

(1986) 12 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Petition No. 214 of 1982

Modi Rubber Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-12-1986

Acts Referred:

Citation : (1987) 12 ECC 302 : (1987) 12 ECR 850 : (1987) 29 ELT 502 :
(1986) ILR Delhi 235

Hon'ble Judges : S.S. Chadha, J;S.N. Sapra, J

Bench : Division Bench

Advocate : Lakshmi Kumaran, P.K. Ram, S.K. Mishra and Simran Mangat, for the Appellant;

Final Decision : Allowed

Judgement

S.S. Chadha, J.—The short question raised in this petition under Article 226 of the Constitution of India is whether waste/scrap obtained in the course of manufacture of tyres, tubes, flaps and other products by the petitioner company are "goods" classifiable under Tariff Item 68 of C. E. T. and liable to excise duty.

2. M/S. Modi Rubber Ltd., a company registered under the Companies Act, 1956, petitioner No. I, is carrying on the business of manufacturing and selling tyres, tubes, flaps and other rubber products. These goods are manufactured by the petitioner-company at its factory at Modipuram. For the purpose of manufacturing these goods, the petitioner-company mixes rubber with various other Chemicals to form a rubber compound. A small quantity of the compound is rejected during the production process due to certain defects such as wrong mixing or over heating. The petitioner-company claims that this defective or rejected rubber compound is in the nature of waste. At various stages of the manufacture of the goods, some quantity of rubber cuttings treated as waste also emerges. Then sub-standard and defective goods are destroyed by cutting and punching and is being treated as waste. The claim of the petitioners is that duty of excise is a duty on the event of manufacture as defined in the Central

Excise and Salts Act, 1944 (hereinafter called the Act) and since there is no event of manufacture of waste, no duty is leviable.

3. A question had been raised and considered by the Central Board of Excise & Customs whether such waste arising during the processing of tyres should be classable under Tariff Item 16-A(2) or 68 of Central Excise Tariff. The Central Board of Excise and Customs noticed that during the process of mixing of rubber compound, a small percentage of stock is rejected due to process, defects such as wrong mixing, over heating etc. and this stock is sold by the manufacturer as "scrap rubber compound" at a price lower than the price of raw rubber put in and similarly during the process of manufacture of tyre, scrap rubberised fabric are also generated as waste material. They took the view that since these articles of such nature arise during the process of manufacture and these could be considered as "goods" resultant of manufacture. A view was taken that the waste arising during the processing of tyres is classifiable under Tariff Item 68 of C. E. T. Accordingly, the impugned trade notice dated July 8, 1981 was issued. The Central Excise Collector, Meerut, in consequence, issued the second impugned notice dated October 17, 1981 to the similar effect that. the waste arising out of process of tyres is classifiable under Tariff Item 68 of C. E. T.

4. The contention of Mr. Lakshmi Kumaran, the learned counsel for the petitioners is that the petitioner company manufactures tyres, tubes, flaps and other rubber products, lie does not dispute the process and the resultant waste as noticed by the Central Board of Excise and Customs. His submission is that the said waste matters come into existence in the course of manufacture of tyres, tubes, flaps and other rubber products and the event of manufacture is not the waste matter but it is the manufacture of tyres, tubes, flaps and other rubber products. It is urged that since there is no event of manufacture of waste matter, no duty of excise can be levied thereon. In pursuance of the impugned directives, the petitioner company was called upon to furnish the information regarding the amount of waste arising in the course of manufacture of tyres. The correspondence exchanged between the petitioner company and Excise Authorities is on the record. Ultimately, the petitioner company declared the quantity of processed waste[scrap as on January 5, 1982 as follows :

1. Rubber Compound 6.5 M.T. 2. New Rejected Tyres Giant Tyres, Pass and Adv Tyres (excluding Bead) 700.00 kg. 3. Tractor Tyres 200.00 Kg. 4. Friction Waste 3 M.T. 5. Lab. Samples/Cured Rubber 200.00 Kgs. 6. Rejected Tubes (All Sizes) 240.00 Kgs. 7. Rejected Flaps 80.00 Kgs. 8. Tyre Shaving/Flap Flash 700.00 Kgs. 9. Bladder Scrap 600.00 Kgs. 10. Air Bags Nil 11. Tabby Ends (Rubberised & Unrubberised) 2100.00 Kgs". 12. Dried Fraction Waste . 1500.00 Kgs.

