M/S. GUJARAT STATE FERTILIZERS CO. A

v.

COLLECTOR OF CENTRAL EXCISE

FEBRUARY 28, 1997

[S.P. BHARUCHA AND S.B. MAJMUDAR, JJ.] B

Central Excises and Salt Act, 1944/Central Excise Rules, 1944/Tariff Act, 1985 :

S. 3/Rule 8(1)/Chapters 28 and 32 of the Schedule—Notification No. 75 of 1984 permitting concessional rate of central excise duty on raw naptha and Notification No. 40 of 1985 totally exempting ammonia from central excise duty—Held the appellant-manufacturer is entitled to the benefits available under the two notifications, as they have fully satisfied the conditions therein inasmuch as raw naptha was utilised by the appellant- manufacturer in manufacture of ammonia; and ammonia was captively consumed in manufacture of molten urea, a chemical fertilizer covered under the term 'fertilizer' in Chapter 31 of the Schedule to the Tariff Act. C D

Rules of Interpretation :

Exemption Notification under Central Excise Rules, 1944—Object of—Held if express language does not indicate a contrary intention, full effect has to be given to wide terminology employed by Notification. E

Words and Phrases :

'Fertilizer' in the context of Tariff Act, 1985—Held includes chemical fertilizer. F

The Central Government, by Notification No. 75 dated 1.3.1984, granted concession in the rate of central excise duty on raw naptha used in the manufacture of fertilizers and ammonia; and by Notification No. 40 dated 17.3.1985, it exempted from excise duty, the ammonia utilised for production of fertilizers. G

The appellant, a public limited company engaged in manufacture of fertilizers, ammonia and chemicals, claimed concessional rate of excise duty, as per Notification No. 75 dated 1.3.1984, on raw naptha consumed H

A by it for manufacturing ammonia. It also claimed total exemption from excise duty, as per Notification No. 40 dated 17.3.1985, on the manufactured ammonia captively utilised by it for production of molten urea. The claim of the appellant was negatived on the ground that the benefit of the two exemption notifications could not be made available to the appellant since the ultimate product manufactured by it by captively consuming B naptha, ammonia and molten urea was melamine which was not a fertilizer. Notices were issued to the appellant to show cause as to why duty should not be recovered at full rate on the two items. The appellant filed its reply. The Assistant Collector of Central Excise accepted the case of the appellant and discharged the show cause notices. The Revenue filed C appeals on the ground that molten urea was used by the appellant in manufacture of melamine and therefore, it would not be entitled to the benefit of the exemption notifications as the spirit of the exemption notification was that ammonia should be used in manufacture of soil fertilizer and not of any other commodity. The Collector of Central Excise D accepted the contention of the Revenue and allowed the appeals. In the appeals filed by the manufacturer, the Customs and Gold (Control) Appellate Tribunal also accepted the case of the Revenue and dismissed the appeals. Aggrieved, the manufacturer filed these appeals.

It was contended for the appellant that raw naptha was utilised by E it in manufacturing ammonia, and ammonia was captively consumed in manufacture of molten urea, which was a chemical fertilizer; and the notifications did not lay down that raw naptha and ammonia should be used in manufacture of soil fertilizer and not chemical fertilizer; that even though molten urea might have ultimately resulted in the manufacture of F melamine which was not a fertilizer, on the express language of the two exemption notifications the appellant was entitled to the relief claimed by it and the CEGAT wrongly assumed that the notifications necessarily required the ultimate product to be only soil fertilizer and not fertilizer. For the Revenue it was contended that a conjoint reading of the two notifications indicated that the Central Government wanted to exempt G either partially or wholly excise duty for only those products which were consumed in a continuous process for ultimately manufacturing soil fertilizers to be made available to agriculturists for improving the yield of crops, and this real object underlying the issuance of the two notifications had to be kept in view and the express terminology employed by these H notifications was required to be construed in that light. It was also

contended for the Revenue that to a common man 'fertilizer' would denote only a soil fertilizer which could be utilised by the agriculturists and, therefore, the term 'fertilizer' as employed by the notifications must be given its ordinary meaning as accepted in common parlance. A

Allowing the appeals, this Court B

HELD : 1. The Collector of Central Excise (Appeals) as well as the CEGAT patently erred in law in taking the view that notification No. 40 of 1985 did not cover captively consumed ammonia utilised by the appellant as input for manufacturing molten urea. Notification No. 75 of 1984 also applied to raw naptha utilised by the appellant for manufacturing ammonia and molten urea. The condition for earning concessional rate of C duty under notification No. 75 of 1984 on raw naptha and total exemption from duty as per notification No. 40 of 1985 on ammonia have been fully satisfied by the appellant. The show cause notices were clearly incompetent and were liable to be quashed and were rightly vacated by the Assistant Collector. [569-B-F] D

