REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7627 OF 2005

COMMISSIONER OF CENTRAL EXCISE, NAGPUR — APPELLANT

VERSUS

M/S GURUKRIPA RESINS PVT. LTD. — RESPONDENT

WITH

CIVIL APPEAL NO. 5809 OF 2007

AND

CIVIL APPEAL NOS. 4663-4665 OF 2008

J U D G M E N T

SUPREME COURT OF INDIA
॥ यतो धर्मस्ततो जयः ॥
JUDGMENT

D.K. JAIN, J.:

1. The Commissioner of Central Excise has preferred this batch of Civil Appeals under Section 35-L(b) of the Central Excise Act, 1944 (for short "the Act"), questioning the correctness of the orders passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai (for short "the Tribunal") whereby the appeals filed by the respondent-assessee (for short "the assessee") have been allowed and the applications filed by the Commissioner for rectification of mistakes in the main orders have been dismissed.

2. As all the appeals involved a common question of law, pertaining to the same assessee, these were heard together and are being disposed of by this common judgment. However, in order to appreciate the issue involved and the rival stands thereon, for the sake of convenience, we shall advert to the facts emerging from C.A. No. 7627 of 2005 arising out of Tribunal's order in appeal No. E/1050/03-Mum and E/Rom-691/04-Mum.

3. The assessee, a body Corporate, is engaged in the manufacture and clearance of "Rosin" and "Turpentine Oil". As per some literature placed on record, "Rosin" is the resinous constituent of the Oleo-resin exuded by various species of pine, known in commerce as crude turpentine. The separation of the Oleo-resin into the essential oil-spirit of turpentine and common Rosin is effected by distillation in large copper stills. "Rosin" and "Turpentine Oil" are classifiable under Chapter Heading Nos. 38.06 and 38.05 respectively of the First Schedule to the Central Excise Tariff Act, 1985 (for short "the Tariff Act"). The assessee filed the requisite classification declarations with the Deputy Commissioner, Central Excise, classifying their finished goods i.e. "Rosin" under the Sub-heading 3806.19 and "Turpentine Oil" under Sub-heading 3805.19, both bearing 'nil' rate of duty, on the ground that the said goods were being manufactured by them without the aid of power. The Deputy Commissioner accepted the classifications under the said Sub-headings

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but treated the said goods as "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power", attracting rate of duty @ 16%. According to the Deputy Commissioner the assessee is using 5 Hp electric motor for lifting water from the well for storage tank at the ground level; the main raw material namely, Oleo-pine Rosin is lifted to the manufacturing platform by manually operated chain pulley block; the raw material is heated in a melting tank - a "Bhatti" fired with coal; the molten raw material is then transferred to settling tanks where it is kept in the liquid form and stirred by manually operated agitators so that the impurities may settle down; the impurities are separated and purified raw material is transferred in the main tank (Distillery) where it is again heated upto 180^0C; at this temperature, the vapours of turpentine oil are formed and finally the "Turpentine Oil" is collected by the process of distillation through the condensers by sprinkling water on the condensers from the water storage tanks installed at a height of 30 ft.; water for the tanks is lifted from the storage tanks at the ground level by using 2 Hp electric motor. "Rosin" which settles down in the Distillery, is collected separately. The Deputy Commissioner was of the view that the water being an important input for the manufacturing process of "Rosin" and "Turpentine Oil", its further lifting upto the height of 30 ft. with the aid of an electric motor for the purpose of condensing the vapours of Turpentine Oil, it cannot be said that the said goods were being manufactured without the aid of power. He

accordingly held that the assessee was liable to pay Central Excise duty at the aforesaid rate.

4. Being aggrieved, the assessee preferred appeal to the Commissioner of Customs and Central Excise (Appeals). The Commissioner (Appeals), affirmed the view taken by the Deputy Commissioner, observing that the water stored in the overhead tank being pumped in the first instance by using electricity to operate pump before it falls on the condensers by gravity, it was clear that certain processes are undertaken in or in relation to the manufacture of the said products with the aid of power.

5. Being dissatisfied with the order passed by the Commissioner (Appeals), the assessee carried the matter in further appeal to the Tribunal. The Tribunal, placing reliance on the clarification issued by the Ministry of Finance vide letter No. B-36/11/77-TRU dated 10th/16th January, 1978, wherein it was clarified that so long as the use of power is limited to drawing water into a cooling tank through which condensation coils pass, manufacture of Rosin cannot be said to be with the aid of power, for the purpose of Notification No. 179/77-CE dated 18th June, 1977, came to the conclusion that the said clarification was binding on the revenue, including the Commissioner (Appeals), the same being a Circular beneficial to the assessee. Drawing support from the decision of this Court in ***Collector of Central Excise, Vadodara*** *Vs.* ***Dhiren Chemical***

Industries[1], the Tribunal came to the conclusion that in light of the said clarification the decision of this Court in ***Collector of Central Excise, Jaipur*** *Vs.* ***Rajasthan State Chemical Works, Deedwana, Rajasthan***[2] cannot be relied upon by the revenue. Accordingly, the appeal preferred by the assessee was allowed by the Tribunal.

