

(2008) 11 SC CK 0090

In the Supreme Court Of India

Case No : Civil Appeal No. 1130 of 2003

Commissioner of Central Excise, Mumbai

APPELLANT

Vs

National Organic Chemical Industries Limited

RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:

Constitution of India, 1950 — Article 39

Citation : (2008) 134 ECC 189 : (2008) 160 ECR 189 : (2008) 232 ELT 193 :
(2008) 12 JT 271 : (2008) 14 SCALE 540

Hon'ble Judges : H. S. Bedi, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : K. Radhakrishnan, Asha G. Nair and P. Parmeswaran, for the Appellant; D.B. Shroff Faranazz Karabhari, kanika Gomber and Rajan Narain, for the Respondent

Final Decision : Dismissed

Judgement

Dalveer Bhandari, J.—This appeal is directed against the judgment and order dated 20th May, 2002 passed by the Customs Excise & Gold (Control) Appellate Tribunal, West Zonal Bench at Mumbai vide Order No. CII/1570/WZB/2002 in Appeal No. E-2354/96 Bombay.

2. The short question for consideration in this appeal is whether ethylene and propylene manufactured by the respondent assessee and used in its factory in the further manufacture of the same goods would be entitled to the benefit of exemption contained in notification No. 217/86.

3. The respondent assessee M/s National Organic Chemical Industries Limited manufactured ethylene and propylene by cracking raw naphtha in a naphtha cracker. Ethylene and propylene fall under chapter 29 of the Central Excise Tariff Act, 1985 (hereinafter referred to as "the Tariff Act"). During the process of cracking raw naphtha, gases such as methane and ethane automatically emerge as by-products and is an inevitable consequence of cracking of raw naphtha. Methane and the ethane fall under chapter 27 of the Tariff Act.

4. It is the common case of the parties that a part of the ethylene and propylene manufactured by the aforesaid process is captively consumed by using the same as a refrigerant in the process of separation and to provide external treatment to keep some of the products at low-temperature to prevent their polymerization. The remaining quantity of ethylene and propylene is sold as the final product.

5. The case of the appellant as set out in appeal is as follows:

The respondent assessee holds Central Excise Registration for manufacture of excisable goods falling under chapter Nos. 27, 28, 29, 32, 38, 39 and 40 of the Schedule to the Tariff Act.

6. The respondent manufactures petro chemicals falling under chapters 27 and 29 from raw naptha. Raw Naptha is cracked in cracker containing number of burners and heated upto 800 degree centigrade. After the process of cracking, Ethylene and Propylene gases are produced in the factory. These gases are also captively consumed as a refrigerant for cooling since they have the property of reducing temperatures upto 100 degree c. and 30 degree c. respectively.

7. The captively consumed ethylene and propylene are further used in refrigeration to manufacture products falling under chapters 27 and 29. The methane and ethane manufactured in this process fall under chapter 27. Ethylene and propylene fall under chapter 29. The manufacture of the products falling under chapter 27 has never been informed to the authorities through the classification list filed by the assessee.

8. It is the further case of the appellant that as per Exemption Notification No. 217/86 CE dated 2.4.1986, the inputs ethylene and propylene (falling under chapter 29) captively consumed in the manufacture of finished goods falling under chapter 29 are exempted from excise duty. As per the said notification such exemption will not be available to ethylene and propylene used in the manufacture of goods falling under chapter 27, namely methane and ethane. In other words, excise duty will have to be paid by the respondent assessee for such of the quantity of ethylene and propylene (inputs) captively consumed and used in the manufacture of products falling under chapter 27 namely methane and ethane.

9. In the circumstances, five show-cause notices were issued to the respondent assessee demanding central excise duty for the inputs ethylene and propylene used in the manufacture of finished products falling under chapter 27. The extended period of limitation was also invoked. Penalty was also proposed.

