Known as [Represented by Shri Ashok Dhingra, Advocate])
M/s Gillette India Ltd-Duracell Division)

CORAM: SHRI V.K.AGRAWAL, MEMBER (TECHNICAL

Responsible.

FINAL ORDER NO A/346/01/NB (S/m)
DATED
MISZ ORDER NO M/70/01/NB (S/m)
PER: V.K.AGRAWAL:

In this appeal, filed by the Revenue, the issue involved is, whether the Modvat Credit of duty paid is available in respect of the inputs used by M/s Duracell (India) Pvt. Ltd. in the trial production.

2. Shri A. K. Jain, Id. D.R., submitted that the Assistant Commissioner disallowed the Modvat Credit amounting to Rs. 8,16,142 to M/s Duracell (INDIA) Pvt. Ltd as the inputs were used for trial production of finished goods which eventually turned into waste and scrap holding that no yeild of final product was obtained and no manufacture had taken place; that as this kind of production is done to develop the

goods and to test the capability of the machine, it would be wrong to assume that such raw materials as inputs covered under Modvat Scheme as the purpose is not to manufacture of final product. The ld. DR, further, submitted that the Commissioner (Appeals) erred in allowing the Respondent's appeal on the basis of the Provisions of Rule 57D(3) and a number of Tribunal's decisions as provisions of Rule 57D are not applicable since the inputs were turned into waste and scrap and no manufacture had taken place; that the decision in the case of Union Carbide Ltd. Vs. C.C.E., 1994 (74) ELT 381 (T) is not applicable as in the said case the question involved was whether goods rejected during testing and inspection could be regarded as 'waste and scrap' generated during the course of manufacture of final product.

3. Shri Ashok Dhingra, ld. Advocate, mentioned at the outset that the name of the Respondent Company has changed to Gillette India LTD-Duracell Division and requests to incorporate the change in the case records. The Misc Application filed by the Respondent is allowed.

4. The ld. Advocate submitted that the requirement under Rule 57A of the Central Excise Rules, ~~the requirement~~ is that the specified goods should be used 'in the manufacture' of final product; that it cannot be denied by the Revenue that the inputs were used in the manufacture of the final products; that the expression "during the manufacture" under Rule 57D is not restricted to the process when only the final product comes out of the machine; that waste can arise at any

manufacturing stage; that the ratio in the case of Union Carbide, supra, is squarely applicable as the RG 1 stage comes only after test and inspection of the goods. He also relied upon the decision in RE, Fertilizers Corporation of India, Ltd., 1982 (10) ELT 421 (C.B.E.C.), wherein the Board held that the feedstock used during the trial run of a unit is exempted under ~~Notification NO. 195/76~~ ^{Notification} ~~NO. 195/76~~ ^{NO. 195/76-CE} as the trial run is an essential part of the manufacturing process. Reliance was also placed upon the decision in the case of Fertilizer Coproation of India Ltd. Vs. C.C.E., 1990(50) ELT 494(T) wherein the Tribunal held that Ammonia used for trial runs prior to commencement of the Plant would also be eligible for the benefit of the notification even though the designated end product had in fact not been produced. Finally, the ld. Advocate mentioned that the entire inputs were not lost as they had manufactured the finished goods during the relevant period.

5. I have considered the submissions of both the sides. It is admitted fact that the inputs were used in the manufacture of the final products. It cannot be denied that even in the trial production, the inputs are used in or in relation to manufacature of the final product. It is not material that any good quality final product did not emerge out of machine. This was the ratio of the decision in the case of Fertilizer Corporation of India, supra, wherein it was held that "the designated goods used in the premises of the

recipients during the period, when its plant was being put through trial runs prior to its commissioning would also be eligible for the benefit of the relative notification even though the designated end product had in fact not been produced."

6. Further Rule 57D of the Central Excise Rules clearly provides that credit shall not be denied or varied on the ground that part of the inputs is contained in any waste or refuse arising during the manufacture of the final product or the inputs have become waste during the course of manufacture of final product. As the inputs were used in the manufacture of final product, though in trial production, the Respondents are eligible to avail of credit of duty paid on such inputs. Accordingly, the appeal filed by the Revenue is rejected.

(V.R.AGRAWAL)
MEMBER (TECHNICAL)

Suni6ta

7-3-2001