6. Thereafter, the revenue filed an application before the Tribunal for rectification of the said order. In the said application it was pointed out that apart from the fact that the decision of this Court in ***Rajasthan State Chemical Works*** (supra) was applicable on the facts of this case, the aforenoted Circular relied upon by it had already been rescinded vide Circular No. 38/38/94-CX dated 27th May, 1994. However, distinguishing the decision in ***Rajasthan State Chemical Works*** (supra), and affirming its earlier view that the 1978 Circular still held the field, the Tribunal dismissed the application. Hence the present appeals by the Commissioner.

7. We have heard learned counsel for the parties.

8. Mr. Devadatt Kamat, learned counsel appearing on behalf of the revenue, strenuously urged that the decisions of the Tribunal are clearly erroneous in as much as it failed to appreciate that: (i) without the process of condensation of vapours, the final products i.e. "Turpentine Oil" &

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1 (2002) 10 SCC 64

2 (1991) 4 SCC 473

"Rosin" cannot be manufactured; (ii) condensation is not possible without sprinkling of water on the copper stills/coils containing vapours of Turpentine and (iii) for sprinkling of water lifting of water to a particular height with the aid of an electric motor is essential, otherwise water would not fall on the coils by the force of gravity. It was thus, argued that water being an integral part of the manufacturing process, which would include all stages and all processes which are necessary for the final product, its lifting to the overhead tank is a process in relation to the manufacture of the final product and since that process requiring the aid of power is integrally connected with the manufacture, the assessee is not entitled to exemption from duty. It was asserted that the clarification issued in the year 1978, having been rescinded vide Circular dated 27th May, 1994, the Tribunal was not justified in relying on the same, more so, when the issue before the Tribunal stood concluded by the decisions of this Court in ***Rajasthan State Chemical Works*** (supra) as also ***Impression Prints*** *Vs.* ***Commissioner of Central Excise, Delhi-1***[3]. Placing reliance on the decision of the Constitution Bench of this Court in ***Commissioner of Central Excise, Bolpur*** *Vs.* ***Ratan Melting & Wire Industries***[4]**,** learned counsel contended that the Circulars issued by the revenue department cannot be given primacy over the decisions of the Courts. In order to substantiate his point that it is not necessary that power should be used in all the processes involved in the manufacture of

[3] (2005) 7 SCC 497
[4] (2008) 13 SCC 1

finished goods, learned counsel placed reliance on the decision rendered by the Constitution Bench of this Court in ***Union of India & Anr.*** *Vs.* ***Delhi Cloth & General Mills Co. Ltd.***[5]. It was thus, stressed that in light of the settled legal position on the issue by this Court, the impugned decisions deserve to be set aside.

9. *Per contra*, Mr. Ajay Majithia, learned counsel appearing for the assessee, supporting the decisions of the Tribunal, argued that the water lifted with the aid of power and used for cooling the coils containing Turpentine vapours cannot be said to be an integral part of the manufacture of the final product because it does not bring about any change in the raw material i.e. Olio-pine-Rosin. According to the learned counsel what is relevant for deciding the issue is the stage at which the aid of power is required and therefore, in the present case once the water is lifted and stored in the storage tanks, no further use of power is required as the water falls on the coils by the force of gravity.

10. The short question in issue is whether or not the process of lifting of water with the use of power, to the extent and for the purpose mentioned above, constitutes a process in or in relation to manufacture of goods, viz. "Rosin" and "Turpentine Oil", with the aid of power?