5. The petitioner Company was advised to start paying appropriate central excise duty on the waste/scrap that was cleared from the factory after observing all the formalities as required under Central Excise Rules by completion of the formalities under the Act and the Rules. The petitioners then moved this Court by the present writ petition under Article 226 of the Constitution of India. Pending

disposal of the petition, the petitioners were allowed future clearances of waste/scrap by execution of a bond in the appropriate form for payment of excise duty if the writ petition was dismissed and giving of a bank guarantee in addition for 25 per cent of the amount of excise duty claimed by the respondents.

6. Excise duty under the Act is on the manufacture and is livable on manufactured products only. The event of taxation is the manufacture of goods. The incidence of levy of duty of excise can arise only if there is manufacture. Manufacture includes any process incidental or ancillary to the completion of a manufactured product. The charging Section 3 imposes excise duty on the manufacture or production of goods. As such no sooner the process of manufacture or production is completed the liability for excise duty arises at that particular point of time. In the leading case of Union of India (UOI) Vs. Delhi Cloth and General Mills, , the Supreme Court observed that manufacture implies a change, but every change is not a manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation that is a new and different article must emerge having a distinctive name, character or use. It was observed that the consideration of the meaning of the word "goods" provides that to become "goods" an article must be something which can ordinarily come to the market to be brought and sold and provides strong support for the view that "manufacture" which is liable to excise duty under the Act must be the bringing into existence of a new substance known to the market. Again in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, it was reiterated that the word "manufacture" implies a change but every change in the raw material is not manufacture, there must be such a transformation that a new and different article must emerge having a distinctive name, character or use.

7. The question that falls for consideration is whether the waste/scrap are goods manufactured by the petitioner company in its factory. Manufacture is the result of treatment, labour or manipulation with a view to achieve a different superior product and the said product is obtained by a deliberate skilful manipulation of the inputs or the raw materials. Manufacture by the petitioner company is the net result of processes through which the original commodity of rubber mixed with various other Chemicals to form a rubber compound is passed so as to obtain a commercially new commodity of distinctive and specific use such as tyres, tubes, flaps and other rubber products. This manufacture is as a result of conscious human labour, treatment and manipulation which results in bringing into existence a new distinctive commercial commodity. The end product which comes into existence after the manufacturing process is complete, is a substance known to the market. The liability for excise duty arises at that particular point of time. The petitioner Company is paying at the time of removal of those goods excise duty under Tariff Item 16-A(2) of C.E.T.

8. It cannot, however, be said that Waste/scrap is the result of any treatment or any labour or any manipulation by the petitioner Company whereby a new and

different article emerges. At various stages of the manufacture of tyres, tubes, flaps and other rubber products which are admittedly goods manufactured, rubber cuttings and waste is generated and comes into existence. The process whether essential or incidental or ancillary to fall within the ambit of the expression "manufacture" is one which must have some relation to the manufacture of a finished product. The waste/scrap is obtained not by any process of manufacture but in the course of manufacturing process to produce the end product of tyres, tubes, flaps, etc. The waste/scrap is obtained in the course of manufacture and not out of manufacture of the end product. In our opinion, it is not a result of manufacture, because no one would produce any such degrading or even inferior thing. If the raw material of rubber compound has undergone some change in the process of manufacture so as to turn into waste or scrap, it cannot be equated with any finished product. There is a change but every change in the raw material is not manufacture. There is no transformation in case of waste/scrap of a new and different article. No one has brought into existence a new substance having a distinctive name, character or use.

