

Indian Farmers Fertiliser Cooperative Limited

Vs

Collector of Central Excise, Ahmedabad

Civil Appeals No. 5437 of 1990 With Nos. 5941-43 of 1990

(S. P. Bharucha, K. T. Thomas JJ)

31.07.1996

JUDGMENT

BHARUCHA, J. –

1. These are appeals against orders of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi.
2. The periods involved in the appeals are : 1-4-1974 to 31-12-1982 in Civil Appeal No. 5437 of 1990 and January 1983 to April 1984 in Civil Appeals Nos. 5941-43 of 1990.
3. By an Exemption Notification (No. 187 of 1961) issued under the provisions of Rule 8 of the Central Excise Rules, the Central Government exempted raw naphtha falling under Item 6 of the First Schedule to the Central Excises and Salt Act, 1944, from the payment of excise duty in excess of Rs. 4.36 per kilolitre at 15 degrees centigrade. The exemption notification applied "in respect of such raw naphtha as is used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers" and the procedure set out in Chapter X of the said rules was followed.
4. The appellants manufacture urea, which is a fertiliser, at a plant at Kalol in the State of Gujarat and utilise for the purpose raw naphtha. The raw naphtha was obtained at the concessional rate of duty and was used for producing ammonia which, in turn, was used, partly, directly in the urea plant and, partly, indirectly, in the submission of the appellants, in the producing of urea by being employed in off-site plants, namely, the water treatment plant, steam generation plant, inert gas generation plant and effluent treatment plant, all of which were part of the integral process of the manufacture of urea.
5. The appellants, however, received show-cause notices for the periods aforementioned demanding excise duty at full rate on the raw naphtha used for making ammonia which had been used in the water treatment plant, steam generation plant, inert gas generation plant, and effluent treatment plant on the ground that such raw naphtha was not used in the manufacture of fertilisers. The demand was confirmed. In appeal by the appellants, the Collector of Central Excise and Customs upheld the contention of the appellants insofar as the ammonia was used in the water treatment plant, steam generation plant and inert gas generation plant. This was on the basis that the inert gas generated in the inert gas generation plant was required for purging the pipelines and other process equipment of the ammonia plant every time it had to be started or shut and, therefore, the process of inert gas generation had to be treated as an integral part of the process of the manufacture of ammonia, which, in turn, was used for the manufacture of fertilisers. The appellants required water

of a high degree of purity in the high pressure boilers and heat exchangers in the ammonia and urea plants. Ammonia was used therein for purifying the water. The use of ammonia in the water treatment and steam generation plants was, therefore, also an integral part of the process of manufacture of fertilisers. Insofar as the effluent treatment plant was concerned, however, the Collector took the view that effluents were waste produced after the fertilisers had been manufactured. The effluents were treated for reasons of hygiene and pollution. Their treatment could not be said to be directly linked to the process of manufacture of fertilisers and the effluent treatment plant could not be said to be an integral part of the process of manufacture of fertilisers. The demand upon the appellants, insofar as it related to the effluent treatment plant, was, therefore, upheld.

6. The excise authorities and the appellants filed appeals before the Tribunal. The Tribunal reversed the decision of the Collector insofar as it held that the off-site plants, other than the effluent treatment plant, were a part of the process of manufacture of fertilisers. The Tribunal held that ammonia was used for the maintenance of the plant and equipment meant for testing and commissioning the plant and could not be said to be utilised in manufacture. Similarly, the purpose of the water treatment being essential for the protection of the boiler and other process equipment from corrosion, formation of scales, etc., the ammonia used for the purpose could not be said to be used in the manufacture of fertilisers. The view of the Collector, insofar as the effluent treatment plant was concerned, was upheld.

7. Emphasis was laid, and rightly, by the learned counsel for the appellants on the phraseology used in the exemption notification. The exemption is made available to such raw naphtha as is used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers. That the raw naphtha is used to make ammonia is unquestioned. The ammonia is used directly in the manufacture of fertilisers; the raw naphtha so used is, it is not disputed, eligible to the exemption. The question is whether the ammonia used in the off-site plants is also ammonia which is "used elsewhere in the manufacture of fertilisers". The water treatment, steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end product urea, which is a fertiliser. These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The exemption notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The exemption notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inter gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption.

8. For our conclusion we draw support from the judgment of this Court in *CCE v. Eastend Paper Industries Ltd.* [(1989) 4 SCC 244 : 1989 SCC (Tax) 602] where it was held : (SCC pp. 248-49, para 5)

"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, articles required in that process, would fall within the expression 'in the manufacture of goods'."

This was a reiteration of the view expressed in *J. K. Cotton Spg. & Wvg. Mills Co. Ltd. v. STO*

[(1965) 1 SCR 900 : AIR 1965 SC 1310 : (1965) 16 STC 563]. It was there held : "The expression 'in the manufacture' takes in within its compass, all processes which are directly related to the actual production." In CCE. v. Ballarpur Industries Ltd. [(1989) 4 SCC 566 : 1990 SCC (Tax) 13] the respondent manufactured paper and paperboard, "in the processes relating to which 'sodium sulphate' is used in the chemical recovery cycle of sodium sulphate which forms an essential constituent of sulphate cooking liquor used in the digestion operation". The exemption notification concerned provided exemption to goods which had used as raw material or component parts any goods (inputs) falling under Item 68 of the First Schedule to the Act from so much of the excise duty leviable thereon as was equivalent to the excise duty paid on the inputs. The Court quoted what had been said in Dy. CST v. Thomas Stephen & Co. Ltd. [(1988) 2 SCC 264 : 1988 SCC (Tax) 190] namely, "[C]onsumption must be in the manufacture as raw material or of other components which go into the making of the end product ..." and observed that, correctly apprehended, that statement did not lend itself to the understanding that for something to qualify itself as a raw material it had necessarily and in all cases to go into and be found in the end product. The Court also quoted with approval the case of Eastend Paper Industries Ltd. [(1989) 4 SCC 244 : 1989 SCC (Tax) 602] cited above.

9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end product is part and parcel of the manufacturing process of that end product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.

10. In the result, the appeals are allowed. The orders under appeal are set aside. It is held that the raw naphtha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plants of the urea plant of the appellants is entitled to the exemption provided by Exemption Notification No. 187 of 1961 as amended from time to time.

11. There shall be no order as to costs.