11. In order to answer the question, it would be necessary to determine as to what activity amounts to a process in or in relation to manufacture of

[5] 1963 Supp (1) S.C.R. 586 : AIR 1963 SC 791

goods? Clause (f) of Section 2 of the Act, as it existed at the relevant time, defines the word "manufacture" as follows:-

> "2(f) "manufacture" includes any process--
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> (i) incidental or ancillary to the completion of a manufactured product;
>
> (ii) which is specified in relation to any goods in the section or Chapter notes of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as amounting to manufacture;"

12. It is manifest that clause (f) gives an inclusive definition of the term "manufacture". According to the Dictionary meaning the term "manufacture" means a process which results in an alteration or change in the goods which are subjected to the process of manufacturing leading to the production of a commercially new article. Therefore, manufacture is an end result of one or more processes through which the original commodities are made to pass. The nature and extent of processing may vary from one case to another. There may be several stages of processing, different kinds of processing at each stage and with each process suffered, original commodity experiences a change but it is only when a change or series of changes that takes the commodity to the point where commercially it can no longer be regarded as an original commodity but instead is recognized as a new and distinct article that "manufacture" can be said to have taken place. It is trite that in determining what constitutes manufacture no hard and fast rules of

universal application can be devised and each case has to be decided on its own facts having regard to the context in which the term is used in the provision under consideration, but some broad parameters laid down in the earlier decisions dealing with the question could be applied to determine the question whether a particular process carried on in relation to the final product amounts to manufacture of that product.

13. In ***Delhi Cloth & General Mills Co. Ltd.*** (supra), a question arose whether the assessee was liable to pay Excise duty on the manufacture of refined oil which fell within item 23 of the First Schedule to the Central Excises and Salt Act, 1944, bearing the description of "vegetable non-essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power"? Negativing the contention that the definition of the term "manufacture" in Section 2(f) of the Act included mere processing, a Constitution Bench of this Court held that processing was distinct from manufacture and that for a commodity to be excisable it must be new product known to the market as such. It was held that the definition of "manufacture" as in Section 2(f) puts it beyond any possibility of controversy that if power is used for any of the numerous processes that are required to turn the raw material in a finished article known to the market, the clause will be applicable; and an argument that power is not used in the whole process of manufacture using the word in its ordinary sense, will not be available.

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14. In ***M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd.*** *Vs.* ***Sales Tax Officer, Kanpur & Anr.***[6], it was held that 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, the goods required in that process would fall within the expression "in the manufacture of".

15. In ***Rajasthan State Chemical Works*** (supra), on which heavy reliance was placed on behalf of the revenue, a bench of three learned Judges of this Court was considering the question whether the two assessees therein were entitled to the benefit of an exemption notification, which was available only to the goods "in or in relation to the manufacture of which no process is ordinarily carried on with the aid of power". In that case one of the assessees was manufacturing common salt and for its manufacture, brine was pumped into salt pans by using a diesel pump and then lifted to a platform by the aid of power. In the second case for manufacturing lime from coke and limestone, the raw materials were lifted to a platform at the head of the kiln with the aid of power. The question was as to whether lifting of salt pans to a platform by the aid of power and the lifting of raw material to a platform at the head of the kiln with the aid of power constituted process in or in relation to manufacture? Referring to earlier decisions of this Court, including ***Delhi Cloth &***

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[6] (1965) 1 S.C.R. 900 : AIR 1965 SC 1310

General Mills Co. Ltd (supra) and ***M/s J.K. Cotton Spinning & Weaving Mills Co. Ltd.*** (supra) the Court observed thus:

> "20. A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption notification. In our view, the word 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture".
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> 26. We are, therefore, of the view that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the aid of power. In this view of the matter, we are unable to accept the contention that since the pumping of the brine into the salt pans or the lifting of coke and limestone with the aid of power does not bring about any change in the raw material, the case is not taken out of the notification. The exemption under the notification is not available in these cases. Accordingly, we allow these appeals."

16. A similar question came up for consideration of this Court in ***Impression Prints*** (supra), again strongly relied upon by learned counsel for the revenue. In that case the assessee was manufacturing printed bed sheets, bed covers and pillow covers, and for that purpose the colour was mixed with the help of colour mixing machine, which was operated with the aid

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of power. The question arose whether the said goods were manufactured with the aid of power. While holding that the activity of printing and colouring being integrally connected to the manufacture of printed bed sheets, bed covers etc., the manufacture of these goods was with the aid of power, the Court culled out the following parameters from the earlier pronouncements, which could be applied for determining the question whether a particular process carried on in respect of the final product amounts to manufacture of that product: (i) the term "manufacture" in Section 2(f) of the Act includes any process incidental or ancillary to the completion of a manufactured product; (ii) if power is used for any of the numerous processes that are required to turn the raw material into the finished articles then the "manufacture" will be with the use of power; (iii) if power is used at any stage then the argument that power is not used in the whole process of manufacture, using the word in its ordinary sense, will not be available; (iv) the expression "in the manufacture" would normally encompass the entire process carried on for converting raw material into goods; (v) if a process or activity is so integrally connected to the ultimate production of goods that but for that process, manufacture or processing of goods is impossible or commercially inexpedient then the goods required in that process would be covered by the expression "in the manufacture of"; (vi) it was not necessary that the word "manufacture" would only refer to the stage at which ingredients or commodities are used in the actual manufacture of the final product and

(vii) the word “manufacture” does not refer only to the using of ingredients which are directly and actually needed for making the goods.