2. Raw naptha is enumerated in column (2) of the table of the Schedule to Notification No. 75 of 1985 as an item on which concessional rate of duty was permitted subject to the condition in column (4) thereof that raw naptha must be intended for use in the manufacture of fertilizers and ammonia. Admittedly raw naptha purchased by the appellant from the E open market was in fact utilised by it in manufacture of ammonia; and thus the condition laid down in column (4) of the Notification got fully satisfied. However, raw naptha can also be said to have been utilised in manufacturing molten urea, which is a chemical fertilizer covered by the term 'fertilizer' as employed by this very condition in column (4). Thus this condition can F be said to have been fully complied with by the appellant. [571-A-D]

3.1. Notification No. 40 of 1985 exempts goods of description mention in column (2) of the table and falling under chapters 25, 27, 28, 29 and 31 or 32, as the case may be, of the Schedule to the Tariff Act, 1985 subject to the condition laid down in the corresponding entry in column (3) G thereof. Ammonia is mentioned at serial No. 3 of column (2) of the table. The condition for earning exemption from excise duty on ammonia, as laid down in column (3) is that ammonia should be used in manufacture of fertilizers. Admittedly ammonia was captively consumed by the appellant in manufacturing molten urea. [571-E-H] H

A 3.2. The term 'fertilizer' is genus which may consist of various species of fertilizers, namely, chemical fertilizer, soil fertilizer, animal or vegetable fertilizers, as seen from description of various types of fertilizers found in chapter 31 of the Schedule to the Tariff Act. Further, the chapter notes of the chapters referred to by the said notification have to be read as part and parcel of the notification. Note to chapter 31 dealing with fertilizers B clearly states that Heading No. 31.02 would cover mineral or chemical fertilizers even when they are not used as fertilizers. Therefore, if molten urea covered by Heading 31.02 was not to be used as fertilizer and on the other hand was utilised as an input for producing melamine, still it would remain a chemical fertilizer within the sweep of chapter 31 and as such it C could not be said that ammonia which was captively consumed for manufacturing molten urea had not satisfied the condition for earning total exemption under Notification No. 40 of 1985. [573-A-C]

Fenner (India) Ltd. v. *Collector of Central Excise, Madurai,* (1995) 77 D E.L.T. 8 SC, relied on.

3.3. The view taken by the CEGAT that molten urea was not a fertilizer at all is not correct. In view of entry in clause (2), sub-clause (A) (viii) of Note 2 under Heading 31.02, Chapter 31 of Schedule to the Tariff Act, 1985, liquid urea is considered to be a chemical fertilizer. The excise E authorities themselves permitted clearance of chemical fertilizer, molten urea, under sub-heading No. 31.02 of Chapter 31. [573-E]

4.1. The object and purpose of the exemption has to be culled out from the express language of the notifications. If the express language of F the notifications does not indicate a contrary intention, full effect has to be given to the wide terminology employed by the notifications; otherwise the result would be that in trying to search for the supposed intention underlying the notifications, the intention flowing from the express language of the notification would get stultified or truncated. [574-F]

G *M/s. Hemraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and Ors.,* (1978) 2 E.L.T. (J. 350), followed.

Steel Authority of India Ltd. v. *Collector of Central Excise,* (1996) 88 E.L.T. 314 SC; *Prince Khadi Woollen Handloom Prod. Coop. Indl. Society* H v. *Collector of Central Excise,* (1996) 88 E.L.T. 637 SC, relied on.

4.2. On the express language of the notification an inevitable conclusion follows that the Central Government meant to exempt excise duty on the captively consumed ammonia if it had resulted in the manufacture of fertilizers and as it had resulted in the manufacture of molten ureas which by itself was a chemical fertilizer covered by Chapter 31 expressly mentioned in the said notification, the scope and ambit of the said notification could not be curtailed on the basis of the supposed latent intention underlying the said notification, namely, that only soil fertilizer was required to be produced by captive consumption of ammonia and not any other type of fertilizer like molten urea which was a chemical fertilizer. In the absence of any such restrictive words in the side notification, the express and wide terminology 'fertilizer' employed therein cannot be curtailed by any process of reasoning about the supposed intention of the Central Government, underlying the issuance of the said notification, nor can it be said that the supposed object or purpose of exemption should be kept in view. [574-G-H, 575-A]

The Tata Oil Mills Co. Ltd. v. *Collector of Central Excise,* **(1989) 43 ELT 183, referred to.**

5. As a result if the appellant becomes entitled to claim any refund of excise duty paid by it, such refund claim if any, submitted by the appellant before the appropriate authority will have to be decided in accordance with law. [578-B]

CIVIL APPEALLATE JURISDICTION : Civil Appeal Nos. 3041-46 of 1991.

