A M/S VANASTHALI TEXTILES INDUSTRIES LTD.

v.

COMMISSIONER OF CENTRAL EXCISE, JAIPUR, RAJASTHAN

B OCTOBER 26, 2007

[DR. ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Excise duty—Exemption under Notification No. 8/97-CE—
C *Entitlement of—100 % EOU using imported sizing material in manufacture of terry towels—Another 100% EOU using imported 'Indigo pure' in manufacture of denim fabric—First company's case that imported sizing material not raw material but consumable and other company's case that Denim fabric wholly produced from cotton*
D *yarn and Indigo pure not raw material, thus entitled to exemption under Notification—Held: Benefit of Notification is available when products are manufactured by 100% EOU wholly from raw material produced and sold in India—On facts, dominant ingredient test in regard to cost variation not applied—Thus, matter remitted to CEGAT to consider*
E *the same and also whether the items are 'consumable'—Notification No. 8/97-CE—Central Excise and Salt Act, 1944.*

Words and Phrases: 'Consumables' and 'raw materials'—Meaning of.

F **In the present batch of appeals, appellant-company is 100% Export Oriented Undertaking-'EOU'. In terms of Notification No.8/97-CE dated 1.3.1997, goods sold in Domestic Tariff Area by a 100% EOU were partially exempted from payment of Central Excise Duty provided the goods were manufactured by 100% EOU wholly**
G **from raw material produced or manufactured in India.**

Appellant-company in first batch of appeals procured the raw materials from domestic manufacturers in India and also imported Carboxymethyle Cellulose which is used for sizing of single yarn to

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give strength to the yarn during weaving after which the woven towels are washed to remove completely the sizing materials and Ultra fresh N.M. which is used for anti bacteria and anti fungus treatment of terry towels. Appellant-company claimed the benefit of the Notification. It was appellant's case that the sizing material imported is not raw material but is classified as consumable under EXIM Policy, which participates in or is required for manufacturing process but does not form part of the end product; that the sizing material is washed away after weaving and as such it does not form part of the end product at all which is dyed towel or its waste and scrap; and that the Board's Circular No. 389/22/98-CX dated 5.5.1998 clarified that the benefit of the Notification would also be available even if imported consumables are used in the manufacture by 100% EOU. The Department relying upon the decision in *CCE, Indore* v. *Century Denim, EOU and CCE* v. *Ballarpur Industries Ltd.* contended that the benefit of Notification was not available as 100% EOU had used the imported articles. Commissioner (Appeals) confirmed the demand of duty on the ground that the sizing material was imported by the company and is raw material, thus, the benefit of Notification was not available. Appellant-company challenged the order. CEGAT granted stay of the recovery of duty and disposed of the appeals filed by the appellant-company.

The appellant-company in other batch of appeals is engaged in the manufacture of cotton yarn and Denim fabric. They are using Indigo pure in manufacture of Denim Fabric which is an imported raw material. The Commissioner, Central Excise and Customs issued notice to the appellant-company to show cause as to why benefit of the Notification be not denied as they are using imported 'Indigo pure' in the manufacture of Denim fabric. The Commissioner holding that the 'Indigo pure' cannot be termed as raw material for production of Denim fabrics, dropped the show cause notice. In appeal, CEGAT held that use of Indigo pure was a raw material in the manufacture of denim fibre. High Court relying on the decision in *Ballarpur's* case, upheld the order of CEGAT. It held that the finished product is not wholly from basic raw material i.e. cotton but

A it has to be treated that the dye is also a raw material which is imported.

Hence the present batch of appeals.

Allowing the appeals, the Court

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HELD: 1.1. The word "consumable" takes colour from and must be read in the light of the words that are its neighbours "raw material", "component part", "sub-assembly part" and "intermediate part". So read, it is clear that the word "consumables" C therein refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason, a departure was made from the concept that "consumable" fall within the broader scope of the words "raw materials".

D [Para 20] [720-B, C]

Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. *M/s Thomas Stephen & Co. Ltd., Quilon,* [1988] 2 SCC 264 and *Coastal Chemicals Ltd.* v. *Commercial Tax Officer, A.P. and Ors.,* [1999] 8 SCC 465, referred to.

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1.2. The expression "raw material" is not a defined term. The meaning has to be given in the ordinary well accepted connotation in the common parlance of those who deal with the matter.

