

GUJARAT NARMADA VALLEY FERTILIZERS CO.
v.
COLLECTOR OF CENTRAL EXCISE, VADODARA

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JANUARY 18, 2001

[B.N. KIRPAL, RUMA PAL AND BRIJESH KUMAR, JJ.]

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Excise Law:

Central Excises and Salt Act, 1944: Tariff Item Nos. 10, 11-A and 27.13.

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Exemption Notifications—Low Sulphur Heavy Stock (LSHS)—Exempted from excise duty—Assessee manufactured fertilizers by using LSHS—First two notifications exempted furnace oil and petroleum stock if used as feed stock in the manufacture of fertilizers—Third notification exempted LSHS if used as feed stock but subjected it to a lower rate of excise duty if used otherwise than as feed stock—Assessee used LSHS directly in manufacture of fertilizers and for manufacture of steam which in turn was used in manufacture of fertilizers—Entitlement of assessee to benefit of notifications in respect of that part of LSHS used in the production of steam—Held: Assessee entitled to benefit of notification Nos. 147/1974 and 75/1984 in respect of that part of LSHS used as feed stock for manufacture of fertilizers and not for generation of steam—However, assessee entitled to benefit of notification No. 127/1988 in respect of LSHS used for generation of steam w.e.f. 1-3-1988—Exemption Notifications Nos. 147/1974, 75/1984 and 127/1988.

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Words and Phrases:

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“Feed stock”—Meaning of—In the context of Exemption Notifications Nos. 147/1974, 75/1984 and 127/1988.

The appellants manufactured fertilizers for which it used Low Sulphur Heavy Stock (LSHS). There were three notifications of exemption from excise duty namely, Notifications Nos. 147/1974, 75/1984 and 127/1988. The first two notifications exempted furnace oil and petroleum stock if they were used as feed stock in the manufacture of fertilisers. The third notification exempted LSHS from excise duty if it was used as feed stock in the manufacture of fertilizers but subjected it to a lower rate of excise duty if it were not so used.

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A The appellant used LSHS directly in the manufacture of fertilizers and for manufacture of steam, which in turn was used in the manufacture of fertilizers.

B The appellant claimed exemption from excise duty in respect of the entire quantity of LSHS used for manufacture of fertilisers as well as steam. But the Central Excise, Customs and Gold (Control) Appellate Tribunal held that the appellant was not entitled to the benefit of the first two notifications inasmuch as that part of LSHS, which had been used for producing steam would not be regarded as having been used as feed stock. Hence this appeal.

C Allowing the appeal in part, the Court

HELD: 1.1. The notifications clearly show that in the manufacture of fertilizers there may be more than one way in which Low Sulphur Heavy Stock (LSHS) may be used. It is only of LSHS is used as 'feed stock' that there is a complete exemption from duty. [452-E]

D 1.2. LSHS has been used in two ways. Firstly, it had been used as feed stock in the oxidation process when along with furnace oil it came in contact with oxygen and steam which resulted in gas with soot which was ultimately subjected to further process before leading to liquid ammonia. Secondly, it was used for adding to the coal which was burnt for boiling water which
E resulted in the production of steam which was also an essential part of the process of manufacture of fertilizers but that by itself would not entitle the appellant to the benefit of complete exemption from excise duty unless it can be shown that LSHS has been used as feed stock in the manufacture. The notifications clearly indicate that it is only in respect of the limited use of
F LSHS as feed stock that complete exemption has been granted. LSHS used in the manufacture of fertilizers, but not as feed stock, was, however, subject to excise duty though at a lower rate. [453-A-C]

G 2. The very process of manufacture shows that LSHS, as a result of chemical reaction, becomes gas which is subsequently purified resulting in liquid ammonia which can be regarded as feed stock in contra-distinction to LSHS which is burnt and as a result whereof steam is generated which in turn is used in the process. In the above-mentioned second case, LSHS is used in the manufacture of ammonia but not as a feed stock. As such, benefit of notification No. 127/1988 would be available to the appellant in respect of LSHS, which has been used for generating steam, and this will be with effect
H from 1-3-1988. In respect of the earlier period it is only that part of LSHS

which will be entitled to 100 per cent exemption from excise duty by virtue of notification No. 147/1974 and notification No. 75/1984 which has been used as feed stock and not for the purpose of generating steam. [453-D-E] A

Fertilizer Corporation of India Ltd. v. CCE, [2000] 122 ELT 343, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2448 of 1992. B

From the Judgment and Order dated 6.3.92 of the Central Excise, Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/3482/87-C with E/Cross/252/88-C in F.O. No. 74 of 1992-C.

With C

C.A. No. 9122 of 1994.

And

CA No. 3119 of 2000.

With D

CA Nos. 3166 and 3167 of 2000.