17. Having considered the present case on the touchstone of the aforenoted parameters, we are of the opinion that the activity of the assessee in first lifting the water for filling up of the storage tank at the ground level and then lifting it further to the overhead water storage tanks with the aid of electric motors are so integrally connected to the ultimate manufacture of “Turpentine Oil” and “Rosin” that but for the said activity the processing of Oleo-pine Rosin for manufacture of Turpentine Oil and Rosin would not be possible. It is common ground that without sprinkling of water on the coils carrying the vapours of Turpentine Oil, condensation - a crucial component of distillation which brings about the change of the physical state of matter from gaseous phase into liquid phase, is not possible. In other words without the process of condensation, Turpentine Oil, the final product, cannot be obtained. Similarly, without lifting water from the storage tanks at the ground level with the aid of electric motor to a higher level, the water cannot fall on the cooling coils with its gravitational force. In this fact situation, we hold that the operation of lifting of the water from the well to the higher levels, is so integrally connected with the manufacture of “Turpentine Oil” and “Rosin”, that without this activity it is impossible to manufacture the said goods and therefore, the

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processing of the said raw material in or in relation to manufacture of the said final goods is carried on with the aid of power.

18. We may now examine the ancillary question as to whether the Tribunal was correct in law in accepting the plea of the assessee that they could not be denied the benefit of the clarification issued by the Board vide their letter dated 10th/16th January, 1978, despite the decision of this Court in ***Rajasthan State Chemical Works*** (supra). We are of the view that the decisions of the Tribunal on this aspect are clearly fallacious for more than one reason. Firstly, the Tribunal has failed to notice and consider the effect and implication of Circular No. 38/38/94-CX dated 27th May, 1994, issued by the Central Board of Excise and Customs, withdrawing all instructions/guidelines/tariff advices issued in respect of the erstwhile First Schedule to the Central Excises and Salt Act, 1944, which, obviously included the 1978 clarification. Secondly, and more importantly, it has also erred in not appreciating the *ratio decidendi* of the decision in ***Rajasthan State Chemical Works*** (supra). It is well settled proposition of law that a decision is an authority for what it actually and explicitly decides and not for what logically flows from it, the precise exercise the Tribunal undertook in the instant case for distinguishing the said decision, by observing thus :

> "We observe that the Supreme Court in that case deals with the use of power while handling the raw material prior to the commencement of process of production. It is nobody's case in

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> the present application that the water that is pumped to the overhead tank is a raw material used in the manufacture of "Rosin"."

In ***Rajasthan State Chemical Works*** (supra), the question of law for determination was as to what kind of "process" carried on in respect of particular goods constituted "process" in or in relation to "manufacture" for the purposes of and within the meaning of Section 2(f) of the Act. It was held that any activity or operation, which is an essential requirement and is so integrally connected with further operations for production of ultimate goods that but for that process the manufacture of the final product is impossible, would be a process in or in relation to manufacture. In fact, it is manifest from the afore-extracted paragraph of the judgment that the contention of the assessee that since the stage at which the power is used does not bring about any change in the raw material, it cannot be said that such process is carried on with the aid of power, was specifically rejected. Therefore, the observations of the Tribunal, extracted above, to the effect that since it is nobody's case that water that is pumped upto the overhead tank is a raw material used in the manufacture of "Rosin", are not only misplaced, in our opinion, these are irrelevant for deciding the issue at hand.

19. In that view of the matter, when the law on the question at issue before the Tribunal had already been declared by this Court, the Tribunal should not have based its decisions on the clarification issued by the Board,

which otherwise stood rescinded, on the specious ground that the said clarification issued by the Board was binding on the Deputy Commissioner as also on the Commissioner (Appeals). It is well settled proposition of law that Circulars and instructions issued by the Central Board of Excise and Customs are no doubt binding in law on the authorities under the respective Statutes but when this Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Courts or the Tribunal, as the case may be, to direct that the Board's Circular should be given effect to and not the view expressed in a decision of this Court or a High Court. [(**See:** ***Ratan Melting & Wire Industries*** (supra)].

20. In the final analysis, in light of the foregoing discussion, the decisions of the Tribunal, impugned in these appeals, cannot be sustained. Resultantly, all the appeals are allowed and the orders passed by the Tribunal are set aside, leaving the parties to bear their own costs.

JUDGMENT

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(D.K. JAIN, J.)

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(H.L. DATTU, J.)

NEW DELHI;
JULY 11, 2011.

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