Amar Dye-Chem Ltd. & Anr.

Vs

The Union of India & Ors.

Civil Appeal No. 1218 of 1967

(C. A. Vaidialingam, I. D. Dua, A. Alagiriswami JJ)

08.12.1972

JUDGEMENT

ALIGIRISWAMI, J. -

1. This appeal by certificate is against the judgment of the High Court of Bombay, which allowed the appellants' petition in part and rejected their prayer for refund of the balance of Excise Duty of Rs. 90-803.78 p. The first appellant is a manufacturer, among other things, of dyes derived from coal tar and coal-tar derivatives. The second appellant is its Manging Agent.

2. Prior to 1st March 1961 "dyes" derived from coal tar and coal tar derivatives used in dyeing process, all sorts were not subject to Central Excise. By the Finance Bill of 1961 the above articles were inserted in the 1st Schedule to the Central Excise and Salt Act as item 14D. The Provisional Collection of Taxes Act, 1931 was made applicable to this levy and all dyes derived from coal tar and coal tar derivatives manufactured after the mid-night of 28th Feb., 1961 became liable to the new ad valorem Excise Duty of 15 per cent.

3. The dispute between the Central Excise officers and the appellants related to a quantity of 47068.50 kg. of dyes derived from coal tar and coal tar derivatives. This quantity consisted of 8 different items. The departmental officers having refused to treat the whole of this quantity as manufactured before the mid-night of 28th February, the appellants filed a petition before the Bombay High Court out of which this appeal arises. The High Court allowed the petitioners' claim in respect of a quantity of 15,109.6 kg and refused relief in respect of the balance. Though at a certain stage the parties relied upon what was called a Trade Notice bearing No. 21 (MP) General, 1961 dated 6th March, 1961 issue by the Collector of Central Excise, which purported to lay down that goods will not be considered as fully manufactured unless at mid-night of 28th February, 1961 they were ready for delivery, the argument before the High Court as well as this Court centred around the point where the process of manufacture had been completed before the mid-night of 28th February.

4. The definition of the word "manufacture" in the Central Excise and Salt Act, 1944, Section 2 clause (f) is as follows :

> "(f) 'manufacture' includes any process incidental or ancillary to the completion of a manufactured product; and
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> (i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarettes or pipe or hookan tobacco, chewing tobacco or snuff;

(ii) in relation to salt, includes collection, removal, preparation steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence;

(iii) in relation to patent or proprietary medicines as defined in item No. 14E of the first Schedule and in relation to cosmetics and toilet preparations as defined in Item No. 14F of that Schedule, includes the conversion of power into tablets or capsuls, the labelling or labelling of containers intended for consumers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to consumers;

(iv) in relation to goods comprised in item No. 18A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or reeling, or any or more of these processes, or the conversion of any from of the said goods into another from of such goods;

and the words 'manufacture' shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account."

5. The argument on behalf of the Central Excise authorities was that the goods which are the subject-matter of dispute ere still to undergo processes incidental or ancillary to the completion of the manufacture product, whereas the argument of the appellants was that all that remained was to pulverise and blending the manufactured product, that the manufacture was already completed and the process of pulverising and blending would not be a process incidental or ancillary to the completion of a manufactured product. It was also sought to be argued on behalf of the Central Excise Authorities that the blending, which was admitted by the appellants, really resulted in the creation of a new product. It was also argued that the dye-stuff which were in the form of lumps before the pulverising and the blending was not a marketable commodity and that it was not a dyestuff as understood by trade. On the other hand it was argued on behalf of the appellants that they had sold the dyestuff in lumps also without pulverising and blending and that, therefore, the pulverising and blending which they carried out was not a process incidental or ancillary to the completion of the manufactured product. It was urged that by this final product and not a product which really resulted only in physical changes i.e. from lumps to powder. On the other hand on behalf of the Central Excise authorities it was urgued that sub-clauses (i) to (iv) of clause (f) would show that even where the conversion consisted only of physical change it was still a manufacturing process. The appellants' answer to this was that these clauses are specifically put in because but for their specific inclusion, they would not be manufacturing processes.

6. In this Case the High Court took the view that the completion of a chemical does not by itself result in the production of a new substance as know to the mercantile community and the consumers. However, we find no material on record to support this conclusion. Nor we do have any material as to what sort of blending was done by the appellants. The material on record is not sufficient to enable us to come to a conclusion one way or the other. There was a certificate given by an expert on behalf of the appellant and there were copies of two letters written by departmental chemists, which accidentally fell into the hands of the appellants, to the effect that before the mid-

night of 28th February, 1961 these goods were in a chemically completely manufactured state. The argument has throughout proceeded on the basis that it is not enought that the goods in question are chemically in a completely manufactured state and that if there are physical changes brought about later it will still be a manufacture. It was even mentioned by the respondents that the dyestuff in lumps were not subject to excise duty.

7. In this state of the evidence we do not propose to express an opinion one way or the other. We consider it advisable that the matter should be remanded back to the Bombay High Court to enable both parties to produce evidence one the disputed question. There will be an order accordingly. Needless to say that to the extent that the appellants got some relief from the Bombay High Court that will stand undisturbed. The order on costs to the parties in this appeal will follow and be provided for in the order which the Bombay High Court might ultimately make.

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