10. Following five show-cause notices were issued to the respondent.

S. No. Date Period 1 03.02.1993 July 1992 to December, 1992 2 04.06.1993 May 1988 to June 1992 3 02.08.1993 January 1993 to May 1993 4 28.12.1993 June 1993 to November 1993 5 29.06.1994 December 1993 to February 1994

11. By order in original dated 12.7.1996, the Commissioner Central Excise,

Mumbai-III confirmed the duty demands, imposed penalty and ordered interest for delayed payment of duty but did not order confiscation of land, building, plant, machinery, etc. of the assessee.

12. The appeal filed by the assessee before the Tribunal was allowed by setting aside the order of the Commissioner through the impugned order dated 20.5.2002.

13. Aggrieved by the impugned order rendered by the Tribunal, the Revenue is in appeal before this Court.

14. According to the appellant, the assessee is not entitled to get the benefit of the exemption notification if the inputs manufactured in the factory are captively used for the manufacture of final products not specified in column 3 of the Table annexed to the notification. Chapter heading 27 is not available in column 3 of the Table. The methane and ethane, the finished products manufactured by using ethylene and propylene as refrigerant fall under chapter 27. Hence, as per the notification the ethylene and propylene (inputs) used for the manufacture of goods falling under chapter 27 are not entitled to get exemption from duty as per the notification.

15. In the order in original there is specific finding that ethylene and propylene are used in the manufacture of goods falling under chapter 27.

16. It was contended by the respondent that ethylene and propylene were used as refrigerant to cool hydrocarbon gases, which result from the cracking of naphtha. It is as a result of this cracking that ethylene, propylene along with ethane, methane and other substances emerge. The emergence of ethane and methane is inevitable. Since it only emerges in the manufacture of other substances, which are specified in column no.3 of the table, their emergence (ethane and methane) should not by itself justify denial of the benefit.

17. The respondent has submitted a chart indicating the process of manufacturing of ethylene and propylene. The chart also reveals how ethane and methane emerge as by- products. The chart is reproduced as under:

18. The process of manufacture indicated in the chart indicates that some gases automatically emerge in the process of cracking of naphtha, including ethane and methane. The respondent further submitted that part of ethylene and propylene manufactured by it is captively consumed or used in or in relation to the manufacture of the same goods. The emergence of ethane and methane, therefore, by itself is not a ground for denying the exemption contained in the notification.

19. The respondent assessee submitted that there was no way by which the respondent could have manufactured ethylene and propylene without producing ethane and methane. It is not as if by using a smaller quantity of raw material or other goods involved in the process, the respondent could have averted the emergence of ethane and methane. In other words, in the technology utilized for

the manufacture of ethylene and propylene, the emergence of ethane and methane was inevitable. Hence, while it is no doubt correct to say that the ethylene and propylene have been used in or in relation to the manufacture of ethane and methane, the identical quantity of the same goods has simultaneously been used in the manufacture of ethylene and propylene. The emergence of ethane and methane is, therefore, by itself is not a ground to deny the benefit of the exemption notification.

20. Mr. K. Radhakrishnan, learned senior advocate appearing for the appellant in support of his submission placed reliance on the case of *Novopan India Ltd., Hyderabad v. Collector of Central Excise and Customs, Hyderabad* 1994 Supp (3) SCC 606 and submitted that in case of ambiguity the benefit of doubt must go to the Revenue. As far as this proposition of law is concerned there is no quarrel, but it has no application to the facts of this case.

21. Reliance has also been placed by Mr. Radhakrishnan on the case of *Commissioner of Central Excise, Chandigarh-I v. Mahaan Diaries* (2004) 11 SCC 798. In this case, the Court held that in order to claim benefit of a notification, a party must strictly comply with the terms of the notification. If on wording of the notification the benefit is not available then by stretching the words of the notification or by adding words to the notification benefit cannot be conferred.

22. Reliance was also placed on the case of *Commissioner of Central Excise, Trichy v. Rukmani Pakkwell Traders* (2004) 11 SCC 801. The same principle has been reiterated in this case and the court held that exemption notifications have to be strictly construed. They must be interpreted on their own wording. To be entitled to the benefits of a notification, a person has to strictly comply with the conditions of that notification. If on a plain reading of the notification the benefit is not available then merely on the basis of principles applied in infringement cases benefit cannot be claimed.

