M/S STEEL AUTHORITY OF INDIA LTD. ETC. A

v.

COLLECTOR OF CENTRAL EXCISE

JULY 30, 1996

B

[S.P. BHARUCHA AND K.T. THOMAS, JJ.]

Central Excise Rules, 1944 : Rules 192 and 196(1)—Exemption Notification No. 187 of 1961 dt. 23rd December 1961—Concessional rate of duty on raw naphtha utilised for the manufacture of fertiliser—At Interim stage reformed gas vented out—Raw naphtha not reaching amonia plant—Imposition of excise duty on raw naphtha—Held, raw naphtha used for the purpose and with the intention to manufacture fertiliser—Reformed gas vented out due to operational reasons—Entitled to benefit under the exemption notification. C

Appellant-assessee was engaged in the manufacture of fertiliser by using raw naphtha. By exemption notification no. 187 of 1961 dt. 23rd December, 1961, raw naphtha was excisable at a concessional rate of duty for the manufacture of fertiliser. According to the Revenue, a substantial quantity of raw naphtha was not used by the appellant in the manufacture of fertiliser. Thus, a show cause notice was issued to the appellant for payment of Excise Duty on quantities of raw naphtha not utilised for the manufacture of fertiliser. On appeal, the Customs, Excise and Gold (Control) Appellate Tribunal relying upon Rule 196(1) of the Central Excise Rules, 1944 upheld the order of the Collector of Central Excise (Appeals). The Tribunal noted that the raw naphtha had been burnt in the naphtha reforming plant, did not reach the amonia plant as the reformed gas vented out into the atmosphere; and that the quantity of raw naphtha not used for the manufacture of fertiliser would not be given the concessional rate of Excise Duty. However, the Tribunal while allowing an appeal against a subsequent order of the Collector, expressed a contrary view that the appellant in fact intended to use raw naphtha for manufacturing fertiliser but for operational reasons it became necessary to vent out the reformed gas. Aggrieved by the order of the Tribunal the present appeals were preferred by the assessee. D E F G

Allowing the appeals, this Court H

A **HELD : 1.1. The benefit of Exemption Notification No. 187 of 1961 dt. 23rd December 1961 is available to the appellant in regard to the raw naphtha that it utilised in its plant for the manufacture of fertiliser but which, for reasons over which it had no control, did not in fact result in the manufacture of fertiliser but had, at the interim stage of reformed gas,**
B **to be vented out. [168-F]**

1.2. The Exemption Notification required proof that the raw naphtha was "intended for use" in the manufacture of fertiliser and not that the raw naphtha was used in the manufacture of fertiliser. Duty at the full rate on the raw naphtha would be leviable only if it could not be shown to have
C **been used for the purpose and with the intention of manufacturing fertiliser. Thus, the Tribunal erred in holding in its first order that it was requisite that it should be proved that raw naphtha had been actually used in the manufacture of fertiliser. [168-A-D]**

1.3. There can be no doubt that the raw naphtha that was fed by the
D **appellant into its plant was for the purpose and with the intention of manufacturing fertiliser and that it was only because of supervening circumstances, namely, the low, uncertain and fluctuating availability of power, that the reformed gas produced during the interim stage of manufacture had to be vented out. Thus, the Tribunal was justified in**
E **expressing its disagreement in the second order with the view taken in the first order. [168-E-F]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3406-11 of 1990 Etc.

F From the Judgment and Order dated 11.5.90 of the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi in A. Nos. E./283 to 288/90-C Order No. 468-473 of 1990-C.

V. Sreedharan, Sunil Kumar Jain, Jatinder K. Bhatia, Sanjeev Bansal and K.J. John for the Appellants.

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Joseph Vellappally, R.P. Srivastava, P. Parmeswaran and V.K. Verma for the Respondent.

