SUPREME COURT OF INDIA

Commissioner of Central Excise, Calcutta

Vs.

Hindustan Petroleum Corporation Limited

C.A.No.2678 of 2000

(S. N. Variava and Tarun Chatterjee JJ.)

14.09.2005

JUDGMENT

S. N. Variava, J.

1. This Appeal is filed against an Order of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), Eastern Bench, Calcutta dated 21st September, 1999.

2. Briefly stated the facts are as follows:-

> "The Respondents manufacture a Speciality Oil known as "METAQUENCH-40". Their claim for exemption under Notification No. 287/86-CE., dated 5th May, 1986 was disallowed by the Assistant Collector by Order dated 31st October, 1991."

3. The Collector (Appeals) allowed the Appeal of the Respondents by Order dated 20th April, 1992. CEGAT has dismissed the Appeal of the Appellants by the impugned Judgment.

4. It is settled law that to avail the benefit of an exemption Notification a party must strictly comply with the Notification. The concerned Notification reads as follows:-

> "In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts specialty oils, falling under sub-heading No. 2710.99 or 3403.00 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), from so much of the duty of excise leviable thereon which is specified in the said Schedule as is in excess of the amount calculated at the rate of 12% ad valorem.
>
> Provided that nothing contained in this notification shall apply to any such speciality oil manufactured by blending or compounding of any mineral oils (falling under Chapter 27 of the said Schedule on which the duty of excise leviable under section 3 of the *Central Excises and Salt Act, 1944* (1 of 1944) or the additional duty leviable

under section 3 of the *Customs Tariff Act, 1975* (51 of 1975), as the case may be, has not already been paid.

Explanation:-For the purposes of this notification, "speciality oil" means any preparation made by blending or compounding of mineral oils (falling under Chapter 27 of the Schedule to the *Central Excise Tariff Act, 1985* (5 of 1986) with other oils or any other substance and is intended for industrial uses (other than for use as lubricant) and of which the lubrication function, if any, is only secondary in nature." *

5. The Notification is undoubtedly exempting Speciality oils. There can be no dispute that even blending or compounding of one mineral oil with another mineral oil could result in manufacture of a Speciality oil. Speciality oil could also be manufactured by blending or compounding of a mineral oil with other oils or any other substance. However, the question is whether this Notification exempts all Speciality oils or only certain types of Speciality oils. The explanation to this Notification clarifies that for the purposes of this Notification the Speciality oil, which is exempted, is a preparation made by blending or compounding of mineral oil (falling under Chapter 27 of the Schedule to the *Central Excise Tariff Act, 1985*) with "other oils or any other substance". It is, thus, clear that all Speciality oils are not exempted under this Notification. Only those Speciality oils where the mineral oil is blended or compounded with other oils or any other substance, are exempted. This becomes further clear from a reading of the proviso. The proviso clarifies that nothing in this Notification will apply to a Speciality oil which is manufactured by blending or compounding of mineral oil falling under Chapter 27 of the Schedule. Thus, not only the explanation but the proviso makes it clear that the exemption is only to the Speciality oil which has been manufactured by blending or compounding of mineral oil (falling under Chapter 27) with other oils or any other substance. The Notification being clear and unambiguous, the opinions expressed by the Commissioner (Appeals) as well as CEGAT cannot be sustained. Both the Commissioner (Appeals) as well as CEGAT have erroneously proceeded to base their decisions on the difference in meanings between the words "blending" and "compounding". The reasoning that "blending" only means straight blending of mineral oils and would thus include within its scope a case of manufacture by mixing of two mineral oils is erroneous. What this reasoning fails to notice is the words "with other oils or any other substance". On above reasoning these words become superfluous. It is settled law that an interpretation which ignores words or which renders words superfluous cannot be given. Also this reasoning ignores the fact that in Chapter 27 there are a large number of mineral oils. When mineral oils of different types are mixed they would have been compounded. It is for this reason that the proviso also provides for "blending or compounding" in respect of mineral oils falling under Chapter 27. The proviso only deals with mineral oils under Chapter 27. It yet talks of "compounding". This shows that the reasoning that "blending" deals with straight blending of mineral oils whereas compounding" deals with mixing mineral oils with other oils is not correct. Thus, there could be "blending or compounding" only of mineral oils falling under Chapter 27. There could also be blending or compounding of mineral oils with other oils or other substances and the explanation makes it clear that the Speciality oil exempted under this Notification is only such Speciality oil which is manufactured by blending or compounding of mineral oil with other oil or any other substance.

6. It was next submitted that in respect of the same party, for an earlier period, by Order in-Appeal No. 224/Cal-I/90, dated 17th December, 1990 and by Order-in Appeal No. 226/Cal-I/90, dated 17th December, 1990, the Commissioner (Appeals) had negatived the contention of the Revenue that benefit of Notification No. 287/86-C.E., dated 5th May, 1986 was not available to Speciality oils which were obtained by only blending and compounding of mineral oils. It was submitted that no Appeal had been filed against those Orders. It was submitted that the Revenue having accepted those orders cannot now be permitted to take a contrary stand. In support of this submission, reliance was placed upon the authorities of this Court in the case of Collector of Central Excise, Pune v. Tata Engineering and Locomotives Co. Ltd. reported in (S.C) (referred) and *Birla Corporation Limited v. Commissioner of Central Excise reported in*[1] (referred). We, however, find, from the Orders relied upon, that those were in respect of some other products. Those Orders do not deal with "METAQUENCH-40" with which we are concerned. Orders in respect of some other product, even if not appealed against, cannot prevent the Revenue from contending that this product is not entitled to the benefit of the Notification.

7. For the reasons aforesaid, this Appeal is allowed. The impugned Order of CEGAT, as well as the Order of the Commissioner (Appeals) are set aside. The Order of the Assistant Collector is restored. There will be no order as to costs.

[1]*2005 (69) RLT 580 (S.C.)*