23. Mr. D.B. Shroff, learned senior counsel appearing for the respondent submitted that he is not questioning the well-settled proposition of law, but the respondent assessee in this case is entitled to the benefits of the notification on a plain reading of the notification.

24. Mr. Shroff further placed reliance on the following decisions:

In Union of India and Ors. v., Tata Iron and Steel Company Limited 1977 (1) ELT 61 (SC), a four-Judge bench of this Court held as under:

23. .. The High Court rightly said that the Notification does not say that exemption is granted only when duty paid pig iron is used and that the exemption would not be available if duty-paid pig iron is mixed with other non-duty paid materials. If the intention of the Government were to exclude the exemption to duty-paid pig iron when mixed with other materials then the notification would have used the expression "only" or "exclusively" or "entirely" in regard to duty-paid pig iron. The object of the notification was to grant relief

by exempting the duty-paid pig iron.

25. In *Indian Farmers Fertiliser Cooperative Limited v. Commissioner of Central Excise, Ahmedabad*, 1996 (86) ELT 177, this Court observed as under:

7. ..The Exemption Notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The Exemption Notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption.

26. Mr. Shroff also placed reliance on *Indian Petrochemicals Corporation Ltd. V. Collector of Central Excise, Vadodara* 1997 (92) ELT 294 . In this case, this Court observed as under:

19. Under this notification pyrolysis gasolene which falls under chapter 27 is produced in the appellant's factory and it is utilised for the manufacture of goods. As such it would be exempt from the whole of the duty of excise leviable thereon assuming that any duty of excise is leviable on it. Therefore, we fail to see how any duty of excise can be levied on any part of pyrolysis gasolene manufactured in the factory of the appellant.

20. Pyrolysis Gasolene being an intermediate product which is produced in the factory of the appellant, and it being utilised for the manufacture of other goods, it would be totally exempt from payment of excise duty under the second exemption notification.

27. In *National Organic Chemical Industries Ltd. V. Collector of Central Excise, Bombay* 1997 (89) ELT 643, this Court observed as under:

11. 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 state. 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.

28. In *Doypack Systems (Pvt.) Ltd. v. Union of India* 1988 (36) ELT 201 , this Court had an occasion to examine the expressions "pertaining to", "in relation to" and "arising out of" and observed as under:

46. ...The expressions "pertaining to", "in relation to" and "arising out of", used in the deeming provision, are used in the expansive sense, as per decisions of courts, meanings found in standard dictionaries, and the principles of broad and liberal interpretation in consonance with Article 39(b) and (c) of the Constitution.

29. Mr. Shroff further placed reliance on Commissioner of Central Excise, Coimbatore v. Jawahar Mills Ltd. 2001 (132) ELT 3 wherein this Court whilst interpreting the words "used in the factory of manufacture" used in Clause (c) of the Explanation to Rule 57Q (1) held that the goods need not be used for producing the final product or used in the process of any goods for the manufacture of final product or used for bringing about any change in any substance for the manufacture of final product and the only requirement is that the same should be used in the factory of the manufacturer. Thus, it can be seen that the language used in the explanation is very liberal.

30. We have heard the learned counsel for the parties at length and perused the judgments cited at the Bar. The Tribunal's finding that the ethylene and propylene used as refrigerant has been used in or in relation to the manufacture of the same goods. The inevitable and automatic emergence of ethane and methane, therefore, by itself is no ground for denying the exemption contained in the notification. The Tribunal came to the categorical finding that the respondent could not have manufactured ethylene and propylene without manufacturing its by-products ethane and methane. The Tribunal held that in any technology the emergence of ethane and methane was inevitable and hence while it is no doubt correct to say that the ethylene and propylene have been used in or in relation to the manufacture of ethane and methane, the identical quantity of the same goods has simultaneously been used in the manufacture of ethylene and propylene. The emergence of ethane and methane, therefore, cannot be a ground to deny the benefit of exemption to the respondent.

31. In our considered view, no interference is called for in the well-reasoned judgment/order of the Tribunal. The appeal being devoid of any merit is accordingly dismissed. However, in view of the facts & circumstances of the case, the parties are directed to bear their own costs.