Soli J. Sorabjee, Attorney General, Joseph Vellapally, R. F. Nariman, U. K. Chaudhary, Tarun Gulati, Ms. Madhu Sweta, Ms. Indu Malhotra, Sameer Parekh, Ms. Deepamala Ranganathan, P. H. Parekh, Ambhoj Kumar Sinha, Ms. Nisha Bagchi, K. Swami, Rajiv Nanda and B. K. Prasad for the appearing parties. E

The Judgment of the Court was delivered by

KIRPAL, J. F

Civil Appeal Nos. 2448/92 and 9122/1994.

Interpretation of the exemption notifications relating to heavy petroleum stock is for consideration in these appeals.

The appellants manufacture fertilizers. In the manufacture thereof apart from other items they also use Low Sulphur Heavy Stock (hereinafter referred to as "LSHS") which is regarded as heavy petroleum stock in respect of which exemption notifications have been issued. G

The Gujarat Narmada Valley Fertilizers Co. Ltd. had applied in 1983 for a licence in Form-L6 so as to obtain without payment of duty excisable goods, H

- A namely, LSHS which was to be used for the industrial process of manufacture of fertilizers. In the said application, it was stated that 30,000 metric tonnes of LSHS was to be used as feed stock per month. The application also gave the manner of manufacture and it was *inter alia* stated that Ammonia was manufactured using furnace oil and LSHS as feed stock alongwith oxygen and steam by employing partial oxidation process. Explaining the process further,
- B it was stated that as a result of employing the said partial oxidation process, gases are produced which are contaminated with soot. Thereafter, there are stages at which the gases initially produced are purified and ultimately when the impurities have been removed the gas is compressed and becomes liquid ammonia. This liquid ammonia is then used for the manufacture of urea
- C fertilizers.

According to the appellants, LSHS was used in twin fold manner - (a) directly in manufacture of fertilizers and (b) for manufacture of steam which in turn was used in manufacture of fertilizers.

- D There are three notifications of exemption with which we are concerned in the present cases. They are notification Nos. 147/1974, 75/1984 and 127/1988. It is not in dispute that the first two notifications, for the purpose of these cases, are similar and therefore we need refer to only one of them namely, notification No. 147/1974 which reads as follows:

- E “Exemption to Furnace Oil and heavy petroleum stock if used as feed stock in the manufacture of fertilizers:-

- F In exercise of the powers conferred by sub-Rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts furnace oil and heavy petroleum stock falling respectively under Item Nos. 10 and 11A of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) intended for use as feed stock in the manufacture of fertilizers, from the whole of the duty of excise leviable thereon:

Provided that—

- G (i) it is proved to the satisfaction of the Assistant Collector of Central Excise that such furnace oil or heavy petroleum stock is so used, and
- (ii) the procedure set out in chapter x of the Central Excise Rules, 1944, is followed.”

- H As far as notification No. 127/1988 is concerned the relevant part,

namely item Nos. 56 and 57 in the table of the said notification is as follows:- A

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| 56. Residues of petroleum oils or of oils obtained from bituminous minerals, including heavy petroleum stock, low sulphur heavy stock and other residual fuel oils falling under heading No. 27.13 of the said Schedule. | NIL | Intended for use as feed stock in the manufacture of fertilizers. | B |
| 57. Residues of petroleum oils or of oils obtained from bituminous minerals, including heavy petroleum stock, low sulphur heavy stock and other residual fuel oils falling under heading No. 27.13 of the said Schedule. | Rs. 70 per tonne | Intended for use otherwise than as feed stock in the manufacture of fertilizers. | C |

The case of the appellants is that LSHS has been used for the manufacture of fertilizers. It is contended that with the help of LSHS steam was produced which is an integral part in the process of manufacture of gases which ultimately result in the formation of liquid ammonia. It is from liquid ammonia that urea is ultimately being manufactured. Just as LSHS and furnace oil, when first reacted with oxygen steam results in the form of ammonia, similarly, steam also goes into the process of manufacture of liquid ammonia and in production of steam LSHS is used and therefore the entire quantity of LSHS was entitled to full exemption. D

The revenue did not accept this contention. After show cause notice had been issued and reply received, the appellants were asked to pay duty on the basis that they were not entitled to the benefit of the first two notifications inasmuch as that part of LSHS which had been used for producing steam would not be regarded as having been used as feed stock. Appeal to the CEGAT being unsuccessful, the present appeals have arisen. E

Learned counsel for the appellants in support of their submission that they were entitled to the benefit of the said notifications Nos. 147/1974 and 75/1984 have strongly relied upon the decision of the Patna High Court in the case of *Fertilizer Corporation of India, Ltd. v. Collector of Central Excise, Patna*, reported in [2000] 122 ELT 343. In that decision, the Patna High Court had come to the conclusion that even that portion of LSHS which had been F

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A used for generating steam which in turn had resulted in the manufacture of liquid ammonia would be entitled to the benefit of the exemption notification.

