

COLLECTOR OF CENTRAL EXCISE, NEW DELHI. A
v.
BALLARPUR INDUSTRIES LTD. .

SEPTEMBER 29, 1989

[M.N. VENKATACHALIAH, N.D. OJHA AND B
J.S. VERMA, JJ.]

Central Excises & Salt Act, 1944/Central Excise Rules, 1944: Sections 2(f), 3 and Item 68 in First Schedule—Notification No. 105/82-CE dated 28.2.1982/Rule 8—Manufacture of paper/paper-boards—Use of Sodium Sulphate in the process—Whether used as raw material—Entitlement to proforma credits of duty paid. C

Words & Phrases: “Raw Material”—Meaning of.

Respondent has been using Sodium Sulphate in the process of manufacture of paper and paper-boards, and by virtue of Notification No. 105/82-CE dated 28.2.1982 claimed proforma-credits. The Superintendent of Central Excise declined the claim on the ground that Sodium Sulphate was burnt up in the process of manufacture and was not retained in the paper, and therefore, could not be considered as raw material in the manufacture of paper. He also issued a show cause notice for the recovery of proforma-credits already availed of by the respondent. On appeal, however, the Assistant Collector set aside the show cause notice holding that Sodium Sulphate was an essential raw material in the manufacture of paper and as such attracted the benefit of the notification. But, the Collector of Central Excise (Appeals) set aside the order of the Assistant Collector and remitted it back to him for readjudication. Respondent challenged this order before the Customs, Excise and Gold (Control) Appellate Tribunal. Adopting the reasoning in its earlier decision in *Seshasayee Paper and Boards Ltd. v. Collector of Central Excise*, [1985] 22 ELT 163, the Tribunal allowed the appeal and restored the order of the Assistant Collector. D

This appeal under Section 35-L(b) of the Central Excises and Salt Act, 1944 is against the Tribunal's order. E

On behalf of the Appellant, it was contended that the word “raw material” connotes something more than what is ‘used’ in the manufacture and requires that goods to become “raw material” must either in their original or altered form, endure as a composite element of the end product. F

A The Respondent contended that Sodium Sulphate was an essential chemical ingredient in the chemistry of paper technology and the fact that the ingredient was actually burnt up or sublimated in the process; and did not retain its identity in the end product, will not detract from its being a raw material.

B Dismissing the appeal,

HELD: 1.1. The Tribunal was right in its conclusion that Sodium Sulphate was used in the manufacture of paper as "Raw-Material" within the meaning of the Notification No. 105/82/CE dated 28.2.1982. [333A]

C 1.2. The expression "Raw-Material" is not a defined term. The meaning to be given to it is the ordinary and well-accepted connotation in the common parlance of those who deal with the matter. The ingredients used in the chemical technology of manufacture of any end-product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end-product; those which, as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end-product; those which, like catalytic agents, while influencing and accelerating the chemical reaction, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end-products and those, as here, which might be burnt-up or consumed in the chemical reactions. It could be that the ingredient should be so essential for the chemical processes culminating in the emergence of the desired end-product, that having regard to its importance in the indispensability for the process, it could be said that its very consumption on burning-up is its quality and value as raw-material. In such a case, the relevant test is not its absence in the end-product, but the dependance of the end-product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end-product in the sense that without its absence, the presence of the end-product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus. [331F-H; 332A-C]

Deputy Commissioner of Sales Tax, Board of Revenue v. Thomas Stephen & Co. Ltd., JT 1988 1 SC 631, distinguished.

H *Seshasayee Paper and Boards Ltd. v. Collector of Central Excise,*

[1985] 22 ELT 163; *Collector of Central Excise v. Eastend Paper Industries Ltd.*, [1989] 43 ELT 201 SC; *Collector of Central Excise, Nagpur v. Ballarpur Industries Ltd., Chandrapur*, [1983] ELT 1263 and *Collector of Central Excise, Bhubaneshwar v. Titaghur Paper Mills*, [1985] 21 ELT 901, referred to.