The Judgment of the Court was delivered by

H **BHARUCHA, J.** These are appeals against orders of the Customs,

Excise & Gold (Control) Appellate Tribunal dismissing appeal filed by the present appellants, Steel Authority of India Ltd. (SAIL), before it.

SAIL has a plant at Rourkela which manufactures fertilisers. For such purpose SAIL uses raw naphtha. Raw naphtha was, at the relevant time, exciseable at a concessional rate of duty in terms of an exemption notification (No.187 of 61) dated 23rd December, 1961, as amended from time to time. The concessional rate of duty therein was admissible provided-

> "(i) it is proved to the satisfaction of an officer not below the rank of an Assistant Collector of Central Excise that such raw naphtha is intended for use in the manufacture of fertiliser; and
>
> (ii) the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed."

It was the case of the Revenue that a substantial quantity of raw naphtha was not, in fact, used by SAIL in the manufacture of fertiliser. SAIL was, therefore, served with show cause notices demanding amounts of excise duty on quantities of raw naphtha allegedly not utilised for the manufacture of fertiliser. SAIL's explanation in that behalf, in the words of an Assistant Collector, read :

> "The assessee contended that the consumption of raw naphtha was more due to abnormal operating conditions such as low load operation, interruption in the plant operations due to low, uncertain and fluctuating availability of power. It was stated that the consumption of naphtha was further high because gases produced (out of raw naphtha) had to be vented due to acute power crisis causing interruption/stoppages of down stream units of the plant. It was submitted that the two naphtha reforming plants have provisions in the system for automatic venting of gases, in the event gas formed cannot travel forward due to non-availability of power for operating the down stream plants, and excessive pressure build up. On many occasions gases are required to be vented out from the naphtha reforming plant when the said gases cannot be sent to down stream plants due to non-availability and law, interrupted and uncertain power supply or any other operational or maintenance problems in the plant. Moreover, naphtha reforming

A plants have to be kept hot for preventing damages to the equipments, Reformer furnaces and catalysts in particular. Under the circumstances, of severe power shortages/restriction there was no production of Ammonia on many days. However, considering the safety of the equipments and life of refractory furnaces and catalysts of the plant, naphtha had to be consumed on those days, when there was no production of Ammonia. Naphtha consumed for the gases vented out during those days when there was no production of Ammonia, was essential for keeping the naphtha reforming plant in operational fitness and safe condition so that the plant could be lined up for production of Ammonia and fertiliser at any time in the subsequent period depending on power availability."

The matter first came before the Tribunal in relation to an order passed by the Collector of Central Excise (Appeals), Calcutta, on 17th September, 1987. The Tribunal then placed reliance upon Rule 196(1) of the Central Excise Rules, which stated, "If any excisable goods obtained under rule 192 are not duly accounted for as having been used for the purpose and in the manner stated in the application .....the applicant shall, on demand by the proper officer, immediately pay the duty leviable on such goods." An exception was made in the said Rule in the case of excisable goods which were shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or unavoidable accident during transport. The Tribunal noted that it was not the case of SAIL that the concerned quantity of raw naphtha had been lost or destroyed. It had, in fact, been burnt in the naphtha reforming plant of SAIL for keeping it continuously running so that the ammonia plant could be switched on immediately upon resumption of power supply. The gas produced by burning the concerned raw naphtha did not reach the ammonia plant as the reformed gas was vented into the atmosphere. This quantity of raw naphtha could not, in the Tribunal's view, be said to have been used for the manufacture of fertiliser. The provisions of Rule 196 of the Central Excise Rules require that excise duty at full rate should be paid on demand in respect of such raw naphtha as was found not to have been actually used in the manufacture of fertiliser. The quantity of raw naphtha in dispute did not satisfy both the conditions prescribed in the exemption notification and, as such, the concessional rate of excise duty was not available to it. The order of the Collector dated 17th September, 1967, was, therefore, upheld.