Reading the three notifications, it is clear that LSHS is entitled to exemption either wholly or in part if it is used in the manufacture of fertilizers. The said entries 56 and 75 are similar to entries 25 and 26 of the exemption notification No. 75/1984 which after amendment *inter alia* related to furnace oil. In item 25 of this notification there was complete exemption from duty in relation to furnace oil if it was- "intended for use as feed stock in the manufacture of fertilizers." Under Entry 26 duty of furnace oil was payable at Rs. 64.10 per Kl. in respect of that furnace oil which was -"intended for use otherwise than as feed stock in the manufacture of fertilisers". At item Nos. 56 and 57 of the notification No. 127/1988 which had been quoted herein above, the language is similar in respect of LSHS to that of furnace oil. Under Entry 56 there is a complete exemption in respect of LSHS which is intended for use as feed stock in the manufacture of fertilizers but if LSHS was intended for use otherwise than as feed stock but in the manufacture of fertilizers duty at the rate of Rs. 70 per tonne had to be paid.

The aforesaid notifications clearly show that in the manufacture of fertilizers there may be more than one way in which LSHS may be used. It is only if LSHS is used as 'feed stock' that there is a complete exemption from duty.

The question, therefore, arises as to what is 'feed stock'. Reference to the Condensed Chemical Dictionary (Tenth Edition) by Gessner G. Hawley defines feed stock as "Gaseous or liquid petroleum-derived hydro carbons or mixtures of hydro carbons from which gasoline, oil fuel, petro-chemicals are produced by thermal or catalytic cracking....." In McGraw Hill's Dictionary on Scientific and Technical Terms, feed stock has been defined as raw material furnished to a machine for process. According to the Glossary of Petroleum term as per the Indian Standards Institute feed stock means "primary material introduced into a plant for processing".

The aforesaid application for licence of M/s. Gujarat Narmada Valley Fertilizers Co. Ltd. clearly indicated that LSHS was to be used as feed stock and that was to be used alongwith oxygen and steam for employing partial oxidation process. In the said application, it was not indicated that LSHS was to be used in the production of steam which in turn was to be employed in the manufacture of liquid ammonia. LSHS, according to the said application, was to be used as feed stock in the manufacture of fertilizers.

As is evident from hereinabove, LSHS has been used in two ways. A
 Firstly, it had been used as feed stock in the oxidation process when alongwith
 furnace oil it came in contact with oxygen and steam which resulted in gas
 with soot which was ultimately subjected to further process before leading
 to liquid ammonia. Secondly, it was used for adding to the coal which was
 burnt for boiling water which resulted in the production of steam which was
 also an essential part of the process of manufacture of fertilizers but that by B
 itself would not entitle them to the benefit of complete exemption from excise
 duty unless it can be shown that LSHS has been used as feed stock in the
 manufacture. The notifications clearly indicate that it is only in respect of the
 limited use of LSHS as feed stock that complete exemption has been granted.
 LSHS used in the manufacture of fertilizers, but not as feed stock, was C
 however subject to excise duty though at a lower rate.

The very process of manufacture indicated hereinabove shows that
 LSHS, as a result of chemical reaction, becomes gas which is subsequently
 purified resulting in liquid ammonia which can be regarded as feed stock in
 contra-distinction to LSHS which is burnt and as a result whereof steam is D
 generated which in turn is used in the process. In the above-mentioned
 second case, LSHS is used in the manufacture of ammonia but not as a feed
 stock. As such, benefit of notification No. 127/1988 would be available to the
 appellants in respect of LSHS which has been used for generating steam and
 this will be with effect from 1st March, 1988. In respect of the earlier period, E
 it is only that part of LSHS which will be entitled to 100 per cent exemption
 from excise duty by virtue of notification No. 147/1974 and notification No.
 75/1984 which has been used as feed stock and not for the purpose of
 generating steam.

For the aforesaid reasons, while I.A. No. 3/1995 in C. A. No. 9122/1994 F
 is allowed and it is held that the appellants therein are entitled to the benefit
 of notification No. 127/1988 with effect from 1st March, 1988, the appeals are
 dismissed with no order as to costs.

C. A. Nos. 3119, 3166 and 3167/2000.

In these appeals, the facts are similar to M/s. Gujarat Narmada Valley G
 Fertilizers Corporation Ltd. The only difference is in the manufacture of
 fertilizers in respect of liquid ammonia it is Methanol which is produced. For
 the reasons stated in our decision in C. A. No. 2448/1992 these appeals are
 also dismissed in so far as LSHS is used for the production of steam.

V.S.S.

Appeals partly allowed. H