

INDIAN FARMERS FERTILISER COOPERATIVE LTD. A

v.

COLLECTOR OF CENTRAL EXCISE, AHMEDABAD

JULY 31, 1996

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

*Central Excises & Salt Act, 1944 :*

*First Schedule, Item 6—Raw naphtha—Exemption Notification No. 187/61 prescribing concessional rate of duty on raw naphtha used to produce ammonia, which was used in manufacture of fertilisers—Appellant allowed concessional rate of duty on raw naphtha used to produce ammonia which was directly utilised in urea plant but required to pay duty at full rate on naphtha used to produce ammonia which was used in off-site plants, namely, water treatment, steam generation, inert gas generation and effluent treatment plants—Held, these off-site plants are a necessary part of the process of manufacture of urea, and raw naphtha used in manufacture thereof is entitled to duty exemption.* C D

**The Central Government, by Exemption Notification No. 187/61, prescribed concessional rate of duty on raw naphtha falling under Item No. 6 of the First Schedule to the Central Excises and Salt Act, 1944 and being utilised in the manufacture of ammonia provided such ammonia was "used elsewhere in the manufacture of fertilisers".** E

**The appellant, a manufacturer of urea, obtained raw naphtha at concessional rate of duty and used the same for producing ammonia, which, in turn, was used, partly in the urea plant, and partly in the off-site plants, namely, the water treatment plant, steam generation plant, inert gas generation plant and effluent treatment plant, all of which, as claimed by the appellant, were part of the integral process of the manufacture of urea.** F G

**The appellant was required to pay excise duty at full rate on the raw naphtha used for making ammonia, which had been used in the said off-site plants, on the ground that such raw naphtha was not used in the manufacture of fertiliser. In the appeal filed by the appellant, the Collector of Central Excise and Customs accepted the case of the appellant in H**

**A** respect of the off-side plant except for the effluent treatment plant. The Customs, Excise and Gold (Control) Appellate Tribunal maintained the decision of the Collector as regards the effluent treatment plant, but reversed his decision as regards off-site plants, and, thus, upheld the demand, Aggrieved, the appellants filed the present appeals.

**B** Allowing the appeals, this Court

**HELD : 1.1.** The raw naphtha use to produce ammonia which is used in the water treatment, steam generation, inert gas generation and effluent treatment plants of the urea plant of the appellant is entitled to the exemption provided by the Exemption Notification No. 187/61 as amended from time to time. [188-H; 189-A]

**1.2.** The water treatment, steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end product urea, which is a fertiliser. These off-site plants are a necessary part of the process of the manufacture of urea. The treatment of effluents from a plant is also an essential and integral part of the process of manufacture in the plant. The emphasis that has rightly been laid in recent year 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 these plants must, therefore, be held to be used in the manufacture of urea and the raw naphtha used for the manufacture thereof is entitled to the duty exemption. [187-D; 188-E-G]

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*Collector of Central Excise, Calcutta II v. M/s. Eastend Paper Industries Ltd.*, [1989] 4 SCC 244; *M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Anr.*, [1965] 1 SCR 900; *Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd.*, [1989] 4 SCC 566 and *Dy. CST v. Thomas Stephen & Co. Ltd.*, [1988] 2 SCC 264, relied on.

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**1.3.** There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The Exemption Notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of

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**fertilisers. The Exemption Notification must be so construed as to give due weight to the liberal language it uses. [187-D-E]** A

**CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5437 of 1990 Etc.**

From the Judgment and Order dated 16.8.90 of the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi in A. No. E/A. No. 2640 of 1989-C, Order No. 950/90-C. B

H.N. Salve and K.J. John for the Appellant.

Joseph Vellapally, A.D.N. Rao and P. Parmeswaran for the Respondent. C

The Judgment of the Court was delivered by

**BHARUCHA, J.** These are appeals against orders of the Customs, Excise and Gold Control Appellate Tribunal, New Delhi. D

The periods involved in the appeals are : 1st April, 1974 to 31st December, 1982 in Civil Appeal No. 5437 of 1990 and January 1983 to April, 1984 in Civil Appeal Nos. 5941-43 of 1990. E

By an Exemption Notification (No. 187/61) issued under the provisions of Rule 8 of the Central Excise Rules, the Central Government exempted raw naphtha falling under Item No. 6 of First Schedule to the Central Excise and Salt Act, 1944, from the payment of excise duty in excess of Rs. 4.36 per kilolitre at 15 degrees Centigrade. The Exemption Notification applied "in respect of such Raw Naphtha as is used in the manufacture of Ammonia provided such Ammonia is used elsewhere in the manufacture of fertilisers" and the procedure set out in Chapter-X of the said Rules was followed. F

The appellants manufacture urea, which is a fertiliser, at a plant at Kalol in the State of Gujarat and utilise for the purpose raw naphtha. The raw naphtha was obtained at the concessional rate of duty and was used for producing ammonia which, in turn, was used, partly, directly in the urea plant and, partly, indirectly, in the submission of the appellants, in the production of urea by being employed in off-site plants, namely, the water treatment plant, steam generation plant, inert gas generation plant and H

A effluent treatment plant, all of which were part of the integral process of the manufacture of urea.