In the second order of the Tribunal, which arose upon an order passed by the Collector on 22nd September, 1989, the earlier order aforementioned was followed; but it was followed only because, as expressly stated, judicial propriety and discipline so required. The view expressed by the Tribunal in the second order was contrary to that expressed in the first order. The second order noted that there was no dispute that the raw naphtha, when it was procured by SAIL, was intended for use in the manufacture of fertiliser but, for operational reasons, it became necessary for SAIL to vent out the reformed gas produced out of the raw naphtha concerned before it could be fed into the ammonia plant in the stream of production of fertiliser. The stand of SAIL that in the then prevailing circumstances this venting of reformed gas was an unavoidable technological necessity had not been denied by the Revenue. The Tribunal noted that it had had occasion to deal with cases where fertiliser plants, before being commissioned, had necessarily to be put through pre-commissioning trial runs and it had been held that, though the use of concessional inputs did not result in the production of fertiliser, such inputs should be deemed to have been used in the manufacture of fertiliser. The Ministry of Finance had, in a circular dated 22nd July, 1974, also made it clear to Excise Collectors that naphtha used during trial runs and commissioning of fertiliser plants was eligible for the excise duty concession. In the view of the Tribunal in the second order, the principle would apply. It said :

> "If venting out the reformed gas, produced out of the concessional rated naphtha was a technological necessity when the fertiliser plant itself could not be operated due to lack of adequate power supply - and, there is no dispute on this - we do not see why such use of naphtha cannot be termed to be use in the manufacture of fertiliser though no fertiliser was, in fact, produced, There is no allegation that this naphtha was misused or utilised in production of something for which exemption was not provided. We feel that the subject notifications should be interpreted in a liberal spirit, looking to the object of the notification viz., reducing the cost of inputs for fertilisers, as indeed the Tribunal did when it held that use of naphtha is pre-commission trials, not resulting in production of fertiliser would be eligible for the benefit of the relevant notifications."

In our opinion, the Tribunal was right when it expressed it dis-

A agreement in the second order with the view taken in the first order.

It is important to note that the exemption notification required proof that the raw naphtha was "intended for use" in the manufacture of fertiliser and not that the raw naphtha was used in the manufacture of fertiliser. Due emphasis has to be given to the clear language of the first condition of the B exemption notification and its effect cannot be nullified by an interpretation placed on the second condition. Both conditions must be so read as to give full effect to the clear language of the first condition. The emphasis in this behalf upon Rule 196 in the first order of the Tribunal appears to us misplaced. Rule 196 says that if any excisable goods obtained under Rule C 192 are not accounted for as having been used for the purpose and in the manner required, full exise duty thereon is payable. It does not appear to be correct to hold, as the Tribunal did in the first order, that this meant that it was requisite that it should be proved that the raw naphtha had been actually used in the manufacture of fertiliser. In the context, what was required to be shown was that the raw naphtha was used for the purpose D and with the intention of manufacturing fertiliser. Duty at the full rate on the raw naphtha would be leviable only if it could not be should to have been used for the purpose and with the intention of manufacturing fertiliser.

There can be no doubt that the raw naphtha that was fed by SAIL E into its plant was for the purpose and with the intention of manufacturing fertiliser and that it was only because of supervening circumstances, namely, the low, uncertain and fluctuating availability of power, that the reformed gas produced during the interim stage of manufacture had to be vented out. The benefit of the exemption notification is, therefore, available to SAIL in regard to the raw naphtha that it utilised in its plant for the F manufacture of fertiliser but which, for reasons over which it had not control, did not, in fact, result in the manufacture of fertiliser but had, at the interim stage of reformed gas, to be vented out.

In the result, the appeals are allowed and the judgments and orders G of the Tribunal under appeal are set aside. The appeals filed by the appellant, SAIL, before the Tribunal against the orders of the Collector of Central Excise (Appeals), Calcutta, are allowed.

There shall be no order as to costs.

S.V.K.I. Appeals allowed.