[Para 13] [717-E]

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1.3. The conditions for getting the benefit of the Notification is that the end products should be wholly manufactured from the raw material produced and sold in India. The dominant ingredient test has not been applied in the instant case; so also the effect of value addition. The Notification does not make distinction on account of G value. Stress is on the word 'wholly'. Since the reliance on dominant ingredient test in regard to cost variation has not been considered by CEGAT though the same has relevance, the matter is remitted to CEGAT to consider those aspects. It shall also consider whether the items can be considered as "consumable" on the facts of the case.

H [Paras 15, 16, 17 and 19] [718-G, H; 719-A, C, G; 720-A]

CCE, Indore **v.** *Century Denim, EOU* **(2001) (129) ELT 657 and** A
CCE **v.** *Ballarpur Industries Ltd.,* **[1989] 4 SCC 566, referred to.**

Chemical Technology of Fibrous Materials" by F. Sadov, M Korchagin & A Matelsky, **referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appel Nos. 2611- B
2612 of 2003.

From the Judgment and Final Order No. 21-22/03-D dated 15.1.2003 of the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. E/2845/02-D & E/2018/02-D.

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Civil Appeal Nos. 5000-5002 of 2007.

K.K. Venugopal, R.G. Padia, S.K. Gambhir, Dr. A.M. Singhvi, R. Krishnan, S. Narayanan, M.K.D. Namboodiri, Rajiv Kapur, Shubra D
Kapoor, Arti Singh, Sanjay Kapur, Alok Yadav, M. P. Devanath, Rajesh Kumar, Naveen Prakash, Rahul Kaushik, B. Krishna Prasad and Amit Bhandari appearing parties.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted in SLP (C) Nos. 9698/2005 and 8595-8596/2005.

2. Challenge in these appeals is to the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (in short 'CEGAT') disposing of appeals filed by the appellant-company. Challenge F
before the CEGAT was to the order passed by the Commissioner (Appeals). CEGAT granted stay of the recovery of duty, and took up the appeals for disposal of merits. The appellant-company had challenged the order passed by the Commissioner of Central Excise (Appeals) Jaipur.

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3. Background facts in a nutshell are as follows:

Appellant-company is 100% export oriented undertaking (in short 'EOU') who claimed partial exemption from duty in terms of Notification NO.8/97-CE dated 1.3.1997 in respect of goods sold in Domestic Tariff

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A Area (in short 'DTA'), which stipulated conditions that the goods have been manufactured wholly from the raw materials produced or manufactured in India. According to the company it procured the raw materials from domestic manufacturers in India and also imported (1) Carboxymethyle Cellulose which is used for sizing of single yarn to give
B strength to the yarn during weaving after which the woven towels are washed to remove completely the sizing materials and (2) Ultra fresh N.M. which is used for anti bacteria and anti fungus treatment of terry towels. The Commissioner (Appeals) had confirmed the demand of duty on the ground that the sizing materials imported by the company is raw material
C and as imported raw material has been used, the benefit of Notification No.8/97-CE is not available.

4. According to learned counsel for the appellant the sizing material imported is not raw material but is a consumable as per definition given in para 3.13 of the EXIM Policy. According to the definition of
D 'Consumable', it means any item which participates in or is required for manufacturing process but does not form part of the end product. Items which are substantially or totally consumed during manufacturing process will be deemed to be consumable. It was submitted that the sizing material is washed away after weaving and as such it does not form part of the
E end product at all which is dyed towel or its waste and scrap. According to para 3.41 of the Policy, raw material means basic materials which are needed for the manufacture of goods but which are still in a raw nature, unrefined or un-manufactured stage. Reliance was placed on the Board's Circular No.389/22/98-CX dated 5.5.1998 wherein it has been clarified
F that the benefit of the Notification would also be available even if imported consumables are used in the manufacture by 100% EOU. The sizing material answers the definition of 'consumable' given in the EXIM Policy and, therefore, benefit of the Notification cannot be denied to the appellant.