From the Judgment and Order dated 19.4.91 of the Customs and Gold (Control) Appellate Tribunal, New Delhi in Order No. 404-09 of 1991-C.

D.A. Dave and Ms. Meenakshi Arora for the Appellant.

K.N. Bhat, Additional Solicitor General, N.K. Bajpai S.D. Sharma and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

S.B. MAJMUDAR, J. : These six appeals are preferred by the common appellant, M/s Gujarat State Fertilisers Company, against the

A central excise authorities, being aggrieved by common judgment and order dated 19.4.1991 rendered by the Customs and Gold (Control) Appellate Tribunal ('CEGAT' for short). The appellant contends that it is entitled to concessional rate of excise duty on raw naptha consumed by it at its factory at Vadodara for manufacturing ammonia which was captively consumed B for manufacturing molten urea. That claim for concessional rate of duty is based on Notification No. 75 of 1984 dated 1.3.1984, as amended from time to time, issued by the Central Government in exercise of its powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 promulgated under the Central Excises and Salt Act, 1944. The appellant also claimed total exemption from excise duty on the manufactured am- C monia utilised by it for production of molten urea by captively consuming the aforesaid ammonia manufactured out of raw naphtha. The said claim is based on a similar exemption notification issued by the Central Government being Notification No. 40 of 1985 dated 17.3.1985, as amended from time to time. The aforesaid manufactured molten urea was further captively D consumed for manufacturing melamine. This claim based on the aforesaid exemption notifications was sought to be negatived by issuance of six show cause notices by the excise authorities on the ground that the aforesaid exemption notifications were not applicable to raw naphtha utilised for manufacturing ammonia as well as to ammonia captively consumed for E manufacturing molten urea on the ground that the ultimate product manufactured out of it was melamine which was not a fertiliser. It was also contended by the excise authorities that molten urea which was manufactured out of ammonia was not by itself a soil fertiliser and, therefore, on the express terms of the exemption notifications, the appellant was not F entitled to get the benefit of concessional rate of excise duty on raw naphtha utilised by it for manufacture of ammonia as well as of total exemption from excise duty on ammonia which was utilised in the manufacture of molten urea. The aforesaid show cause notices were issued by the Superintendent of Central Excise, Vadodara, to the appellant on various dates between 12.5.1986 and 28.5.1987. The appellant was called upon to G show cause as to why duty should not be recovered at full rate on the quantity of raw naphtha and ammonia utilised by the appellant for production of molten urea during the period in question and as to why concessional rate of duty on raw naphtha under Notification No. 75 of 1984 and exemption to ammonia under Notification No. 40 of 1985 should not be H disallowed.

The appellant by its replies to these show cause notices contended that as a public limited company, it was engaged in the manufacture of fertilisers, ammonia and chemicals. That one of the raw materials used for the manufacture of ammonia was raw naphtha which was purchased by the appellant. That ammonia manufactured by it which falls under Chapter 28 of the Schedule to the Central Excise Tariff Act, 1985 ('Tariff Act' for short) was captively consumed by it in its Urea Plant for manufacture of molten urea. It was submitted by the appellant that molten urea was classified by the excise authorities under Chapter 31, which refers to fertilisers and duty was paid on molten urea as a chemical fertiliser under Heading 31.02 which covers nitrogenous mineral and chemical fertiliser. The molten urea was then captively consumed in its Melamine Plant for the manufacture of melamine which was not a fertiliser. The case of the appellant was that though molten urea was not used for manufacture of fertiliser, it still remained classifiable as a fertiliser, regardless of its use. Relevant chapter notes were relied upon by the appellant in this connection.

The Assistant Collector of Central Excise after considering the appellant's case came to the conclusion that raw naphtha was utilised by the appellant in manufacturing ammonia which in its turn was utilised for manufacturing molten urea and that as molten urea was a chemical fertiliser, the benfit of both the aforesaid notifications was available to the appellant. Consequently, the show cause notices were discharged by six orders passed by the Assistant Collector between 12.11.1986 and February 1989.

