

(2001) 01 SC CK 0150

In the Supreme Court Of India

Case No : C.A. Nos. 3119, 3166 and 3167/2000

M/s. Gujarat Narmada Valley Fertilizers Co.

APPELLANT

Vs

Collector of Central Excise, Vadodara

RESPONDENT

Date of Decision : 18-01-2001

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (2001) AIRSCW 2468 : (2001) 73 ECC 641 : (2001) 128 ELT 13 : (2001) 3 GLR 2304 : (2001) 2 JT 595 : (2001) 1 SCALE 361 : (2001) 1 SCR 447 : (2001) 1 Supreme 516

Hon'ble Judges : Ruma Pal, J;Brijesh Kumar, J;B. N. Kirpal, J

Bench : Full Bench

Advocate : Soli J. Sorabjee, Attorney General, Joseph Vellapally, R.F. Nariman, U.K. Chaudhary, Tarun Gulati, Ms. Madhu Sweta, Ms. Indu Malhotra, Sameer Parekh, Ms. Deepamala Ranganathan, P.H. Parekh, Ambhoj Kumar Sinha, Ms. Nisha Bagchi, K. Swami, Rajiv Nanda and B.K. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

Kirpal J.

Civil Appeal Nos. 2448/92 and 9122/1994

1. Interpretation of the exemption notifications relating to heavy petroleum stock is for consideration in these appeals.

2. The appellants manufacture fertilizers. In the manufacture thereof apart from other items they also use Low Sulphur Heavy Stock (hereinafter referred to as "LSHS") which is regarded as heavy petroleum stock in respect of which exemption notifications have been issued.

3. The Gujarat Narmada Valley Fertilizers Co. Ltd. had applied in 1983 for a licence in Form-L6 so as to obtain without payment of duty excisable goods, namely, LSHS which was to be used for the industrial process of manufacture of fertilizers. In the said application, it was stated that 30,000 metric tonnes of

LSHS was to be used as feed stock per month. The application also gave the manner of manufacture and it was inter alia stated that Ammonia was manufactured using furnace oil and LSHS as feed stock alongwith oxygen and steam by employing partial oxidation process. Explaining the process further, it was stated that as a result of employing the said partial oxidation process, gases are produced which are contaminated with soot. Thereafter, there are stages at which the gases initially produced are purified and ultimately when the impurities have been removed the gas is compressed and becomes liquid ammonia. This liquid ammonia is then used for the manufacture of urea fertilizers.

4. According to the appellants, LSHS was used in twin fold manner - (a) directly in manufacture of fertilizers and (b) for manufacture of steam which in turn was used in manufacture of fertilizers.

5. There are three notifications of exemption with which we are concerned in the present cases. They are notification Nos. 147/1974, 75/1984 and 127/1988. It is not in dispute that the first two notifications, for the purpose of these cases, are similar and therefore we need refer to only one of them namely, notification No. 147/1974 which reads as follows:

"Exemption to Furnace Oil and heavy petroleum stock if used as feed stock in the manufacture of fertilizers:-

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts furnace oil and heavy petroleum stock falling respectively under Item Nos. 10 and 11A of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) intended for use as feed stock in the manufacture of fertilizers, from the whole of the duty of excise leviable thereon:-

Provided that -

(i) it is proved to the satisfaction of the Assistant Collector of Central Excise that such furnace oil or heavy petroleum stock is so used, and

(ii) the procedure set out in Chapter X of the Central Excise Rules, 1944, is followed."

6. As far as notification No. 127/1988 is concerned the relevant part, namely item Nos. 56 and 57 in the table of the said notification is as follows:-

56. Residues of NIL Intended for use as feed stock in the manufacture of fertilizers. petroleum oils or of oils obtained from bituminous minerals, including heavy petroleum stock low sulphur heavy stock and other residual fuel oils falling under heading No. 27.13 of the said Schedule. 57. Residues of Rs.70/- Intended for use per otherwise than as feed tonne stock in the manufacture of fertilizers. petroleum oils or of oils obtained from bituminous minerals, including heavy petroleum stock low sulphur heavy stock and other residual fuel oils falling under heading No. 27.13 of the said Schedule.

7. The case of the appellants is that LSHS has been used for the manufacture of fertilizers. It is contended that with the help of LSHS steam was produced which is an integral part in the process of manufacture of gases which ultimately result in the formation of liquid ammonia. It is from liquid ammonia that urea is ultimately being manufactured. Just as LSHS and furnace oil, when first reacted with oxygen steam results in the form of ammonia, similarly, steam also goes into the process of manufacture of liquid ammonia and in production of steam LSHS is used and therefore the entire quantity of LSHS was entitled to full exemption.

8. The revenue did not accept this contention. After show cause notice had been issued and reply received, the appellants were asked to pay duty on the basis that they were not entitled to the benefit of the first two notifications inasmuch as that part of LSHS which had been used for producing steam would not be regarded as having been used as feed stock. Appeal to the CEGAT being unsuccessful, the present appeals have arisen.