5. Reliance was placed by the Department upon the decision in
G *CCE, Indore* v. *Century Denim, EOU* (2001) 129 ELT 657 wherein the Tribunal relying upon the decision of this Court in the case of *CCE* v. *Ballarpur Industries Ltd.*, [1989] 4 SCC 566 held that the benefit of Notification 8/97 is not available as 100% EOU has used the imported indigo pure dye and other articles. Tribunal dismissed the appeals and
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upheld the views of the departmental authorities. After considering the rival submissions, CEGAT came to hold that the appellant-company is using Carboxymethyle Cellulose which is a sizing material in the manufacture of finished products, which are finally cleared in the DTA. The sizing material is undisputedly imported by it. The benefit of Notification No.8/97 is available only if the products brought only from the raw materials produced or manufactured. The Board's Circular dated 5.5.1998 has clarified that 100% EOU is available for the benefit of the said Notification even if the imported consumables are used since the Notification does not bar the use of imported consumables. Reliance was placed in *Ballarpur's* case (supra) to conclude that the benefits of Notification were not available. It was also noted that in the case of *Century Denim's EOU* case (supra) the view taken was affirmed by this Court in *Century Denim's* case (supra). Accordingly, the appeals were dismissed. It is the assessee's stand in these appeals that the Tribunal had not correctly applied the decision in *Ballarpur's* case (supra) inasmuch as this Court clearly observed that the said decision was in the facts and circumstances of that matter and no general proposition of law was being laid down. In that case this Court was concerned with Sodium Sulphate which was burnt up in the process of manufacture and other chemical reaction. Additionally, in *Ballarpur's* case (supra) the manufacturer was not 100% EOU importing any material unlike the present appellant company which is 100% EOU importing material classified under the EXIM Policy as consumable.

6. Stand of the Department-respondent was that imported sizing material was used by the assessee in the manufacture of impugned product and the process of sizing is essential process during the course of manufacture of terry towel because it increased the strength of the yarn and the fibre and thus improves the weaving of the yarn. Therefore, the sizing material is an essential ingredient for weaving of terry towel. Reliance was placed on the decision of this Court in *Ballarpur's* case (supra) to contend that one of the valid tests to determine whether the ingredient qualifies to be called raw material could be that ingredient should be so essential for the chemical processes culminating in the emergence of the desired end product.

7. Learned counsel for the parties re-iterated the stand taken before

A the CEGAT.

8. In the connected matter i.e. SLP (C) No.9698/2005 challenge is to the order passed by a learned Single Judge of the Madhya Pradesh High Court, Indore Bench. Factual position in that case is as follows:

B 9. The appellant-Company is a duly incorporated company. It is a 100% export oriented unit situated in the industrial backward district of Khargone for manufacture of cotton yarn and/or blended yarn. Appellant-Company is engaged in the manufacture of cotton yarn and Denim fabric, which is made out of the cotton yarn produced by the appellant. The C Denim cloth being so manufactured is thus a variety of textile product. The Denim so manufactured is of two varieties, namely, coloured Denim and gray Denim. As per appellant's case under Chapter 52 of the Central Excise Tariff Act, 1985 which deals with cotton, the Denim fabrics produced by the appellant is covered by sub-heading 52.07 of the Tariff. D Vide Notification No.8/97 dated 1.3.1997, the Government of India has permitted payment of Central Excise duty at the same rate at which goods produced by an EOU, provided the goods are manufactured by a 100% EOU wholly from raw material produced or manufactured in India. It is further submitted in the appeal that the appellant's product Denim fabrics E is wholly produced from cotton yarn and the Company is availing the benefit of the aforesaid Notification since 1977.

10. The Commissioner of Central Excise & Customs, Indore issued a notice dated 3.2.1998, to the appellant-Company to show cause why benefit of this Notification be not denied, as they are using 'Indigo pure' F in the manufacture of Denim fabrics, which is an imported raw material and also for the recovery of Rs.1,97,11,939/- being short duty paid on Denim fabric cleared in DTS Sales during the period 1.4.97 to 30.1.98 under Rule 9(2) of the Central Excise Rules, 1944 (in short the 'Rules') read with proviso to section 11-A(1) of the Central Excise Act, 1944 (in G short the 'Act') and also for imposing penalty under section 11-AC of the Act and Rules 173-Q and 209 of the Rules and also for recovery of interest on the duty short paid and with other directions about the confiscation of the land, building, plant and machinery, materials or any other things under Rule 173-Q(2) and Rule 209(2) of the Rules.

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11. On 5.6.1998 the appellant filed reply to the aforesaid show cause notice and, thereafter after hearing the learned counsel for the parties the Commissioner, Central Excise and Customs, Indore by order dated 23.6.1999 held that since the raw material has not been defined specifically and also nothing has been brought on record to establish that imported 'Indigo pure' is a raw material known in common trade parlance therefore, the 'Indigo pure' cannot be termed as raw material for production of Denim fabrics and dropped the show cause notice against which the Revenue filed a joint appeal before the CEGAT.

