

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 2588/2006

C.C.E., BELAPUR

Appellant(s)

VERSUS

M/S. I.G. PETROCHEMICAL LTD. & ANR.

Respondent(s)

WITH
C.A. No. 9679-9681/2010

O R D E R

The respondent no. 1 (hereinafter referred to as 'the assessee') is a 100% Export Oriented Unit (EOU) which is engaged in the manufacture of excisable goods viz., Phthalic Anhydride, Waste Water, Waste Steam and Low Boiling Component.

The unit has

been set up in terms of Letter of Permission dated 05.12.1991 for manufacture and export of Phthalic Anhydride falling under Chapter sub-heading 2917.90 of the Schedule to the Central Excise Tariff Act, 1985. The assessee was permitted to sell certain quantities of the aforesaid product in Domestic Tariff Area (DTA) by the

Development Commissioner, SEEPZ, Mumbai in terms of the provisions of prevalent Export Import Policy (for short 'EXIM Policy') and Digitally signed by

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subject to various terms and conditions as stipulated from time to time. Reason:

The assessee wanted to take benefit of Notification No.

8/97-CE dated 01.03.1997 which provided payment of duty on

concessional rate. To the similar effect another Notification No. 23/03-CE dated 31.03.2003 was also issued. As per the se

Notifications, which are identical, if the goods are produced or manufactured only from the raw material produced or manufactured in India, the assessee would be entitled to the concessional rate of duty as prescribed in these Notifications. Thus, in order to

avail the benefit of these Notifications it was required to

establish by the assessee that it was producing the aforesaid goods viz. Phthalic Anhydride, Waste Water, Waste Steam and Low Boiling Components from the raw material produced or manufactured in India. On this aspect dispute has arisen inasmuch as while

producing the aforesaid products the assessee was also using

Vanadium Pentoxide which was imported by the assessee. As per the

Revenue, Vanadium Pentoxide which is the material used for the manufacture of the products in question is the raw material and since the aforesaid components of raw material are imported, the assessee would not be entitled to the benefit of the aforesaid

notifications. The assessee on the other hand submitted that

Vanadium Pentoxide was only a catalyst and denied the benefit of the Notifications. It is not in dispute that apart from Vanadium

Pentoxide all other raw materials are used. We may also mention that the period involved in these appeals is May, 2000 to June, 2003 and July, 2003 to May, 2004. The outcome of the appeals would

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depend upon the determination of the issue as to whether Vanadium Pentoxide is the raw material or not.

The Order-in-Original was passed holding that the respondents were not eligible to avail the benefit of the said Notifications.

However, the Tribunal, in appeal, reversed the order with its finding that it is not the raw material. Since the term 'raw

material has not been defined anywhere except in the EXIM Policy,

as far as the Commissioner is concerned, he had adopted the

definition therefrom. However, as per the Tribunal, the said definition contained in the EXIM Policy would be of no relevance. To this extent the Tribunal is right in its approach because under EXIM Policy catalyst is covered as capital goods inasmuch as this Court in various judgments on the subject has taken the view that the raw material is not a defined term. On that basis, it is held that the meaning to the expression 'raw material' has to be given in the ordinary well accepted connotation in common parlance of those who deal with the matter.

We may mention that this Court in CCE VS. Ballarpur Industries Ltd.[1989(43) ELT 804 (SC)=1989(4) SCC 566] clarified that there may be various ingredients used in Chemical Technology of manufacture of any end product. Such kinds of ingredients stipulated therein read as under:

"(i) those which may retain their dominant individual identity and character through out the process and also in the end product;

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(ii) 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;

(iii) those which, like catalyst agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end product; and

(iv) those which might be burnt up or consumed in the chemical reactions."

In the present case, as is clear from the facts narrated above, we are concerned with the ingredients used in the manufacture of the final products, including catalyst. It is not in dispute that Vanadium Pentoxide, while influencing and accelerating the chemical reactions, itself remains uninfluenced and unaltered and retains its independent character. It is also not in dispute that it remains outside the product and does not form part of the product. This has been accepted even by the

Commissioner and finding to this effect is given by stating that it is not directly consumed in the process of manufacturing and normal life of the catalyst is 36 months, after which this catalyst has to be replaced by a new one.

On the basis of the aforesaid it becomes crystal clear that the catalyst which retains its character, remains outside the end product, remains uninfluenced and unaltered cannot be treated as raw material.

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Mr.A.K. Panda, learned senior counsel appearing for the Department, heavily relied upon the judgment in Ballarpur Industries Ltd.(supra) and submitted that this Court had stated four ingredients which can be used in the manufacture of the product and catalyst is mentioned as third ingredient and, therefore, qualifies to be a raw material. We are unable to agree with the aforesaid submission of Mr. Panda. No doubt, four ingredients are mentioned which are used in the chemical technology of manufacturer of any end product. However, the said judgment nowhere decides that all four ingredients are to be treated as raw material. In para 14 of the said judgment, while listing these four ingredients, this Court immediately thereafter clarified that in that case the Court was concerned only with the last ingredient mentioned therein viz. that those which might be burnt up or consumed in the chemical reactions. Otherwise, in para 19 the Court clarified that each case has to rest upon its own facts and in many cases it might be difficult to draw a line of demarcation.

Date : 01/09/2015 These appeal were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. A.K. Panda, Sr. Ad.
Mr. Arijit Parshad, Adv.
Ms. Sunita Rani Singh, Adv.
Mr. B. Krishna Prasad, Adv.

For Respondent(s) Mr. S. Ganesh, Sr. Adv.
Mr. Sourav Agarwal, Adv.
Mr. Mohan J., Adv.
Mr. Karan Adik, Adv.
Mr. Satyajit A. Desai, Adv.
Ms. Anagha S. Desai, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeals are dismissed in terms of the signed order.

(Ashwani Thakur) (Renu Diwan)
COURT MASTER COURT MASTER
(Signed order is placed on the file)