The Collector of Central Excise, Vadodara, in exercise of powers vested in him under Section 35-E of the Act directed the Assistant Collector to file appeals to the Collector, Central Excise (Appeals) against the aforesaid orders on the ground that molten urea which was classifiable under Chapter 31 Heading 31.08 was further used in the manufacture of melamine and hence the appellant would not be entitled to the benefit of the aforesaid notifications as the spirit of the notifications was that ammonia should be used in the manfufacture of a soil fertiliser and not any other commodity.

Pursuant to the directions of the Collector, the Assistant Collector filed six appeals on diverse dates to the Collector, Central Excise (Ap-

peals). The appellant filed cross-objections submitting in the alternative that assuming that molten urea was not a fertiliser, even then it was entitled to the benefit of Notification No. 217 of 1986 dated 1st March 1986 which exempted captively consumed excisable goods used for the manufacture of excisable final products as set out in the Table annexed to the said notification. As ammonia covered by Chapter 28 was mentioned as input and molten urea covered by Chapter 31 was shown as output in the said notification, even under that notification no duty was payable on molten urea.

The Collector, Central Excise (Appeals) by his diverse orders between 13.3.1989 and 25.7.1989 allowed the appeals by holding that as molten urea was not a soil fertiliser and as the final product melamine was also not a soil fertiliser, the benefit of the aforesaid twin notifications was not available to ammonia and raw naphtha respectively. The appellant thereafter preferred six appeals before the CEGAT. The CEGAT by the impugned common order dismissed all these appeals agreeing with the view of the Collector, Central Excise (Appeals) that ammonia was used in a continuous process for ultimately manufacturing melamine which was not a fertiliser and as molten urea which was an intermediate product was also not a soil fertiliser, the benefit of these notifiactions was not available to the appellant.

The impugned common order of the CEGAT was challenged by Shri Dave, learned Senior Counsel appearing for the appellant on diverse grounds. In the first instance, Shri Dave submitted that the CEGAT had patently erred in law in taking the view that raw naphtha utilised by the appellant in manufacturing ammonia did not earn the concessional rate of duty as per Notification No. 75 of 1984. It was submitted by him that raw naphtha was utilised by the appellant in manufacturing ammonia and also fertiliser, namely, molten urea which is a chemical fertiliser and that the notification nowhere lays down any condition for its applicability, that the raw naphtha should be soil fertiliser and not chemical fertiliser. Similarly, it was contended that the appellant was entitled to the benefit of total exemption from excise duty as per Notification No. 40 of 1985 dated 17.3.1985 as amended from time to time as ammonia covered by the said notification was captively consumed in manufacture of fertiliser, namely, molten urea which was a chemical fertiliser. Shri Dave submitted that even though molten urea might have ultimately resulted in the manufacture of

melamine which was admittedly not a fertiliser, on the express language of these exemption notifications, the appellant had made out a case for relief as claimed by it and that the CEGAT had wrongly assumed that the notifications necessarily required the product manufactured by the appellant to be only soil fertiliser and not fertiliser of any other type and that express terminology of the notifications did not have such a restrictive meaning. It was alternatively contended that in any case, Notification No. 217 of 1986 applied to the facts of the present case and even on that ground, the demand-cum-show cause notices were liable to be quashed. Shri Bhat, learned Additional Solicitor General, on the other hand, contended that the express terminology employed by exemption Notification No. 75 of 1984 dated 1.3.1984 and Notification No. 40 of 1985 dated 17.3.1985 had to be appreciated in the light of the connotation of the term 'fertiliser' as understood in common parlance and should not be read in the light of the subsequent Tariff Act which might have brought on the statute book relevant Chapters 31 or 32. Therefore, the wording of those chapters and the chapter notes could not be relied upon to cull out the meaning of the term 'fertiliser' as employed by these notifications. Ultimately when the express terminology of these notifications was noticed by him making direct reference to the concerned chapters of the Tariff Act he did not pursue this point any further. However, his main contention was that on a conjoint reading of the relevant clauses of the notifications, it must be held that the Central Government wanted to exempt either partially or wholly excise duty for only those products which were consumed in a continuous process for ultimately manufacturing soil fertilisers which were to be made available to agriculturists for improving the yield of crops and, therefore, if the final product which emerged was melamine, which was not a fertiliser at all, the intermediate products as inputs which had gone into the manufacturing of the final product of melamine in this continuous process of manufacture could not earn any concession or full exemption from excise duty. Learned Additional Solicitor General submitted that the aforesaid real object underlying the issuance of these notifications had to be kept in view and the express terminology employed by these notifications was required to be construed in that light. It was also contended by him that the CEGAT had rightly taken the view that as raw naphtha which was utilised for manufacturing ammonia and ammonia which in its turn was utilised in manufacturing molten urea could not get the benefit of the aforesaid exemption notifications as molten urea was not

A B C D E F G H

A a soil fertiliser and the exemption notifications were issued only with a view to making soil fertilisers cheaper so as to get them within the reach of farmers in a more advantageous manner. That it was not the intention of the exemption granting authorities to give any benefit to the consumers of final product like melamine which was not a fertiliser at all.