12. The CEGAT allowed the appeal filed by the Revenue by order dated 30.1.2001 and set aside the order passed by the Commissioner on 26.3.1999 and considered the case in the light of finished product and has held that 'Indigo pure' which has gone into the production of the finished product is thus the raw material and remanded the case to consider the points of limitation and the quantum of duty, as these points were not considered as the entire proceedings were dropped, against which the appellant-Company has filed the writ petition challenging the aforesaid order of the CEGAT. The dispute relates to a question whether Indigo Pure dye can be treated as a raw material. Relying on the decision in *Ballarpur's* case (supra) the order passed by the CEGAT was upheld. In that case also the question was relating to the Notification as referred to above.

13. The expression "raw material" is not a defined term. The meaning has to be given in the ordinary well accepted connotation in the common parlance of those who deal with the matter. In *Ballarpur's* case (supra) it was *inter alia* observed as follows:

> "14. 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

A 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 question 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
B of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as
C raw material. In such a case, the relevant test is not its absence in the end product, but the dependence 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
D impossible. This quality should coalesce with the requirement that its utilization is in the manufacturing process as distinct from the manufacturing apparatus."

14. CEGAT had held in that case that the use of Indigo dye is a raw material in the manufacture of denim fibre. According to the High
E Court also the question was whether the use of small quantity of imported dye in bringing the end product into existence, even in that case it can be treated that the finished product has come into existence wholly from cotton. It was held that for the manufacture of denim the basic raw material and the finished product cannot be treated as wholly produced or
F manufactured from cotton. Therefore, placing reliance on *Ballarpur's* case (supra) it was held that the finished product is not wholly from basic raw material i.e. cotton but it has to be treated that the dye is also a raw material which is imported.

15. It is to be noted that cost of dye varied between 2 and 2.5% of
G the total production cost. The denim is manufactured from cotton and not from indigo. The conditions for getting the benefit of the Notification is that the end products should be wholly manufactured from the raw material produced and sold in India.

H 16. It is to be noted that dominant ingredient test has not been

applied in the instant case; so also the effect of value addition. In *Ballarpur's* case (supra) it was held in para 19 as follows:

> "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 borderline a particular case falls."

17. It is true that the Notification does not make distinction on account of value. Stress is on the word 'wholly'. In the Circular dated 5.5.1998 it is stated as follows:

> "xx xx xx xx
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> 3(b) In respect of situation (ii) a Unit is eligible for the benefit of Notification 8/97-CX ibid, even if imported consumables are used since the Notification does not debar the use of imported consumables, provided other conditions of the said Notification are satisfied."

18. In Chemical Technology of Fibrous Materials" by F. Sadov, M Korchagin & A Matelsky it has been stated as follows:

> "In industry, textile fonning (fibrous) items used for manufacturing (Main activity) a textile product are referred as raw material, e.g. cotton, viscose, wool, silk, nylon, polyster, etc. or their blends in different compositions. Whereas, (non fibrous) items used for chemical processing of textile product (Ancillary activity) are referred as consumables e.g. starches, variety of chemicals, several colouring matters such as dyes and pigments etc. Power and water are other consumable items in addition to fuel oil, lubricating agents and packing materials. It is a common practice in Textile industry and trade to identify and categorise raw material and consumables on such basis".

19. Since the reliance on dominant ingredient test in regard to cost

A variation has not been considered by CEGAT though the same has relevance, the matter is remitted to the CEGAT to consider those aspects. It shall also consider whether the items can be considered as "consumable" on the facts of the case.

20. Dealing with a case under a Sales Tax statues, i.e. Andhra B Pradesh General Sales Tax Act, 1957, this Court held that the word "consumable" takes colour from and must be read in the light of the words that are its neighbours "raw material", "component part", "sub-assembly part" and "intermediate part". So read, it is clear that the word "consumables" therein refers only to material which is utilized as an input C in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason, a departure was made from the concept that "consumable" fall within the broader scope of the words "raw materials". Reference in this connection can be made to the view expressed in *Deputy Commissioner of Sales* D *Tax (Law), Board of Revenue (Taxes), Ernakulam* v. *M/s Thomas Stephen & Co. Ltd., Quilon,* [1988] 2 SCC 264 and *Coastal Chemicals Ltd.* v. *Commercial Tax Officer, A.P. and Ors.,* [1999] 8 SCC 465. In the cases at hand "consumable" are treated differently from "raw materials".

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21. The appeals are allowed with no order as to costs.

N.J. Appeals allowed.