9. In "Indian Aluminium Co. Ltd. V. A.K. Bandopadhyaya and others", 1980 Elt 146 Bom. (3) the question arose about the suitability of "Dross and Skimming" obtained in the process of manufacture of aluminium sheets from aluminium ingots. It was held that dross and skimming are merely refuse, scum or rubbish thrown out in the process of manufacture of aluminium sheets and cannot be said To be the result of treatment, labour or manipulation. It was ruled :

IT cannot be said that dross and skimming are the result of treatment, labour or manipulation whereby the end-product of manufacture of aluminium sheets. Therefore it cannot be said that dross and skimming are transformation resulting in a new and different article with a distinctive name, character or use or that they ordinarily come to the market to be brought and sold and are known to the market. The article or goods manufactured from the aluminium ingots was not dross and skimming but the aluminium sheets. It was the aluminium sheets Therefore that were the end-product or the finished product and. not the dross and skimming which were merely the refuse or scum or rubbish thrown out in the course of the manufacture of the finished product, namely, the aluminium sheets. . . .

10. Rule 49 of the Central Excise Rules. 1944 (hereinafter referred to as the Rules), provides for duty chargeable only on removal of the goods from the factory premises or from an approved place of storage. Payment if duty in respect of excisable goods is made when they are about to be issued out of the place or premises specified. Under second proviso to Rule 49, the proper officer may not demand duty due on any goods claimed by the manufacturer as unfit for consumption or marketing. The excisable goods lying in the licensed premises and found unfit for consumption or for marketing can be destroyed without payment of duty livable thereon subject to the prior permission and fulfillment of

such conditions as may be imposed by the Collector. For claiming remission of duty on such goods, a procedure has been laid down in Chapter 42 of the Central Excise Law Guide. Separate procedure has been prescribed under other statutory provisions for the destruction or disposal of waste, refusal or unsaleable material arising out of goods brought under Rule 56A or under Chapter X or under Rule 173-K, 137-N and 173-P. The list showing the excisable commodities and the manner and method of their destruction has been specified in para 42.07. In case of Tariff Item No. "16 i.e. Tyres it is "by cutting and punching". If under the Rules, the remission is granted on the goods found unfit for consumption or for marketing on destruction in the manner and method prescribed then there is no warrant to levy duty of excise on the tyres, tubes and flaps which are found unfit for consumption or for marketing by the petitioner himself. After such goods have come into existence during the process of manufacture, then the only method employed by the petitioner himself is of destruction "by cutting and punching" to turn it into waste/scrap. There is no event of manufacture of waste matter and thus no duty can be levied thereon.

11. It is the common cases that waste," scrap are capable of fetching some sale price but that cannot be the criterion for the event of manufacture. There are several commodities mentioned in the said para 42.07. Manner and method of destruction in case of each Tariff Item given there is different. In some cases it is by burning in others it is by cutting or breaking into small pieces. The ash by burning or small pieces may have a market value. It is sold as a waste product like rubbish undesired and unwanted with a view to get rid of it. It is no argument that it fetches some money that it cannot be considered as waste. These days waste matter is put to a lot of use by recycling or other treatment, but there is no event of manufacture of waste within the meaning of the Act. It is also not the department's case that they have classified nil the destroyed items of Para 42.07 as "goods" liable to excises duty under Tariff Item 68 of C. E. T. There is no reason as to why the destroyed tyres by cutting and punching be treated as "goods" manufactured.

12. By virtue of definition in Section 2(d) excisable goods mean goods specified in the First Schedule as being subject to duty of excise and includes salt. Knowledge must be attributed to the Legislature that in the process of manufacture, certain waste is generated or comes into existence and certain goods can be found unfit for consumption or for marketing. Waste is generated in relation to the manufacture of man-made fibres. In Tariff Item No. 18, an entry has been provided by giving the description of goods as IV "Non-cellulosic waste, all sorts" on which a rate of duty has been prescribed. An Explanation is given that this item includes only wastes arising in or in relation to, the manufacture of man-made fibres (other than mineral fibers)and man-made filament yarns. Under Tariff Item No. 15-A, the description of goods is "Artificial or synthetic resins and plastic materials; and other materials and articles specified. therein". The "waste and scrap" is specifically mentioned under Item (C) of Explanation III. If the intention of the Legislature is to cover "waste or scrap" arising in or in

relation to a manufacture, then it has been specifically provided in the tariff items. "Waste or scrap" obtained in the course of manufacture of tyres is not mentioned in Tariff Item No. 16 which gives the description of goods as Tyres.

