
(2001) 10 P&H CK 0041
In the Punjab And Haryana At Chandigarh
Case No : C.C.E.S. No. 44 of 2001

Commr. of C. Excise, Chandigarh-II

APPELLANT

Vs

National Fertilizer Ltd.

RESPONDENT

Date of Decision : 16-10-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 196(1), 210

Citation : (2002) 79 ECC 758 : (2000) ECR 504 : (2002) 140 ELT 372 : (2002) 1 RCR(Civil) 834

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : Kamal Sehgal, A.C.G.S.C, for the Appellant;

Final Decision : Dismissed

Judgement

Ashutosh Mohunta, J.—The present reference petition is against the order of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as "the CEGAT"), dated September 7, 2000.

2. Respondent No, 1 - M/s. National Fertilizer Ltd., Bathinda - is engaged in the manufacture of fertilizer and ammonia. For its manufacture furnace oil is used by it. A part of the furnace oil is used in the manufacture of steam, which is further used in running the rotary equipments like, turbines, generating sets, compressors, pumps etc. The respondent paid concessional rate of duty on the furnace oil. Every year the plant used to be shutdown for a period of one month for repair and maintenance and during this period no fertilizer or ammonia was manufactured. However, the respondent was using the furnace oil for the manufacture of steam, which in turn was used in the manufacture of electricity in its captive power generating plant. Thus, although no manufacturing process took place during the shut-down period, but the furnace oil was used for the maintenance and repair of the plant and machinery.

3. A show cause notice was issued to the respondent, stating that it had

contravened the provisions of Rules 196(1) and 210 of the Central Excise Rules, 1944, and that it had violated the provisions of Chapter X inasmuch as it had not used the furnace oil in the manufacture of fertilizer and thereby it had evaded the Central Excise Duty to the tune of Rs. 10,67,785.56 during the period May, 1990 to May, 1994. It was also alleged that as no manufacturing process had taken place during the shut-down period, therefore the respondent was not entitled to the concessional rate of duty. The respondent submitted its reply to the show cause notice, but the adjudicating authority confirmed the demand under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11A of the Central Excises and Salt Act, 1944.

4. An appeal was filed before the Commissioner (Appeals), Central Excise, who vide his order dated December 26, 1997 dismissed it and confirmed the demand of Rs. 10,67,985.56 under Rule 9(2) of the 1944 Rules read with proviso to Section 11A of the 1944 Act. The respondent filed an appeal before the CEGAT. It set aside the order of the Commissioner on the ground that "when the ingredients of the contravention of Rule 9(1) are not found to be established a demand under Rule 9(2) read with proviso to Section 11A, as ordered, cannot be sustained". The Revenue has filed the present petition against the order of the CEGAT and has claimed the following question of law :-

"Whether CEGAT was correct in setting aside the Order-in-Original and allowing the appeal of the party due to misquoting of Rules by the adjudicating authority in operative part of the Order-in-Original and the CEGAT has not decided the case on merits?"

5. We have heard Mr. Kamal Sehgal, learned Counsel for the Revenue on merits as well.

6. Firstly, in the present case the demand has been made under Rule 9(2) of the 1944 Rules read with proviso to Section 11A(1) of the 1944 Act. This could not be ordered because under Rule 9(2) a demand can only be made on the contravention of Rule 9(1), i.e., if the goods have been removed. As per Rule 9(1) of the 1944 Rules, "no excisable goods shall be removed from any place where they are produced, cleared or manufactured or any premises, apartment thereto, which may be specified by the Commissioner in this behalf, whether for consumption, export or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid". In the present case there are no findings to show that there has been any clandestine removal from the place of manufacture. Thus, when there is no contravention of Rule 9(1), a demand under Rule 9(2) of the 1944 Rules read with the proviso to Section 11A of the 1944 Act cannot be sustained. On merits, it is clear that the furnace oil was chargeable to annual rate of duty, if the same was intended for the use as feed stock in the manufacture of fertilizer. The contention of Mr. Sehgal is that during the shut-down period, no manufacture of fertilizer had taken place and, therefore, the respondent was not eligible for concessional rate of duty. He has submitted that during the annual closure of the plant, the furnace

oil was used for the manufacture of steam, which in turn was used for generation of electricity. Thus, as no production of fertilizer had taken place, therefore, the respondent was liable to pay the entire duty on the use of furnace oil during the shut-down period.

7. We have considered the arguments of Mr. Sehgal. The steam generation and its ultimate generation of electricity is a part and parcel of the composite process, which produces the final product, i.e. fertilizer. For the effective running of any plant, maintenance and overhauling of the machinery is necessary. It is an integral part in the process of production. Similar question came up for adjudication before their Lordships of the Apex Court in *Collector of Central Excise, Calcutta-II Vs. Eastend Paper Industries Ltd.*, where it was held "where any particular process.....is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression in the manufacture of goods". Similar question also arose in *Indian Farmers Fertiliser Cooperative Limited Vs. Collector of Central Excise, Ahmedabad*, wherein the Apex Court has held :-

"9. That leaves us to consider whether the raw naphtha used to produce the ammonia which is used in the effluent treatment plant is eligible for the said exemption. It is too late in the day to take the view that the treatment of effluents from a plant is not an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent years upon the environment and pollution control requires that all plants which emit effluents should be so equipped as to rid the effluents of dangerous properties. The apparatus used for such treatment of effluents in a plant manufacturing a particular end-product is part and parcel of the manufacturing process of that end-product. The ammonia used in the treatment of effluents from the urea plant of the appellants has, therefore, to be held to be used in the manufacture of urea and the raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption."

8. The same view was also expressed by the Apex Court in *Steel Authority of India Ltd. Vs. Collector of Central Excise*, .

As a sequel to the above discussion, it is held that the furnace oil, which was used in the manufacture of steam, which in turn was further used in the generation of electricity during the shut-down period, was entitled to the concessional rate of duty.

In the end result, the reference petition filed by the Revenue is dismissed in limine.