9. Learned counsel for the appellants in support of their submission that they were entitled to the benefit of the said notification Nos. 147/1974 and 75/1984 have strongly relied upon the decision of the Patna High Court in the case of Fertilizer Corporation of India Ltd. Vs. Collector of C. Ex., . In that decision, the Patna High Court had come to the conclusion that even that portion of LSHS which had been used for generating steam which in turn had resulted in the manufacture of liquid ammonia would be entitled to the benefit of the exemption notification.

10. Reading the three notifications, it is clear that LSHS is entitled to exemption either wholly or in part if it is used in the manufacture of fertilizers. The said entries 56 and 75 are similar to entries 25 and 26 of the exemption notification No. 75/1984 which after amendment inter alia related to furnace oil. In item 25 of this notification there was complete exemption from duty in relation to furnace oil if it was - "intended for use as feed stock in the manufacture of fertilizers." Under Entry 26 duty of furnace oil was payable at Rs.64.10 per K1, in respect of that furnace oil which was - "intended for use otherwise than as feed stock in the manufacture of fertilizers". At item Nos. 56 and 57 of the notification Nos. 127/1988 which had been quoted herein above, the language is similar in respect of LSHS to that of furnace oil. Under Entry 56 there is a complete exemption in respect of LSHS which is intended for use as feed stock in the manufacture of fertilizers but if LSHS was intended for use otherwise than as feed stock but in the manufacture of fertilizers duty at the rate of Rs.70/- per tonne had to be paid.

11. The aforesaid notifications clearly show that in the manufacture of fertilizers there may be more than one way in which LSHS may be used. It is only if LSHS is used as 'feed stock' that there is a complete exemption from duty.

12. The question, therefore, arises as to what is 'feed stock'. Reference to the

Condensed Chemical Dictionary (Tenth Edition) by Gessner G. Hawley defines feed stock as "Gaseous or liquid petroleum-derived hydro carbons or mixtures of hydro carbons from which gasoline, oil fuel, petrochemicals are produced by thermal or catalytic cracking...." In McGraw Hill's Dictionary on Scientific and Technical Terms, feed stock has been defined as raw material furnished to a machine for process. According to the Glossary of Petroleum terms as per the Indian Standards Institute feed stock means "primary material introduced into a plant for processing".

13. The aforesaid application for licence of M/s Gujarat Narmada Valley Fertilizers Co. Ltd. clearly indicated that LSHS was to be used as feed stock and that was to be used alongwith oxygen and steam for employing partial oxidation process. In the said application, it was not indicated that LSHS was to be used in the production of steam which in turn was to be employed in the manufacture of liquid ammonia. LSHS, according to the said application, was to be used as feed stock in the manufacture of fertilizers.

14. As is evident from hereinabove, LSHS has been used in two ways. Firstly, it had been used as feed stock in the oxidation process when alongwith furnace oil it came in contact with oxygen and steam which resulted in gas with soot which was ultimately subjected to further process before leading to liquid ammonia. Secondly, it was used for adding to the coal which was burnt for boiling water which resulted in the production of steam which was also an essential part of the process of manufacture of fertilizers but that by itself would not entitle them to the benefit of complete exemption from excise duty unless it can be shown that LSHS has been used as feed stock in the manufacture. The notifications clearly indicate that it is only in respect of the limited use of LSHS as feed stock that complete exemption has been granted. LSHS used in the manufacture of fertilizers, but not as feed stock, was however subject to excise duty though at a lower rate.

15. The very process of manufacture indicated hereinabove shows that LSHS, as a result of chemical reaction, becomes gas which is subsequently purified resulting in liquid ammonia which can be regarded as feed stock in contra-distinction to LSHS which is burnt and as a result whereof steam is generated which in turn is used in the process. In the above-mentioned second case. LSHS is used in the manufacture of ammonia but not as a feed stock. As such, benefit of notification No. 127/1988 would be available to the appellants in respect of LSHS which has been used for generating steam and this will be with effect from 1st March, 1988. In respect of the earlier period, it is only that part of LSHS which will be entitled to 100 per cent exemption from excise duty by virtue of notification No. 147/1974 and notification No. 75/1984 which has been used as feed stock and not for the purpose of generating steam.

16. For the aforesaid reasons, while I.A. No.3/1995 in C.A. No.9122/1994 is allowed and it is held that the appellants therein are entitled to the benefit of notification No. 127/1988 with effect from 1st March, 1988, the appeals are

dismissed with no order as to costs.

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17. In these appeals, the facts are similar to M/s Gujarat Narmada Valley Fertilizers Corporation Ltd. The only difference is in the manufacture of fertilizers in respect of liquid ammonia it is Methanol which is produced. For the reasons stated in our decision in C.A. No.2448/1992 these appeals are also dismissed in so far as LSHS is used for the production of steam.