B Having given our anxious consideration to these rival contentions, we have reached the conclusion that the CEGAT had erred in not accepting the contention of the appellant convassed before it. Reasons are obvious. It is not in dispute between the parties that the appellant which is a public limited company is engaged in manufacturing fertiliser ammonia and C chemicals at its factory situated on the outskirts of Vadodara in Gujarat State. That one of the raw materials used by it for manufacture of ammonia is raw naphtha which is purchased by it from open market. During the relevant period, ammonia was covered by Chapter 28 of the Schedule to the Tariff Act of 1985. Ammonia manufactured by the appellant was D captively consumed by it in its Urea Plant for the manufacture of molten urea. Under the Central Excise Tariff Act, the excise authorities classified molten urea under Chapter 31 thereof dealing with fertilisers. That duty was being paid by the appellant at the relevant time on molten urea under Chapter Heading 31.02 which covered nitrogenous mineral and chemical fertilisers. It is no doubt true that molten urea in its turn was also captively E consumed by the appellant in its Melamine Plant for manufacture of melamine which admittedly is not a fertiliser.

In the light of these background facts on which there is no dispute the short controversy posed for our consideration will have to be resolved. F We have, therefore, to turn to the concerned two notifications which are brought on the anvil of scrutiny before us. Notification No. 75 of 1984 dated 1.3.1984, as amended from time to time, sought to grant a concession in the rates of central excise duty as specified in the Schedule to the said notification on goods of the description specified in column (2) of the Table subject to intended use or condition as laid down in column (4) G thereof. The Table to the said notification mentioned at sl. no.2 raw naphtha as the commodity on which concessional rate of duty was permitted subject to the condition mentioned in column (4) which provided that raw naphtha must be intended for use in the manufacture of fertilisers and ammonia. We are not concerned with the proviso to the said condition H mentioned in column (4). Now a mere look at the said notification shows

that when raw naphtha was utilised for manufacture of fertilisers and ammonia, it would earn the concessional rate of duty. It is not in dispute between the parties that raw naphtha which the appellant purchased from the open market was in fact utilised by it in manufacture of ammonia even leaving aside the further question as to whether it was utilised for manufacture of any fertiliser. It is, therefore, difficult to appreciate as to how the CEGAT could persuade itself to hold that because ammonia manufactured out of raw naphtha had resulted in molten urea which was not a soil fertiliser, the benefit of the aforesaid notification could not be made available to the appellant which had utilised raw naphtha in its Plant. Moment it was shown that raw naphtha was wholly utilised by the appellant for manufacturing ammonia, the condition laid down in column (4) of the notification got fully satisfied. On this short ground, the reasoning of the CEGAT for not extending the benefit of concessional rate of duty on raw naphtha to the appellant cannot be sustained. However, as discussed hereinafter, raw naphtha can also be said to have been utilised in manufacturing molten urea which is a chemical fertiliser covered by the term 'fertiliser' as employed by this very condition in column (4). Thus this condition can be said to have been fully complied with by the appellant.

Then next we turn to exemption Notification No. 40 of 1985 dated 17.3.1985. As per the said notification, as amended from time to time, it had been laid down that the Central Government was pleased to exempt goods of the description mentioned in column (2) of the Table and falling under Chapters 25, 27, 28, 29 and 31 or 32, as the case may be, of the Schedule to the Tariff Act, from the whole of the duty of excise leviable thereon under Section 3 of the Central Excises and Salt Act, 1944, subject to the conditions, if any, laid down in the corresponding entry in column (3) thereof. Column (2) of the Table referred to the description of goods and at sl. no. 3 is mentioned ammonia. Thus ammonia which was manufactured by the appellant out of raw naphtha came under the sweep of the said exemption notification. The condition for earning exemption from excise duty on ammonia as laid down in column (3), which is relevant for our present purpose, is Condition No. (ii) which provides that ammonia should be used in the manufacture of fertilisers. It is not in dispute that ammonia was captively consumed by the appellant in manufacturing molten urea. Therefore, the moot question is whether ammonia could be said to have been utilised for manufacturing any fertiliser. It is no doubt true that molten urea in its turn became an input for producing the final product,