The appellants, however, received show cause notices for the periods aforementioned demanding excise duty at full rate on the raw naphtha used for making ammonia which had been used in the water treatment plant, steam generation plant, inert gas generation plant, and effluent treatment plant on the ground that such raw naphtha was not used in the manufacture of fertilisers. The demand was confirmed. In appeal by the appellants, the Collector or Central Excise and Customs upheld the contention of the appellants insofar as the ammonia was used in the water treatment plant, steam generation plant and inert gas generation plant. This was on the basis that the inert gas generated in the inert gas generation plant was required for purging the pipelines and other process equipment of the ammonia plant every time it had to be started or shut and, therefore, the process of inert gas generation had to be treated as an integral part of the process of the manufacture of ammonia, which, in turn, was used for the manufacture of fertilisers. The appellants required water of the high degree of purity in the high pressure boilers and heat exchangers in the ammonia and urea plants. Ammonia was used therein for purifying the water. The use of ammonia in the water treatment and steam generation plants was, therefore, also an integral part of the process of manufacture of fertilisers. Insofar as the effluent treatment plant was concerned, however, the Collector took the view that effluents were waste produced after the fertilisers had been manufactured. The effluents were treated for reasons of hygiene and pollution. Their treatment could not be said to be directly linked to the process of manufacture of fertilisers and the effluent treatment plant could not be said to be an integral part of the process of manufacture of fertilisers. The demand upon the appellants, insofar as it related to the effluent treatment plant, was, therefore, upheld.

The excise authorities and the appellants filed appeals before the Tribunal. The Tribunal reversed the decision of the Collector in so far as it held that the off-site plants, other than the effluent treatment plant, were a part of the process of manufacture of fertilisers. The Tribunal held that ammonia was used for the maintenance of the plant and equipment meant for testing and commissioning the plant and could not be said to be utilised in manufacture. Similarly, the purpose of the water treatment being essential for the protection of the boiler and other process equipment from

corrosion, formation of scales, etc., the ammonia used for the purpose could not be said to be used in the manufacture of fertiliser. The view of the Collector, in so far as the effluent treatment plant was concerned, was upheld. A

Emphasis was laid, and rightly, by learned counsel for the appellants on the phraseology used in the Exemption Notification. The exemption is made available to such raw naphtha as is used in the manufacture of ammonia provided such ammonia is used elsewhere in the manufacture of fertilisers. That the raw naphtha is used to make ammonia is unquestioned. The ammonia is used directly in the manufacture of fertilisers; the raw naphtha so used is, it is not disputed, eligible to the exemption. The question is whether the ammonia used in the off-site plants is also ammonia which is "used elsewhere in the manufacture of fertilisers". The water treatment, steam generation and inert gas generation plants are part and parcel of the composite process that produces as its end product urea, which is a fertiliser. These off-site plants are part of the process of the manufacture of urea. There is no good reason why the exemption should be limited to the raw naphtha used for producing ammonia that is utilised directly in the urea plant. The Exemption Notification does not require that the ammonia should be used directly in the manufacture of fertilisers. It requires only that the ammonia should be used in the manufacture of fertilisers. The Exemption Notification must be so construed as to give due weight to the liberal language it uses. The ammonia used in the water treatment, steam generation and inert gas generation plants, which are a necessary part of the process of manufacturing urea, must, therefore, be held to be used in the manufacture of ammonia and the raw naphtha used for the manufacture thereof is entitled to the duty exemption. B  
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For our conclusion we draw support from the judgment of this Court in *Collector of Central Excise, Calcutta-II v. M/s. Eastend Paper Industries Ltd.*, [1989] 4 SCC 244, 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'". This was a reiteration of the view expressed in *M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Another*, [1965] 1 SCR 900. It was there held, G  
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- A "The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production". In *Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd.*, [1984] 4 SCC 566, the respondent manufactured paper and paperboard, "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 Exemption Notification concerned provided exemption to goods which had used as raw material or component parts any goods (inputs) falling under Item 68 of the First Schedule to the Act from so much of the excise duty leviable thereon as was equivalent to the excise duty paid on the inputs. The Court quoted what had been said in *Dy. CST v. Thomas Stephen & Co. Ltd.*, namely, "Consumption must be in the manufacture as raw material or of other components which go into the making of the end product....." and observed that, correctly apprehended, that statement did not lend itself to the understanding that for something to qualify itself as a raw material it had necessarily and in all cases to go into and be found in the end product. The Court also quoted with approval the case of *Eastend Paper Industries Limited* cited above.

That leaves us to consider whether the raw naphtha used to produce

- E 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. That 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
- F raw naphtha used in the manufacture of such ammonia to be entitled to the said exemption.
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In the result, the appeals are allowed. The orders under appeal are set aside. It is held that the raw naphtha used to produce ammonia which is used in the water treatment, steam generation, inert gas generation and

effluent treatment plants of the urea plant of the appellants is entitled to A the exemption provided by the Exemption Notification No. 187/61 as amended from time to time.

There shall be no order as to costs.

R.P.

Appeals allowed. B