2. It cannot be gainsaid that Sodium Sulphate used was anterior to and at one stage removed from the actual manufacture of paper. Section 2(f) of the Act defines 'manufacture' and it takes within it all ancillary and incidental purposes. 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'. [332F-G, 331D]

Collector of Central Excise v. Eastend Paper Industries Ltd., [1989] 43 ELT 201 SC, followed.

3. It is not always possible to draw a line of strict demarcation between what can be said to be 'goods' merely used in the manufacture and what constitute goods used as "Raw-Material" for that purpose. In the infinite variety of ways in which these problems present themselves it is neither necessary nor wise to enunciate principles of any general validity intended to cover all cases. The matter must rest upon the facts of each case. Though in many cases it might be difficult to draw a line of demarcation, it is easy to discern on which side of the boarder-line a particular case falls. [333B-C]

Pragmatism and Theory in English Law, page 75, *Hamlyn Lectures of 1987*; *Attorney General v. Brighton & Hove Co-operative Association*, [1900] 1 Ch. 276; *Mayor of South Port v. Morris*, [1893] 1 Q.B. 359, relied on.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2882 of 1989.

From the Judgment and Order dated 2.12.1988 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1351 of 1988-C.

C. Shirappa Adv. General for State of Karnataka, A.K. Ganguli, K. Swami and Mrs. Sushma Suri, Advs. with them for the Appellant.

A Soli J. Sorabji, O.P. Malhotra, Ms. Indu Malhotra, Ms. Auesha Zaidi and Mrs. Nisha Bagchi for the Respondent.

The Judgment of the Court was delivered by

VENKATACHALIAH, J. This appeal, under Section 35-L(b) of the Central Excise and Salt Act, 1944, arises out of and is directed against the Order No. E/1351/88-C dated 2.12.1988, by the Customs, Excise and Gold (Control) Appellate Tribunal, (Tribunal) New Delhi, allowing the appeal preferred by the Respondent and holding that Respondent was entitled to certain proforma credits of the duty paid on "Sodium Sulphate" used in the manufacture of paper and paper-boards in which respondent is engaged.

C

The short point for consideration in this appeal is whether the Respondent-Manufacturer,—The Ballarpur Industries Ltd.,—was entitled to the benefit of Central Government's Notification No. 105/82-CE dated 28.2.1982 a question which in turn, depends on whether

D Sodium Sulphate could be said to have been used as "Raw-Material" in the manufacture of 'paper' and 'paper-board'. In the proceedings before the authorities, the dispute initially concerned six other inputs. But the controversy before us was limited, as it should rightly be, only to Sodium Sulphate inasmuch as even in the appeal before the Collector (Appeals), the department's grievance, apparently, was confined to the Proforma-Credits of duty earlier paid on Sodium Sulphate [See Col. 6 of the Assistant Collector's Memorandum Appeal dated 15.7.1987 before the Collector (Appeals)].

F 2. Respondent is a manufacturer of paper and paper-boards in the processes relating to which "Sodium Sulphate" is used "in the chemical recovery cycle of Sodium Sulphate which forms an essential constituent of Sulphate cooking liquor used in the digestion operation." The notification dated 28.2.1982 under which the credit is claimed reads:

G "In exercise of the power conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the Notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 178/77-Central Excise, Dated 18 June, 1977, the Central Government hereby exempts all excisable goods (hereinafter referred as "the said goods") on which the duty of excise is leviable and in the manufacture of which *any goods falling under*

H

Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred as "the inputs") *have been used as raw material or component parts* (hereinafter referred to as "the inputs") from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid *on the "inputs"*.

(Emphasis Supplied)

The Superintendent of Central Excise, Range-2, Yamunanagar, declined the Proforma-Credit to the duty paid on "Sodium Sulphate" on the ground that Sodium Sulphate "was burnt-up in the process of manufacture and was not retained in the paper" and that, therefore, it could not be considered "Raw-Material" in the manufacture of paper. Accordingly, he caused a notice dated 18.1.1983 to be issued requiring respondent to show cause why the amounts of Proforma-Credit availed of by the respondent for the period between 28.2.1982 and 31.10.1982 should not be recovered. The reason why "Sodium Sulphate" could not be held to be a "raw material" in the manufacture of paper was set out in the notice thus:

"..... The Proforma Credit claimed and granted in respect of the above mentioned items from 28.2.82 to 31.10.82 is not admissible *because these Chemicals are burn out and do not remain in the finished product*. The amount of proforma credit availed is, therefore, liable to be recovered"

(Emphasis supplied)

However, the Assistant Collector of Central Excise, Ambala, by his order dated 27.6.1986 took a different view and held that Sodium Sulphate, even as the other inputs referred to in the said notice, was an essential raw material in the manufacture of paper and attracted the benefit of the notification. The show cause notice dated 18.1.1983 was, accordingly, set aside.