A namely, melamine which admittedly was not a fertiliser. But as required by the express language of the notification we have to find out whether molten urea which was manufactured out of ammonia was a fertiliser or not. It is now well settled by a catena of decisions of this Court that for deciding whether an exemption notification gets attracted on the facts of a given case, the express language of the exemption notification has to be given its B due effect. In this connection, we may refer to a decision of this Court to which our attention was invited by Shri Dave, learned Senior Counsel for the appellant. In *M/s Hemraj Gordhandas* v. *H.H. Dave, Assistant Collector of Central Excise & Customs, Surat and Ors.,* (1978) 2 E.L.T. (J. 350)], a Constitution Bench of this Court speaking through Ramaswami, J. has C made the following pertinent observations in paragraph 5 of the Report :

> ".....It is well estabilished that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notifaction. If the tax-payer is within the plain terms of the D exemption it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. If such intention can be gathered from the construction of the words of the notification or by necessary implication therefrom, the matter is different but that is not the case here...."

E

In *Steel Authority of India Ltd.* v. *Collector of Central Excise,* (1996) 88 E.L.T. (S.C.), one of us S.P. Bharucha, J. speaking for a Bench of two learned Judges, while dealing with an exemption notification in connection with raw naphtha laid down in paragraph 5 of the Report that due F emphasis had to be given to the clear language of the condition mentioned in the exemption notification. Same view was reiterated in the case of *Prince Khadi Woollen Handloom Prod. Coop. Indl. Society* v. *Collector of Central Excise,* (1966) 88 E.L.T. 637 (S.C.).

In the light of the aforesaid settled legal position, we have, therefore, G to confine ourselves to the express language employed by the exemption granting authority in its wisdom while it issued Notification No. 40 of 1985. As noted earlier, the notification clearly refers to the goods of description specified in column (2) of the Table annexed to the notification and falling under enumerated chapters of the Tariff Act. One of the chapters men- H tioned therein is Chapter 31. The said chapter deals with fertilisers. Note

No. 1 of the said chapter lays down that Heading Nos. 31.02, 31.03, 31.04 and 31.05 cover mineral or chemical fertilisers, even when they are clearly not to be used as fertilisers. When we turn to Heading no. 31.02, Sub-heading No. 3102.00, we find the description of goods which refers to mineral or chemical fertilisers, nitrogenous. Extracts from Central Excise Tariff of India 1987-88 by Shri R.K. Jain show that so far as Chapter 31 dealing with fertilisers is concerned, Heading No. 31.02, amongst others, applies also to urea, whether or not pure. The said entry is found in clause (2), sub-clause (A)(viii) of Note 2 under Heading No. 31.02. Sub-clause (D) of clause (2) of Notes under Heading No. 31.02 shows that liquid fertilisers consisting of the goods of sub-paragraph (A)(ii) or (viii) above are also included in the said heading. It, therefore, becomes obvious that liquid urea is considered to be a chemical fertiliser. It is also not in dispute that the excise authorities themselves permitted clearance of chemical fertiliser, molten urea, under sub-Heading No. 31.02 of the said chapter. It must, therefore, be held that the view taken by the CEGAT that molten urea was not a fertiliser at all, is not connect. It is difficult to appreciate as to how the CEGAT could come to that conclusion when it was not called upon to go into that question by either of the parties before it. The only contention before CEGAT was whether the term 'fertiliser' in each of the exemption notifications covered chemical fertiliser like molten urea or was confined only to soil fertiliser. There was no controversy between the parties as to whether molten urea was chemical fertiliser or not. It was an admitted position between them that it was a chemical fertilizer exigible to excise duty under Tariff Item 31.02. Excise Authorities themselves accepted the classification to that effect from time to time and had raised no objection on that score at any time. It is, therefore, difficult to appreciate how the CEGAT could persuade itself to hold by making out entirely a new and a third case for the parties to the effect that molten urea was not a fertiliser at all, specially in the absence of such a pleading of any party much less there being any evidence on the point.

