(2000) 04 SC CK 0016

In the Supreme Court Of India

Case No : Civil Appeal No''s. 8989-9000 of 1996

Collector of Central Excise, Baroda APPELLANT

Vs

United Phosphorus Ltd. RESPONDENT

Date of Decision : 07-04-2000

Acts Referred:

Citation : AIR 2000 SC 3424 : (2000) AIRSCW 1145 : (2000) 69 ECC 255 : (2000) 90 ECR 6 : (2000) 117 ELT 529 : (2001) 2 GLR 1717 : (2000) 4 JT 323 : (2000) 3 SCALE 120 : (2000) 4 SCC 18 : (2000) 2 SCR 1062 : (2000) 3 Supreme 251

Hon'ble Judges : S. Rajendra Babu, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : Gauri Shankar Murti, K.C. Kaushik and P. Parmeshwaran, for the Appellant; Dushyant A. Dave Jay Savlam, J.K. Das and N. Menon, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.—The respondents are engaged in the manufacture of insecticides, fungicides, weedicides and pesticides falling under Tariff sub-heading 3808.10 and excisable thereunder. During the process of manufacturing Mercuric Acetate (MA), Para Chloro Phenyl Valeric Acid (PCA), and Chloro Synthetic Acid Chloride (CSA Chloride) came into existence as Intermediate products. The Collector of Central Excise passed orders of adjudication holding the abovesaid three Intermediate products liable to payment of excise duty. The respondents preferred appeals before the Collector (Appeals) who has allowed the appeals exonerating the said three intermediate products from levy of excise duty. The appeals preferred by the Revenue against the order of Collector (Appeals) have been dismissed by a common order by the CEGAT. The aggrieved Revenue has come up by filing these appeals to this Court.

2. It is well settled by a series of pronouncements of this Court from Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay, to Union of

India and another Vs. Delhi Cloth and General Mils Co. Ltd. and another, that excise is a duty on goods as specified in the Schedule. The taxable event in the case of excise duty is the manufacture of goods. In order to be excisable goods (i) there must be goods (ii) having come into existence as a result of manufacture, and (ill) to be goods, the article must be known to the market as such and as would ordinarily come to the market for being bought and sold. Actual sale of the article is not required but it must be capable of being bought and sold. Intermediate products even if captivity consumed may be liable to levy of excise duty if they satisfy the test of being goods on the touchstone of marketability. In Union of India and another Vs. Delhi Cloth and General Mils Co. Ltd. and another, the following statement of law from Moti Laminates Pvt. Ltd. and Others Vs. Collector of Central Excise, Ahmedabad, has been reaffirmed:

The duty of excise being on production and manufacture which means bringing out a new commodity, it is Implicit that such goods must be usable, moveable, saleable and marketable. The duty is on manufacture or production but the production or manufacture is carried on for taking such goods to the market for sale. The obvious rationale for levying excise duty linking it with production or manufacture is that the goods so produced must be a distinct commodity known as such in common parlance or to the commercial community for purposes of buying and selling.

3. Though the intermediate goods so coming into existence may be specified in the Schedule as excisable they would not be subjected to duty unless they satisfy the test of marketability. In the case of Union of India and another Vs. Delhi Cloth and General Mils Co. Ltd. and another, the intermediate product was calcium carbide, which initially produced in the form of cakes, was broken into smaller pieces after the cakes attained room temperature and the broken pieces were forthwith put into use for the production of acetylene gas. The Appellate Collector had found that the calcium carbide which was sold in the market was packed in airtight containers and conformed to ISI specifications which the Intermediate products of DCM did not. Their Lordships held that as the calcium carbide manufactured by the DCM for further utilisation in the production of acetylene gas was not of a purity that rendered it marketable nor was it packed in such a way as to make it marketable, that is to say, in airtight containers it was not excisable on the ratio of Moti Laminates. As held in Collector of Central Excise, Baroda Vs. M/s. Ambalal Sarabhi Enterprises (P) Ltd., onus to establish that an article is "goods" and marketable, is on the department.

4. In the case at hand the Collector (Appeals) has found that the abovesaid three intermediate products came into existence at a certain stage of a multiple stage integrated chemical process leading to the final products and therefore they could not be held to be goods as understood in commercial parlance because they were not marketable. The department had failed in showing if any facility existed for separation of the said three products and whether in the form in which the said three products came into existence, in the reaction process were

capable of being marketed. The finding of fact so arrived at has not been challenged much less dislodged before the Tribunal. The only argument advanced before the Tribunal was that the three items were mentioned as "goods" in the dictionary and in the excise tariff and Mercuric Acetate (MA) was also mentioned as one of the items entitled to drawback in Duty Drawback Rules. The Tribunal has observed that these facts and mere mentioning of an item in Drawback Rules with reference to a different context was not enough to satisfy the test of marketability unless it was shown that the intermediate products were capable of being taken to market and bought and sold.

5. No fault can be found with the view taken by the Tribunal. The appeals are devoid of any merit and hence are dismissed though without any order as to the costs.