But, the Collector of Central Excise (Appeals) set-aside the order of the Assistant Collector and remitted the matter to Assistant Collector for a readjudication. The respondent-manufacturer challenged this order before the Tribunal. The Tribunal upheld the contention of the Respondent-Manufacturer, set-aside the order of the Collector (Appeals) and restored the order of the Assistant Collector. The Tribunal adopted the reasoning in its earlier decision in *Seshasayee Paper and Boards Ltd. v. Collector of Central Excise*, [1985] 22

A ELT 163 in which the Tribunal had held:

“..... the term “raw material” has to be interpreted in the circumstances of each case in the absence of any acceptable or useful definition of the term either in the dictionary or in the technical literature

B

“..... sodium sulphide lye, Sodium Sulphate, Daicol (Gaur Gums) and Fluo solid lime used for the bleaching of pulp should be considered as raw materials in the manufacture of paper; they serve a distinct and definitive purpose in the normal and recognised process of manufacture of paper and are essential for the process of manufacture

C

In this appeal, the Collector challenges the correctness of the decision of the Tribunal.

D

3. We have heard Sri A.K. Ganguly, learned Senior Counsel for the Appellant and Sri Soli Sorabjee, learned Senior Counsel for the Respondent-Manufacturer. The thrust of Sri Ganguly's arguments is that the amplitude of the expression “Raw-material” in the Notification has to be ascertained with reference to and in the context of the

E

purpose in substituting that expression in place of the words obtaining in the earlier Notification No. 79/CE dated 4.6.1979, in which credit was given to duty paid on “goods” which have been “used” in the manufacture of excisable goods. Sri Ganguly says that the Tribunal has, virtually and in effect, ignored the essential and important distinction between goods being “used” in the manufacture on the one hand

F

and “goods” used as “Raw-Material” on the other, ignoring the conscious change intended by the substitution of the expression “Raw-Material” in the later notification dated 28.2.1982 which was clearly intended to cut-down the benefit. Sri Ganguly referred to the following observations of this Court in *Collector of Central Excise v. Eastend Paper Industries Ltd.*, [1989] 43 ELT 201 SC:

G

In *J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officer*, [1965] 16 STC 563 SC, this Court while construing the expression ‘in the manufacture or processing of goods for sale’ in the context of Sales Tax Law, though the concept is different under the Excise Law, has held that *manufacture of goods should normally encompass the entire*

H

process carried on by the dealer of converting raw materials into finished goods

(P. 204)
(Emphasis Supplied)

and contended that the import of the word "Raw-Material", judicially accepted, connotes something more than what is 'used' in the manufacture and requires that goods to become "Raw-Material" must, either in their original or altered form, endure as a composite element of the end-product. Sri. Ganguly submitted that the technical literature and evidence in the case as to the part played by Sodium Sulphate in the chemical technology of paper making suggested two things: First, that Sodium Sulphate was utilised in the preparation of an anterior, intermediate product at the stage of 'digestion' of the pulp and did not, therefore, strictly belong to the process of manufacture of paper itself; and, Secondly, that Sodium Sulphate did not go directly into and find a place in the finished product and did not, therefore, qualify for being "Raw-Material" in the manufacture of paper. Learned Counsel said that no satisfactory answer to the question raised in the appeal could be afforded unless a clear line of demarcation between the material merely used in the manufacture of paper on the one hand and material used as "Raw-Material" on the other is drawn. Sri Ganguly sought to substantiate this distinction in the present case with reference to certain observations of this Court in *Deputy Commissioner of Sales Tax, Board of Revenue v. Thomas Stephen & Co., Ltd.*, JT 1988 (1) SC 631. One of the questions there was whether cashew-shells used in the kiln by the dealer who was a manufacturer of tiles, terra-cotta-ware and ceramic-items were eligible to purchase-tax under Section 5A (1)(a) of the Kerala General Sales Tax Act, 1963, on the ground that the dealer had "consumed such goods in the manufacture of other goods". The Tribunal had held that cashew-shells had been used only as fuel in the kiln for the manufacture of tiles and that, therefore, the condition of 5A (1)(a) of the Act was not satisfied, there having been no consumption of cashew-shells in the manufacture of the ceramic goods.

