

National Organic Chemical Industries Ltd.

Vs

Collector of Central Excise, Bombay

Civil Appeal No. 3828 of 1990

(K. Ramaswamy, S. P. Bharucha, K. Venkataswami JJ)

06.01.1997

JUDGMENT

BHARUCHA, J. -

1. The proper construction of the words "derived from" will determine this appeal against a judgment and order of the Customs, Excise & Gold (Control) Appellate Tribunal.
2. The appellants are a refinery, recognised to be such by the Union of India. They manufacture ethylene, butylene and propylene ("the said products"). It is their contention that the said products fall within Item 11-AA of the Excise Tariff and that they are entitled to the benefit of an exemption notification issued in respect of that item on 21-12-1967, as amended from time to time, under Rule 8 of the Central Excise Rules. The Revenue contends, basing itself on a Trade Notice dated 24-11-1984, that the said products are manufactured from raw naphtha and, therefore, are not classifiable under Item 11-AA but under the residuary Item 68.
3. Item 11-AA deals with petroleum gases. Sub-item (2) thereof, which is relevant, reads thus :

"Other petroleum gases and gaseous hydrocarbons derived from refining of crude petroleum or shale."
4. The said exemption notification applies to goods falling, inter alia, under Item 11-AA if they are "produced in any premises (other than the premises wherein refining of crude petroleum or shale or blending of non-duty-paid petroleum products is carried on) declared under sub-rule (2) of Rule 140 of the Central Excise Rules, 1944, to be a refinery". If the said products are held to fall under Item 11-AA, the said exemption notification, it is not in dispute, will apply.
5. The Tribunal noted the argument on behalf of the Revenue that the said products were "not derived directly from refining crude petroleum. Refining of crude petroleum means the first product obtained by refining of crude petroleum. The products in dispute in this case are derived from cracking raw naphtha" which was obtained by the appellants from the oil refineries. The Tariff Advice upon which the Revenue sought to change the classification of the said products from Item 11-AA(2) to Item 68 took the ground that the said products were not "derived directly" from crude petroleum. The Tribunal stated that the point for decision was whether, for the purpose of classification under Item 11-AA(2), a product should be derived directly from the refining of crude petroleum. Relying on a judgment of the Gujarat High Court, it held that for a product to be excisable under that item it "must be the immediate result of refining of crude petroleum". The said products were not derived directly from the crude petroleum but were obtained from raw naphtha

purchased from oil refineries. Accordingly, the Tribunal accepted the contention of the Revenue that the said products were not excisable under the said item but under the residuary Item 68.

6. The learned counsel for the appellants placed reliance upon the judgment of this Court in *Tata Oil Mills Co. Ltd. v. CCE* [(1989) 4 SCC 541 : 1990 SCC (Tax) 22 : (1989) 43 ELT 183]. The question before this Court related to an exemption notification; it exempted "soap as is made from indigenous rice bran oil or from a mixture of such oil with any other oils" from a certain part of the excise duty leviable thereon. This Court held that the requirement of the notification was that the soap manufacture should be from rice bran oil as contrasted with other types of oil. That was the ordinary meaning of the words used. The words might be construed literally, but they had to be given their fullest amplitude and interpreted in the context of the process of soap manufacture. There were no words in the notification to restrict it only to cases where rice bran oil was directly used in the factory claiming exemption and to exclude cases where soap was made by using rice bran fatty acid derived from rice bran oil. The whole purpose and object of the notification was to encourage the utilisation of rice bran oil in the process of manufacture of soap in preference to various other kinds of oil used in such manufacture and this should not be defeated by an unduly narrow interpretation of the language of the notification even when it was clear that rice bran oil could be used for manufacture of soap only after its conversion into fatty acid or hydrogenated oil.

7. The learned counsel submitted that the aforesaid judgment applied to the facts of this case. It made no difference that the raw naphtha was procured by the appellants from other factories. The point was that the said products were derived from the refining of crude petroleum, and raw naphtha was an intermediate product in such refining.

8. The learned counsel drew attention to the judgment of the Gujarat High Court, upon which the Tribunal had relied [*Nav Bharat Enterprises (P) Ltd. v. Collector of Customs* [1983 ELT 1134 (CEGAT)]]. Upon the assumption contended on behalf of the Revenue that processed oil ceased to bear the character of lubricating oil and became a new chemical compound, it was observed there that the product derived from refining crude petroleum would be covered by Item 11-A, but if a different commodity was produced or made by subjecting the "products derived from refining of crude petroleum" to a process, it would not fall within the plain language of Item 11-A (now Item 11-AA). The learned counsel submitted that the raw naphtha, produced from refining crude petroleum, was not subjected by the appellants to a process to produce the said products. The said products were the result of further refining.

9. The learned counsel for the Revenue submitted that the raw naphtha was a separate commercial commodity. It was the raw material from which the finished product, that is, the said products, was manufactured by the appellants. It could not, therefore, be said in a commercial sense that the said products had been derived from crude petroleum.

10. The dictionaries state that the word "derive" is usually followed the word "from", and it means : get or trace from a source; arise from, originate in; show the origin or formation of.

11. The use of the words "derived from" in Item 11-AA(2) suggests that the original source of the product has to be found. Thus, as a matter of plain English, when it is said that one word is derived from another, often in another language, what is meant is that the source of that word is another word, often in another language. As an illustration, the word "democracy" is derived from the Greek word "demos", the people, and most dictionaries will so state. That is the ordinary meaning of the words "derived from" and there is no reason to depart from that ordinary meaning here.

12. Crude petroleum is refined to produce raw naphtha. Raw naphtha is further refined, or cracked, to produce the said products. This is not controverted. It seems to us to make no difference that the appellants buy the raw naphtha from others. The question is to be judged regardless of this, and the question is whether the intervention of the raw naphtha would justify the finding that the said products are not "derived from refining of crude petroleum". The refining of crude petroleum produces various products at different stages. Raw naphtha is one such stage. The further refining, or cracking, of raw naphtha results in the said products. The source of the said products is crude petroleum. The said products must, therefore, be held to have been derived from crude petroleum.

13. The judgment of the Tribunal is erroneous on the basic question before it, and it is, therefore, not necessary for us to consider the aspect of limitation.

14. The appeal is allowed and the judgment and order under appeal is set aside.

15. No order as to costs.