Consequently, on a conjoint reading of the express terms of Notification No. 40 of 1985 and the relevant headings and sub-headings of Chapter 31 of the Tariff Act, it must be held that the appellant by captively consuming ammonia had manufactured molten urea, a chemical fertiliser. It is difficult to appreciate the contention of Shri Bhat, learned Additional Solicitor General that the spirit of the notification was to give the benefit

A only to soil fertilisers as final product which could be utilized by the cultivator in agriculture and with that end in view the notification was promulgated. On the express language of the notifications it is not possible for us to agree with this contention. If that was the view of Central Government while promulgating the said notifications, nothing prevented B the Central Government from indicating that it was not seeking to cover the goods mentioned in Chapter Heading No. 31 or in not confining the said exemption notification only to soil fertilisers. In the absence of any such restrictive words in the said notification, the express and wide terminology 'fertiliser' employed in the notification cannot be curtailed by any C process of reasoning about the supposed intention of the Central Government underlying the issuance of the said notification. It is also not possible to agree with the contention of Shri Bhat, learned Additional Solicitor General placing reliance on a decision of this Court in *The Tata Oil Mills Co. Ltd.* v. *Collector of Central Excise,* (1989) 43 E.L.T. 183 S.C. that the D supposed object and purpose of exemption should also be kept in view. In paragraph 6 of the Report, Ranganathan, J. speaking for a two-Member Bench of this Court has observed that in trying to understand the language used by an exemption notification, one should keep in mind two important aspects : (a) object and purposes of the exemption and (b) the nature of the actual process involved in the manufacture of the commodity in relation E to which exemption was granted. It must be kept in view that the object and purpose of the exemption has to be culled out from the express language of the notification. If the express language of the notification does not indicate a contrary intention conveyed by the wide words employed by the notification, full effect has to be given to the wide terminology F employed by the notification otherwise the result would be that in trying to search for the supposed intention underlying the notification, the intention flowing from the express language of the notification would get stultified or truncated. To recapitulate, on the express language of the notification an inevitable conclusion follows that the Central Government G meant to exempt excise duty on the captively consumed ammonia if it had resulted in the manufacture of fertilisers and as it had resulted in the manufacture of molten urea which by itself was a chemical fertiliser covered by Chapter 31 expressly mentioned in the said notification, the scope and ambit of the said notification could not be curtailed on the basis H of the supposed latent intention underlying the said notification, namely,

that only soil fertiliser was required to be produced by the captive consumption of ammonia and not any other type of fertiliser like molten urea which was a chemical fertiliser. If the contention of Shri Bhat, learned Additional Solicitor General, is accepted, Condition No. 2 as laid down by the said notification will have to be redrafted by adding the restrictive words 'soil fertiliser' instead of the wide word 'fertiliser' as employed by the exemption granting authority in its wisdom. It is obvious that the term 'fertiliser' is genus which may consist of various species of fertilisers, namely chemical fertiliser, soil fertiliser, animal or vegetable fertilisers, as seen from description of various types of fertilisers found in Chapter 31 of the Tariff. It has also to be noted that the chapter notes of the Chapters referred to by the said notification have to be read as a part and parcel of the said notification. In this connection, we may usefully refer to a decision of this Court is *Fenner (India) Ltd.* v. *Collector of Central Excise, Madurai,* (1995) 77 E.L.T. 8 S.C. wherein one of us S.P. Bharucha, J. speaking for a two-Member Bench of this Court observed that the Tariff Schedule contained rules for its interpretation which required that for legal purposes classification would be determined on terms of the headings and any relative Section or Chapter Notes. As we have already seen Note to Chapter 31 dealing with fertilisers clearly that Heading No. 31.02 would cover mineral or chemical fertilisers even when they are not used as fertilisers. Therefore, it must be held that if molten urea as covered by Heading No. 31.02 was not to be used as fertiliser and on the other hand was utilised as an input for producing melamine, still it would remain a chemical fertiliser within the sweep of Chapter 31. If it remained a fertiliser, it could not be said that ammonia which was captively consumed for manufacturing molten urea had not satisfied the condition for earning total exemption under Notification No. 40 of 1985 as ammonia had resulted in the manufacture of molten urea being a fertiliser.

