

Collector of Central Excise, Jaipur

Vs

Rajasthan State Chemical Works, Deedwana, Rajasthan

With

Collector of Central Excise, Indore

Vs

M/S. Sunderson (Minerals) Ltd., Madhya Pradesh

With

Collector of Central Excise, Indore

Vs

M/S. S.N. Sunderson (Minerals) Ltd., New Delhi

Civil Appeal Nos. 3593-94 of 1989 and 642-643 and 1723-1731 of 1991

(S. Ranganathan, N. D. Ojha JJ)

17.09.1991

JUDGMENT

FATHIMA BEEVI, J. –

1. These appeals by the Revenue under Section 35-L of the Central Excises and Salt Act, 1944 involve the interpretation of the Notification No. 179/77 CE dated June 18, 1977. The notification reads thus :

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts all goods falling under Item 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) in or relation to the manufacture of which no process is ordinarily carried on with the aid of power, from whole of the duty of excise leviable thereon."

2. Tariff Item 68 during the relevant period read :

"All other goods, not elsewhere specified, manufactured in a factory but excluding"

3. M/s. Rajasthan State\Chemical Works, the respondents in Civil Appeal Nos. 3593-94 of 1989, are manufacturers of crude sodium sulphate. In the process of manufacture of common salt from brine, in the salt pans in which the process of evaporation takes place some quantities of sodium sulphate present in the brine also crystallise and settle at the bottom as crust. The sodium sulphate is thus

obtained as a by-product. For the purpose of the manufacture, brine is pumped into salt pans using diesel pumps.

4. The benefit of the aforesaid notification not given to these respondents as pumping of brine into the pans was carried on with the aid of power. The claim for exemption though denied by the original authority, was allowed by the Collector of Customs (Appeals) and that order was affirmed by the Tribunal.

5. M/s. Sunderson (Minerals) Ltd., the respondents in Civil Appeal Nos. 642-643 of 1991 and 1723-1731 of 1991 are manufacturers of lime from coke and limestone. The raw materials are lifted to the platform at the head of the kiln by the aid of power. At the kiln head, the raw materials are mixed manually and fed into the kiln. Since power is used for lifting the raw materials at the kiln head, these respondents were denied the benefit of the notification by the Assistant Collector. The appeal before the Collector of Appeals was dismissed. The Tribunal, however, accepted the claim of the respondents.

6. The Revenue being aggrieved has challenged the respective orders of the Tribunal in these appeals.

7. In both these set of cases, the view taken by the Tribunal is that the manufacturing process starts from the stage of feeding raw materials into the salt pan or the kiln as the case may be. The transportation of the raw materials to the platform at the kiln head and the pumping of brine into the salt pan is a stage prior to the commencement of manufacturing process. Therefore, the transferring of the raw materials is not a part of the process of manufacture and use of power for such transfer would not disentitle the respondents from the benefit under the notification.

8. It has been contended before us on behalf of the appellant that pumping the brine into the pan or lifting the raw materials to the kiln head is a process in relation to the manufacture of the final product and since that process with the aid of power is integrally connected with the manufacture, the exemption would not apply. On the other hand, it is reiterated for the respondents that if the process carried on with the aid of power does not bring about any change in the raw material, it cannot be said that any process in or in relation to the manufacture of an article has been carried on with the aid of power and, therefore, mere transfer of raw materials by the use of power cannot be considered as a process of manufacture.

9. The Central Government has exempted all goods falling under Item 68 of the First Schedule to the Act in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power from the whole of the duty of excise leviable thereon. The exemption under this notification is available only when the goods are manufactured without the aid of power at any stage of the process. Where manufacture involves series of processes and if any one of such processes is carried on with the aid of power, the case is taken out of the purview of the notification.

10. We have to consider what activity amounts to process in or in relation to manufacture of goods for the application of the notification. The word 'manufacture' has been defined in Section 2(f) of the Central Excises and Salt Act, 1944, thus :

"2.(f) 'Manufacture' includes any process :-

(i) incidental or ancillary to the completion of a manufactured products; and

(ii) which is specified in relation to any goods in the Section or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture."

