

Collector of Central Excise, Jaipur

Vs

Rajasthan State Chemical Works, Deedwana, Rajasthan

Civil Appeal Nos. 3593-94 of 1989

(L. M. Sharma, P. B. Sawant JJ)

18.12.1990

ORDER

L. M. SHARMA, J. -

1. The respondents are engaged in manufacture of salt and crude sodium sulphate. They were served with notices demanding payment of excise duty on the clearance of crude sodium sulphate. The respondents resisted on the ground that crude sodium sulphate was the residue in the manufacture of salt and it was covered by a notification granting exemption to goods produced without the aid of power.

2. Admittedly brine is pumped from a well into salt pans by using electric power. In the salt pans salt is formed by the process of natural evaporation of water. During the course of formation of salt some quantity of sodium sulphate percent in the brine also crystallises and settles at the bottom in the form of crust. After salt is removed from the pans the sodium sulphate lying at the bottom of the pans becomes available. The question is as to whether power can be said to have been used in relation to the manufacture of the chemical by reason of the fact that brine is pumped into the salt pans with the aid of electricity. By the impugned judgment the CEGAT, confirming the order of the Collector, agreed with the respondents holding that no power was used in the manufacture of crude sodium sulphate.

3. Reliance has been placed on behalf of the appellant on the decisions in the Union of India v. Delhi Cloth and General Mills [1963 Supp 1 SCR 586 : AIR 1963 SC 791] and Standard Fireworks Industries, Sivakasi v. CCE [(1987) 1 SCC 600 : 1987 SCC (Tax) 138 : (1987) 28 ELT 56], in support of the argument that the movement of the brine from the well to the salt pans with the aid of power deprives the respondents of the benefits of the exemption notification. The learned counsel for the respondents has attempted to distinguish the cases by reference to the facts and has contended that mere use of power in transferring the raw materials cannot be said to be use of power in the process of manufacture of final product because it is not a process of manufacture. Reference has been made to the decision of the Gujarat High Court in Nirma Chemical Works v. Union of India [1981 ELT 617 (Guj)].

4. After hearing the learned counsel for the parties, we are of the view that the case may be placed for hearing before a bench of three Judges. Let the records be placed before the Hon'ble the Chief Justice for orders.

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