That takes us to the consideration of the main submission canvassed by Shri Bhat, learned Additional Solicitor General, that the CEGAT had taken the view that ammonia which was utilised by way of captive consumption by the appellant for manufacture of molten urea was subjected to a continuous process of manufacturing which had resulted in the end product melamine which was admittedly not a fertiliser. That may be so. However, the question remains whether ammonia could be said to have been used in the manufacture of molten urea which was a chemical

A fertiliser. We have to recall that molten urea itself is an excisable commodity even though it might have been exempted from payment of excise duty by a notification issued by the Central Government. But for the said exemption notification molten urea would have been required to bear the full duty. As seen earlier, it has been classified as a chemical fertiliser under
B Heading 31.02 by the authorities themselves. For levying excise duty on such a commodity, namely, molten urea, if the department takes the view that it is to be subjected to excise duty as a chemical fertiliser on its clearance even for captive consumption, it is difficult to appreciate the contrary stand of the very same authority that it would cease to be a fertiliser for the purpose of exemption Notification No. 40 of 1985, even
C though ammonia results in the manufacture of the same excisable item, namely, molten urea. Such a stand cannot be permitted to be adopted by the department, as it would amount to blowing hot and cold at the same time. If molten urea is treated to be an excisable item under Heading 31.02 as a chemical fertiliser, it has to be treated on the same lines while
D construing the sweep of exemption Notification No. 40 of 1985 which expressly refers to Chapter 31 amongst others. In short, molten urea must be treated to be a fertiliser for the purpose of its exigibility to duty under Heading 31.02 of the Tariff Act and simultaneously also for the purpose of exemption Notification No. 40 of 1985. It is also easy to visualise that if
E molten urea would have been sold by the appellant in outside market instead of being captively consumed further for the manufacture of melamine, it would have borne full duty subject to exemption notification, if any, under Tariff Item 31.02. Only because it was captively consumed in the onward process of manufacture which had resulted into melamine, it could not be said that the final product for the purpose of Excise Act had
F not emerged in the shape of molten urea by the captive consumption of ammonia.

Shri Bhat, for the Revenue, next contended that the term 'fertiliser' as employed by the notification must be given its ordinary meaning that is
G accepted in common parlance. He submitted that to a common man fertiliser would denote only a soil fertiliser which could be utilised by the agriculturist for improving his agricultural yield. It is difficult to appreciate this contention. As noted earlier, the notification in terms seeks to encompass in its coverage goods of the description falling under Chapters 25, 27,
H 28, 29 and 31 or 32 of the Tariff Act. When there is an express reference

in the notification covering the goods, amongst others, those referred to in Chapter 31 and as Chapter 31 in its turn includes chemical fertilisers, it is difficult to appreciate how despite such an express reference in the notification, the supposed common parlance test can be adopted. In fact, such was not the contention of the department even before the CEGAT or for that matter before the Assistant Collector or the Collector (Appeals). The only stand of the department was that exemption Notification No. 40 of 1985 would not apply to ammonia as it had resulted into the final product melamine which was not a fertiliser and the intermediate product of molten urea was utilised in a continuous process of manufacture and, therefore, it must be held that ammonia was captively consumed for the purpose of manufacturing the ultimate product of melamine and not molten urea. On the express language of the notifications, in question, it is not possible to agree with the contention of Shri Bhat, learned Additional Solicitor General that the term 'fertiliser' employed by the said notification must be understood by adopting the common parlance test to be referred to soil fertiliser only.

As a result of the aforesaid discussion, it must be held that the Collector of Central Excise (Appeals) as well as the CEGAT had patently erred in law in taking the view that Notification No. 40 of 1985 did not cover captively consumed ammonia utilised by the appellant as input for manufacturing molten urea. It must also be held that Notification No. 75 of 1984 applied to raw naphtha utilised by the appellant for manufacturing ammonia and molten urea. The condition for earning concessional rate of duty under Notification No. 75 of 1984 on raw naphtha and total exemption from duty as per Notification No. 40 of 1985 on ammonia must be held to have been fully satisfied by the appellant. Hence show cause notices were clearly incompetent and were liable to be quashed and were rightly vacated by the Assistant Collector.

In view of the aforesaid conclusion, it is not necessary to go into the alternative contention canvassed by Shri Dave, learned Senior Counsel for the appellant, about the applicability of Notification No. 217 of 1986 dated 2.4.1986 as amended from time to time.

In the result, these appeals succeed and are allowed. The common judgment and order rendered by the CEGAT in all the six appeals as

A confirming in its turn the appellate orders passed by the Collector of Central Excise (Appeals) are quashed and set aside and instead six orders passed by the Assistant Collector, Central Excise, Vadodara, between 12.11.1986 and February, 1989 are confirmed. As a result of our decision, if the appellant becomes entitled to claim any refund of excise duty paid
B by it pursuant to the impugned order of the CEGAT as confirming the orders of Collector of Central Excise (Appeals), such refund claim, if any, submitted by the appellant before the appropriate authorities will have to be decided in accordance with law. In the facts and circumstances of the case, there will be no order as to costs.

C R.P. Appeals allowed.