This Court held:

"The cashew shells in the instant case, had been used as fuel in the kiln. The cashew shells did not get transformed into the end product. These have not been used as raw-materials in the manufacture of the goods. These have been used only as an aid in the manufacture of the goods by

A the assessee. *Consumption must be in the manufacture as raw-material or of other components which go into the making of the end product to come within the mischief of the section.* Cashew shells do not tend to the making of the end product. Goods used for ancillary purposes like fuel in the process of the manufacture, do not fall within section 5A(1)(a) of the Act. Cashew shells, therefore, do not attract levy of tax under the said section”

B

(p. 634)

(Emphasis Supplied)

C Sri Ganguly says that “Sodium Sulphate” in the present case must, like the cashew-shells, be held to have been used as an aid in the manufacture of paper and for ancillary purposes like fuel and not as “Raw-Material in the manufacture of paper.

D 4. Sri Sorabjee, for the Respondent, sought to maintain that Sodium Sulphate was an essential chemical ingredient in the chemistry of paper technology and that the fact that the ingredient was actually burnt-up or sublimated in the process and did not retain its identity in the end-product, will not, necessarily, detract from its being a “Raw-Material”. The relevant test is how essential is the ingredient in the manufacture. Learned counsel said that in the complexity of the chain of chemical reactions in the manufacturing process, undue emphasis E on the search for the identity of any individual chemical ingredient in the final product would be artificial and unrealistic. Sri Sorabjee submitted that authoritative scientific treatises on the paper technology recognise that “Sodium Sulphate” is an essential raw material. Sri Sorabjee referred to the publication of the Food and Agriculture Organisation of the United Nations under the caption “Guide for F Planning Pulp and Paper Enterprises” in which the following statement occurs:

G “For any pulp and paper enterprise a variety of nonfibrous raw materials are required: water, fuel, power and paper-making chemicals and, for pulp mills, pulping and bleaching chemicals”

(p. 270)

H “The sulphate (kraft) pulping process, now the most common pulping process for both wood and nonwood fibrous raw materials, requires the purchase of salteake (sodium sulphate) and limestone (calcium carbonate). De-

pending on the efficiency of the recovery system, about 40 to 80 kilogrammes of salteake and 25 kilogrammes of limestone are needed per ton of pulp. These chemicals are converted in the chemical recovery and causticizing systems to give sodium hydroxide and sodium sulphide, which are the active chemicals in the pulping liquor."

(p. 275)

Sri Sorabjee submitted that the Tribunal had consistently taken this view in several cases and that the department not having carried those matters up in appeal must be held to have accepted the correctness of that view. As instances in point, Learned Counsel referred to two decisions, in *Collector of Central Excise, Nagpur v. Ballarpur Industries Ltd., Chandrapur*, [1983] ELT 1263 and in *Collector of Central Excise, Bhubaneswar v. Titaghur Paper Mills*, [1985] 21 ELT 901.

Adverting to appellant's contention that use of Sodium Sulphate was at a stage of preparation of the Pulp which is a stage anterior to the actual manufacture of paper, Sri Sorabjee submitted that, apart from the fallacy inherent in the attempt to dissect an otherwise integrated process of manufacture, the definition of 'manufacture' in Section 2(f) of the 'Act' which takes with in it all ancillary and incidental processes, should secure to render the contention insubstantial.

5. The question, in the ultimate analysis, is whether the input of Sodium Sulphate in the manufacture of paper would cease to be a "Raw-Material" by reason alone of the fact that in the course of the chemical reactions this ingredient is consumed and burnt-up. The expression "Raw-Material" is not a defined term. The meaning to be given to it is the ordinary and well-accepted connotation in the common parlance of those who deal with the matter.