11. Clause (f) gives an inclusive definition of the term 'manufacture'. According to the dictionary, the term 'manufacture' means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. In determining what constitutes 'manufacture' no hard and fast rule can be applied and each case must be decided on its own facts having regard to the context in which the term is used in the provision under consideration.

12. Manufacture implies a change but every change is not manufacture, yet every change of an article is the result of treatment, labour and manipulation. Naturally, manufacture is the end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one class to another. There may be several stages of processing, a different kind of processing at each stage. With each process suffered the original commodity experiences a change. Whenever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. But it is only when the change or a series of changes takes the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new distinct article that a manufacture can be said to take place.

13. Manufacture thus involves series of processes. Process in manufacture or in relation to manufacture implies not only the production but the various stages through which the raw material is subjected to change by different operations. It is the cumulative effect of the various processes to which the raw material is subjected to (sic that the) manufactured product emerges. Therefore, each step towards such production would be process in relation to the manufacture. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture of processing of goods would be impossible or commercially inexpedient, that process is one in relation to the manufacture.

14. The natural meaning of the word 'process' is a mode of treatment of certain materials in order to produce a good result, a species of activity performed on the subject matter in order to transform or reduce it to a certain stage. According to Oxford Dictionary one of the meanings of the word 'process' is "a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result." The activity contemplated by the definition is perfectly general requiring only the continuous or quick succession. It is not one of the requisites that the activity should involve some operation on some material in order to (sic effect) its conversion to some particular stage. There is nothing in the natural meaning of the word 'process' to exclude its application to handling. There may be a process which consists only in handling and there may be a process which involves no handling or not merely handling but use or also use. It may be a process involving the handling of the material and it need not be a process involving the use of material. The activity may be subordinate but one in relation to the further process of manufacture.

15. In *J.K. Cotton Spg. & Wvg. Mills Co. Ltd. v. STO* ((1965) 1 SCR 900 : AIR 1965 SC 1310 : (1965) 16 STC 563), this Court in construing the expression 'in the manufacture of goods' held thus : (SCR pp. 906-07)

"But there is no warrant for limiting the meaning of the expression 'in the

manufacture of goods' to the process of production of goods only. The expression 'in the manufacture' takes in within its compass, all processes which are directly related to the actual production."

16. The Court Further held thus : (SCR p. 905)

"The expression 'in the manufacture of goods' would normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. 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 commercially inexpedient, goods required in that process would, in our judgment, fall within the expression 'in the manufacture of goods'."

17. In that case, the assessee carrying on the business of manufacturing textile goods claimed that certain goods namely drawing material etc. were used in the manufacture. The Court said that if the process of designing is so integrally connected with the process manufacturing of cloth, there is no reason to regard the process of designing as not being a part of the process of manufacture. The process of designing may be distinct from the actual process of turning out finished goods but, there is no warrant for limiting the meaning of the expression 'in the manufacture of goods' to the process of production of goods only. The expression 'in the manufacture of goods' takes within its compass all processes which are directly related to the actual production.

18. In *Union of India v. Delhi Cloth & General Mills* (1963 Supp 1 SCR 586 : AIR 1963 SC 791), this Court held thus : (SCR pp. 597-98)

"The definition of 'manufacture' as in Section 2(f) puts it beyond any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material into a finished article known to the market the clause will be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available."

19. In that case, it was contended that manufacture is complete as soon as by the application of one or more processes the raw material undergoes some change. In answering the contention, the Court stated thus : (SCR pp. 597-98)

"We are unable to agree with the learned counsel that by inserting this definition of the word 'manufacture' in Section 2(f) the legislature intended to equate 'processing' to 'manufacture' and intended to make mere 'processing' as distinct from 'manufacture' in the same sense of bringing into existence of a new substance known to the market, liable to duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word 'manufacture' has been used to mean a process incidental to the manufacture of the article. Thus in the very item under which the excise duty is claimed in these cases, we find the words : 'in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power'. The definition of 'manufacture' as in Section 2(f) puts it beyond any possibility of controversy that if power is used for any of the numerous process that are required to turn the raw material into a finished article known to the market the clause will be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available. It

is only with this limited purpose that the legislature, in our opinion, inserted this definition of the word 'manufacture' in the definition section and not with a view to make the mere 'processing' of goods as liable to excise duty."

20. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the word 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture.

21. The transfer of raw material to the reacting vessel is a preliminary operation but it is part of a continuous process but for which the manufacture would be impossible. The handling of the raw materials for the purpose of such transfer is then integrally connected with the process of manufacture. The handling for the purpose of transfer may be manual or mechanical but if power is used for such operation, it cannot be denied that an activity has been carried on with the aid of power in the manufacturing process. The use of diesel pump sets to fill the pans with brine is an activity with the aid of power and that activity is in relation to the manufacture. It is not correct to say that the process of manufacture starts only when evaporation starts. The preliminary steps like pumping brine and filling the salt pans form integral part of the manufacturing process even though the change in the raw material commences only when evaporation takes place. The preliminary activity cannot be disintegrated from the rest of the operations in the whole process of manufacture. Similarly, when coke and lime are taken to the platform in definite proportions for the purpose of mixing, such operation is a step in the manufacturing process. It precedes the feeding of the mixture into the kiln where the burning takes place. The whole process is an integrated one consisting of the lifting of the raw materials to the platform mixing coke and lime and then feeding into the kiln and burning. These operations are so interrelated that without any one of these operations manufacturing process is impossible to be completed. Therefore, if power is used in any one of these operations or any one of the operations is carried on with the aid of power, it is a case where in or in relation to the manufacture the process is carried on with the aid of power.

22. Learned counsel for the appellant relying on the decision of the Gujarat High Court in *Nirma Chemical Works v. Union of India* ((1981) 8 ELT 617 (Guj)), submitted that process means an operation which brings about some change in the raw material. That in the present case, the operation of putting the raw materials, namely coke and limestone on the kiln head does not bring about any change in the raw material but the raw materials remain in the same shape as they were when they were brought in the truck and were dumped separately on the ground and, therefore, this operation can be termed only 'transportation' and cannot be called a 'process'. The Gujarat High Court in *Nirma Chemical Works* ((1981) 8 ELT 617 (Guj)) said : (ELT p. 629, para 17)

"It must be made clear that it is only at the stage of transferring liquid raw materials from the motor tanker to the storage tank that power is used and at no subsequent stage is any power used.

If no change is brought about in the raw material until it reaches the reaction vessel, then no process of manufacture can be said to have taken place until the raw

materials are taken to the reaction vessel. Till then they are all preparations made but the raw materials continue to be the same raw materials. Until sulphuric acid and alkyd benzene start reacting on each other, no change takes place in the raw materials. Merely because the goods are stored in one place, may be at an elevated place above the ground, it cannot be said that a process of manufacture which would convert the raw material by different stages into the final product has been undergone. In view of the decision in *Chowgule and Co. (Chowgule & Co. (P) Ltd. v. Union of India*, (1981) 1 SCC 633 : 1981 SCC (Tax) 51 : AIR 1981 SC 1014) as to what is meant by processing, it is clear that unless and until some change takes place in the raw material of the original commodity, no process can be said to have been gone through. Before any operation can be characterised as a process, the commodity must, as a result of the operation, experience some change."

