

SUPREME COURT OF INDIA

Commissioner of Central Excise, Chandigarh-I

Vs.

M/s. Markfed Vanaspati & Allied Industries

C.A.Nos.77-80 of 2001

(S.N. Variava and H.K. Sema JJ.)

09.04.2003

JUDGMENT

S.N. Variava, J.

1. These appeals are against the judgment of the larger Bench of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The question for consideration is whether "spent earth" is liable to excise duty or not. Under the Tariff, prior to its amendment in 1985, it had been consistency held that "spent earth" was not liable to duty. However, with the enforcement of new Tariff in 1985, a conflict arose between various benches of the Tribunal. Some benches held that "spent earth" was still not excisable, whereas other benches held that, as it now stood included by a specific sub-heading, it became excisable. In view of these conflicting decisions, the matter was placed before the larger Bench of the CEGAT which by the impugned judgment has held that "spent earth" was still not dutiable. Hence these Appeals.

2. The only question for consideration for us is whether a good becomes excisable merely because it falls within a tariff item. After 1985 Tariff item 1507 reads as "residue resulting from the treatment of fatty substances". It is submitted that "spent earth" is a residue resulting from treatment and is thus now excisable. What we have to consider is whether the well settled twin tests of "manufacture and marketability" cease to apply if a good falls within a Tariff Entry.

3. Prior to this Entry being introduced in 1985, it had been consistently held that "spent earth" was not manufactured. It had been consistently held that "spent earth" remained "earth" even after processing. It has been consistently held that all that happened was that its capacity to absorb was reduced. It had been consistently held that duty having been paid on "earth", not duty was leviable on "spent earth" as it remained the same product. It had been held that to levy duty on "spent earth" would amount to levying duty twice. It is on this ground that it has been held that "spent earth" was not excisable. Even now it has not been shown that there is manufacture. The only submission is that "spent earth" is a residue resulting from the treatment of fatty substances. The submission is that now that there is a

specific Entry which makes "residue resulting from the treatment of fatty substances" excisable, duty has to be paid on "spent earth". In other words, what is submitted is that merely because a good falls within one of the Tariff items it becomes excisable.

4. In support of their submission, reliance is placed on the case of *Lal Woollen & Silk Mills (P) Ltd., Amritsar v. Collector of Central Excise, Chandigarh reported in*¹. In this case the question was whether excise duty was to be paid on dyed worsted woollen yarn made from duty paid worsted woollen grey yarn. It was argued that there was no manufacture. The Court, however, held as follows:

"Admittedly both "dyed yarn" and "grey yarn" are covered by two separate distinct heads of tariff items with different duty. So this itself recognizes them to be two different goods with separate levy. In view of this it cannot be urged that there is no manufacture of "dyed yarn" from the "grey yarn."

Undoubtedly this authority appears to support the contention which is raised.

5. However, it appears to us that the observation made in this authority are "*per incuram*". In so observing, the decision of a larger Bench of this Court in the case of *Collector of Central Excise, Indore v. Universal Cable Ltd. reported in*² has not been noted or considered. In this case an argument that a good becomes excisable because it is covered by Tariff Entry, has been negated. In the case of *B.P.L. Pharmaceuticals Ltd. v. Collector of Central Excise reported in*³ it has also been held that merely because there is a change in the Tariff Item the good does not become excisable. Subsequently in a judgment dated 13th February, 2003 in Civil Appeal No. 6745 of 1999 it has been held that merely because an item falls in a Tariff Entry, it does not become excisable unless there is manufacture and the good is marketable. In *Lal Woollen & Silk Mills'* case (supra) it has not been held that the twin test of manufacture and marketability is not to apply. It is not possible to accept the contention that merely because an item falls in a Tariff Entry it must be deemed that there is manufacture. The law still remains that the burden that there is manufacture and that what is manufactured is on the revenue. In this case no new evidence is placed to show that there is manufacture. "Spent earth" was "earth" on which duty has been paid. It remains earth even after the processing. Thus if duty was to be levied on it again, it would amount to levying double duty on the same product.

6. Under the circumstances, we find no infirmity in the impugned judgment. The Appeals stand dismissed. There shall be no order as to costs.

Appeal dismissed.

¹1999(4) SCC 466

²1995 Supp (2) SCC 465

³1995 Supp (3) 1