

# SUPREME COURT OF INDIA

Asian Peroxides Ltd.

Vs.

Commnr. of Central Excise, Guntur

C.A.Nos.5842-5843 of 2004

(Dr. Arijit Pasayat, P. Sathasivam and Aftab Alam JJ.)

07.07.2008

## JUDGMENT

### **Dr.Arijit Pasayat, J.**

1. In these appeals challenge is to the order by the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (in short the `CESTAT'). Before the CESTAT the issue related to the eligibility of the appellant for the benefit of exemption under Notification No.8/97-CE dated 1.3.1997 for Hydrogen Peroxide manufactured and cleared by the appellant to the Domestic Tariff Area ( in short the `DTA'). The Notification in question exempts finished products manufactured in a 100% Export Oriented Unit (in short the `EOU') wholly from the raw materials produced or manufactured in India and allowed to be sold in India from so much of the duty of excise leviable thereon under Section 3 of the Central Excise Act, 1944 (in short the `Act') as is in excess of amount equal to the duty of excise leviable under Section 3 of the Act on like goods produced or manufactured in India other than in a 100% EOU.

2. The original authority did not accept the stand of the appellant that the finished goods namely Hydrogen Peroxide removed by them from their EOU to the DTA was manufactured wholly from the raw materials produced in India.

3. Aggrieved by the adjudication, assessee appellant filed an appeal before the Commissioner of (Appeals) Excise who accepted the contention of the appellant that the above mentioned items are not raw materials but only consumable and, therefore, assessee cannot be denied the benefit of exemption under Notification no.8/97 in respect of several raw materials (11 in number). The revenue preferred appeals before the CESTAT. By the impugned order in each case CESTAT accepted the stand of the revenue. It was held that the respondent was not entitled to the benefit of Notification No. 8/97.

4. It held that in *Commissioner of Central Excise & Customs, Indore v. Century Denim*<sup>1</sup> the Tribunal applied the tests enunciated by this Court namely, whether it is an ingredient which goes into the making of the end product in the sense that without its presence the end

product, as such is rendered impossible and took the view that indigo pure dye, lycra and other important fixing agents utilized in the manufacture of denim fabrics are raw materials and not consumables.

5. According to the learned counsel for the appellant the materials in question are not raw materials but consumable as per definition in para 3.13 of the EXIM Policy. According to the definition of 'consumable' it means any item which participates in or is required for manufacturing process but does not form part of the end-product. Items which are substantially or totally consumed during manufacturing process will be deemed to be consumable. According to para 3.41 of the policy, raw material means basic materials which are needed for the manufacture of goods but which are still in a raw nature, unrefined or un-manufactured stage. Reliance was placed on the Board's Circular No. 389/22/98-CX, dated 5.5.1998 wherein it has been clarified that the benefit of the Notification would also be available even if imported consumables are used in the manufacture by 100% EOU.

6. Learned counsel for the revenue supported the judgment of the CESTAT.

7. The expression "raw material" is not a defined term. The meaning has to be given in the ordinary well accepted connotation in the common parlance of those who deal with the matter. In *CCE v. Ballarpur Industries Ltd.*<sup>2</sup> it was, inter alia, observed as follows:

“14. The ingredients used in the chemical technology of manufacture of any end product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end product; those which, as a result of interaction with other chemicals or ingredients might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end products and those, as here, which might be burnt up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "raw material" for the end product. One of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence of the end product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end product in the sense that without its absence the presence of the end product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilization is in the manufacturing process as distinct from the manufacturing apparatus.”

20. Dealing with a case under a Sales Tax statute, i.e. Andhra Pradesh General Sales Tax Act, 1957, this Court held that the word "consumable" takes colour from and

must be read in the light of the words that are its neighbours "raw material", "component part", "sub-assembly part" and "intermediate part". So read, it is clear that the word "consumables" therein refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason, a departure was made from the concept that "consumable" fall within the broader scope of the words "raw materials". Reference in this connection can be made to the view expressed in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s Thomas Stephen & Co. Ltd., Quilon*<sup>3</sup> and *Coastal Chemicals Ltd. V. Commercial Tax Officer, A.P. and Ors.*<sup>4</sup>. In the cases at hand "consumable" are treated differently from "raw materials".”

8. Since the CESTAT has not considered the materials on record in the above perspective, the impugned judgments are set aside. The matter is remitted to the CESTAT in each case for dealing with the matter afresh in accordance with law. The CESTAT while doing so shall keep in view the decision of this Court in *Vanasthali Textiles Industries Ltd. v. Commr. of C.Ex., Jaipur, Rajasthan*<sup>5</sup>.

9. The appeals are disposed of accordingly. No order as to costs.

<sup>1</sup>(2001) 129 ELT 657 (T)

<sup>2</sup>(1989) 4 SCC 566

<sup>3</sup>(1988 (2) SCC 264)

<sup>4</sup>(1999 (8) SCC 465)

<sup>5</sup>[2007(218) ELT 3(SC)]