23. Counsel for the respondents submitted that a process in or in relation to the manufacture commences as soon as the change is brought about in the raw material and ends till the manufactured product is marketed. Until some change physical or chemical is brought about in the raw material, there is no process in or in relation to the manufacture. Mere collecting, storing or dealing with the raw material are operations and/or activities prior to the beginning of the process. Mere physical alteration of the site or placement of raw materials or stacking, storing the same cannot be said to be a process in relation to manufacture. In the case of preparation of sodium sulphate, it is said that the process in or in relation to manufacture commences after the brine is placed in the salt pans. The counsel submits that if every operation and/or activity and/or action is treated as a 'process' in or in relation to manufacture then power is used in (i) erection of factory where steel, cement, bricks etc. are used; (ii) day-do-day transportation and (iii) use of electricity for lights, fans etc. These arguments are far - fetched. The activity in relation to which power is used is not to be considered in isolation where the activity is such that it forms an integral part of the whole process. The Gujarat High Court in interpreting the word 'process' has assumed that 'process' synonymous to 'processing' and has drawn support from the observations of this Court in *Chowgule & Co. Pvt. Ltd. v. Union of India (Chowgule & Co. (P) Ltd. v. Union of India*, (1981) 1 SCC 633 : 1981 SCC (Tax) 51 : AIR 1981 SC 1014). We are afraid the observations had not been properly understood or applied in drawing inference that process when used in relation to manufacture must be one that produces a change in the commodity. It has been made clear in *Dy. CST v. Pio Food Packers* (1980 Supp SCC 174, 176 : 1980 SCC (Tax) 319 : AIR 1980 SC 1227), that : (SCC p. 176, para 5)

"Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place."

24. It has been made clear in *Union of India v. Delhi Cloth & General Mills* (1963 Supp 1 SCR 586 : AIR 1963 SC 791) that the definition of the word 'manufacture' Section 2(f) puts it beyond any possibility of controversy that if the power is used for any of the numerous processes that are required to turn the raw materials into a finished article know to the market, it would be a case where in or in relation to manufacture process has ordinarily been carried on with the aid of power.

It is, therefore, wrong to conclude that every operation in the course of the manufacture should bring about a change and if any operation with aid of power does not result in a change, it cannot be an integral part of the process in or in relation to manufacture. In *Chowgule & Co. Pvt. Ltd. case* (*Chowgule & Co. (P) Ltd. v. Union of India*, (1981) 1 SCC 633 : 1981 SCC (Tax) 51 : AIR 1981 SC 1014), what this Court said is that : (SCC p. 660, para 6)

"Where a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity."

What is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change. The question is not whether there is manual application of energy or there is application of mechanical force. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the operation of the commodity that is material for the purpose of determining whether the operation constitutes "processing". In drawing the distinction between 'processing' and 'manufacture', this Court observed in *Delhi Cloth Mills case* (1963 Supp 1 SCR 586 : AIR 1963 SC 791) thus; (SCR p. 596)

"To say this is to equate 'processing' to 'manufacture' and for this we can find no warrant in law. The word 'manufacture' used as a verb is generally understood to mean as 'bringing into existence a new substance' and does not mean merely 'to produce some change in a substance', however minor in consequence the change may be."

25. Thus "processing" may be an intermediate stage in manufacture and until some change has taken place and the commodity retains a continuing substantial identity through the processing stage, we cannot say that it has been manufactured. That does not, however, mean that any operation in the course of such process is not in relation to the manufacture. While interpreting the same exemption notification in *Standard Fireworks Industries v. Collector of Central Excise* ((1987) 1 SCC 600 : 1987 SCC (Tax) 138 : (1987) 28 ELT 56), it was held that manufacture of fireworks requires cutting of steel wires and the treatment of papers and, therefore, it is a process for manufacture of goods in question. The notification purports to allow exemption from duty only when in relation to the manufacture of goods no process is ordinarily carried on with the aid of power. It was observed that cutting of steel wires or the treatment of the papers is a process for the manufacture of goods in question.

26. We are, therefore, of the view that if any operation in the course of manufacture is so integrally connected with the further operation which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the with the aid of power. In this view of the matter, we are unable to accept the contention that since the pumping of the brine into the salt pans or the lifting of coke and limestone with the aid of power does not bring about any change in the raw material, the case is not taken out of the notification. The exemption under the notification is not available in these cases. Accordingly, we allow these appeals. In the facts and circumstances of the case, we make no order as to costs.

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