13. Rule 50 deals with the non-excisable products which cannot be removed without permission. It provides that for the purpose of facilitating the collection of duty on excisable goods, the Collector may require that a manufacturer shall not, without the permission of the proper officer and except in accordance with such procedure as may be prescribed by the Collector, remove from the approved premises any non-excisable goods produced in such premises, or any intermediate or residual product, except waste matter and such other material as may be specified by the Collector in writing. Reality of the manufacturing process is noticed that non-excisable goods can be produced in the factory premises as also any intermediate or residuary product. These cannot be removed except in accordance with the procedure laid down by the Collector. The generation of the waste or scrap in the course of manufacture is also recognised. So far as waste matter is concerned, it has been treated as a non-excisable product with no restriction on its removal. No amendment has been made even after the introduction of Tariff Item No. 68 introduced for the first time with effect from March 1, 1975. Waste matter is still treated as non-excisable in Rule 50.

14. We are not impressed with the submission of Shri S. K. Misra, the learned counsel for the respondent that the scrap[waste obtained in the course of manufacture of tyres, tubes, flaps and other products by the petitioner company are goods as by-product. It is true that the word "production" in Section 3 of the Act is used in juxtaposition with the word "manufacture" but it obviously refers to finished and semi-finished articles made from raw material. If in fact any by-product or intermediate or residual product in the manufacture of particular goods is produced which satisfies the tests laid down by the Supreme Court in the aforesaid two cases, then they will be goods. It has to have a distinct name, character or use. Waste and scrap is in the nature of rubbish and has no distinctive name, character or use. In "Oudh Sugar Mills Ltd. V. Union of India and Others", 1982 E. L. T. 937 (All.) relied upon by the counsel for the respondents, it was the case of molasses which is a by product or intermediate to production of sugar. The admitted position in that case was that molasses are intermediate product as stored in tanks from where through the pipelines it goes to distillery where it is used for preparation of alcohol. There is no integrated continuous process in so far as manufacture of sugar and that of alcohol from molasses is concerned. It is a process separately to bring out altogether a new good known as alcohol. Both the distilleries are holding separate licenses for the said purpose under the Act without which no distillery can engage itself in the manufacture of alcohol and in the license they have obviously specified the place of the distillery. On a cumulative reading of Rules 9 and 49 of the Rules, it was held that it is obvious that an intermediate product is goods by itself and if used in captive consumption for manufacture of another by-product it becomes chargeable to duty. The decision of Allahabad High Court is thus on its own facts.

We make no comments on the decision of Cegat in 1984 ECR 726 relied upon by the counsel.

15. The decision in State of Gujarat Vs. Raipur Manufacturing Company Ltd., relied upon by the counsel for the respondents is regarding the levy of sales-tax under the Bombay Sales Tax Act (3 of 1953). Kolsi was regarded as a subsidiary product in the case of manufacture. Kolsi resulted from coal which remained unburnt. It was on that account a subsidiary product regularly and continuously turned out in the factory and was being sold from time to time. On those facts, an intention to carry on business in kolsi was attributed to the Company. Waste caustic liquor was also regarded as a by-product or a subsidiary product in the course of manufacture and its sale thereof was incidental to the business of the Company. It is on those facts that the Supreme Court held that the turnover in respect of both kolsi and waste caustic liquor would be liable to sales-tax. The decision was concerned on the interpretation with regard to an activity as business and not to the event of manufacture. We put a question as to whether cotton waste obtained in the manufacture of cotton fabrics in a textile manufacturing unit is liable to excise duty or not. It was conceded that the cotton waste obtained in the course of manufacture of cotton fabrics is not goods liable to excise duty. In Tariff Item No. 19 of C.E.T., the entry relates to cotton fabrics and cotton waste is not included therein.

16. For the above reasons, we are of the opinion that the waste/scrap obtained in the course of manufacture by the petitioner Company are not goods. There is no event of manufacture of waste I scrap and as such no duty of excise can be levied on such waste/scrap. The writ petition is allowed. The impugned directives are quashed. On the facts and circumstances of the case, there is no order as to costs.