The ingredients used in the chemical technology of manufacture of any end-product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end-product; those which as a result of interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end-product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end-products and those, as here, which might be burnt-up or consumed in the chemical reactions. The ques-

- A tion in the present case is whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "Raw-Material" for the end-product. One of the valid tests, in our opinion, could be that the ingredient should be so essential for the chemical processes culminating in the emergence of the desired end-product, that having regard to its importance in and indispensability for the
- B process, it could be said that its very consumption on burning-up is its quality and value as raw-material. In such a case, the relevant test is not its absence in the end product, but the dependance of the end-product for its essential presence at the delivery and of the process. The ingredient goes into the making of the end-product in the sense that without its absence the presence of the end-product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus.

- 6. The decision of this Court in *Deputy Commissioner of Sales Tax, Board of Revenue v. Thomas Stephen & Co. Ltd.*, relied upon by
- D Sri Ganguly, does not really advance the appellant's case. The observations therein to the effect that "consumption must be in the manufacture of raw material or of other component which go into the making of end-product" were made to emphasise the distinction between the "fuel" used for the kiln to impart the heat-treatment to ceramics and what actually went into the manufacture of such ceramics. The observations, correctly apprehended, do not lend themselves to the understanding that for something to qualify itself as "Raw-Material" it must necessarily and in all cases go into, and be found, in the end-product.

- 7. We also find no substance in the contention of Sri Ganguly
- F that the process in which the Sodium Sulphate was used, was anterior to and at one stage removed from the actual manufacture of paper. Sri Sorabjee's answer to this contention is, in our view, appropriate. That apart the following observations in *Collector of Central Excise v. Eastend Paper Industries Ltd.*, cited by Sri Ganguly himself is a complete answer:

- G "..... Where any particular process, this Court further emphasised, 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'"
- H

A

8. On a consideration of the matter, we are persuaded to the view that the Tribunal was right in its conclusion that Sodium Sulphate was used in the manufacture of paper as "Raw-Material" within the meaning of the Notification No. 105/82-CE dated 28.2.1982.

B

9. Now a word about Sri Ganguly's insistence on drawing a line of strict demarcation between what can be said to be 'goods' merely "used" in the manufacture and what constitute goods used as "Raw-Material" for the purpose.

C

We are afraid, in the infinite variety of ways in which these problems present themselves it is neither necessary nor wise to enunciate principles of any general validity intended to cover all cases. The matter must rest upon the facts of each case. Though in many cases it might be difficult to draw a line of demarcation, it is easy to discern on which side of the border-line a particular case falls.

D

Sri Ganguly's insistence, however, serves to recall the pertinent observations of an eminent author on the point. It was said:

D

"..... A common form of argument used by counsel in legal cases is to suggest that if the court decides in favour of the opposing counsel's arguments, it will become necessary to draw lines which may be very difficult or impossible to draw. "Where will you draw the line"? Is, of course, a question which must be faced by a legislator who is actually proposing to lay down lines for all future cases, but it is not a question which needs in general to be faced by common law courts who proceed in slow stages, moving from case to case"

E

[See: "*Pragmatism and Theory in English Law*"; page 75; Hamlyn Lectures of 1987]

F

The learned author recalls Lord Lindley's "robust answer" to the question: Where will you draw the line?

G

"Nothing is more common in life than to be unable to draw the line between two things. Who can draw the line between plants and animals? And yet who has any difficulty in saying that an oak-tree is a plant and not an animal?"

H

[See: *Att. Gen v. Brighton & Hove Co-operative Assoc.*, [1900] 1 Ch. 276 at p. 282]

A Again, Lord Coleridge in *Mayor of Southport v. Morris*, [1893] 1 Q.B. 359 at 361 said:

“The Attorney-General has asked where we are to draw the line. The answer is that it is not necessary to draw it at any precise point. It is enough for us to say that the present case is on the right side of any line that could reasonably be drawn.”

10. In the result for the foregoing reasons, we find no merit in this appeal which is, accordingly, dismissed.

C G.N. Appeal dismissed.