Collector of Central Excise Vs. Pyrites, Phosphates and

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-11-1983

Reported in : (1983)LC391DTri(Delhi)

Appellant : Collector of Central Excise

Respondent : Pyrites, Phosphates and

Judgement :

1. This has been a proceeding pending before the Central Government which is now transferred to the Appellate Tribunal under Sub-section 2 of Section 35P of the Central Excises and Salt Act, 1944 (hereinafter in this order referred to as the 'Act').

2. The respondents namely M/s. Pyrites, Phosphates and Chemicals Ltd,, are a Government of India concern and are engaged in the mining of pyrites at Amjhore in the State of Bihar. The pyrites come out in the form of lumps and the bigger lumps are used in the manufacture of sulphuric acid while the smaller lumps (after crushing) are used for agricultural purposes in Uttar Pradesh and Bihar. The mining of pyrites by the respondents was commenced during the years 1967-68 and initially the low grade pyrites or smaller lumps were being dumped in and around the mine as refuse. After doing some research work in the matter, the respondents found that by manually screening such refuse, the same could be put to use for agricultural purposes and since then they started supplying the same as A.G. pyrites, i.e. Agricultural Grade pyrites for agricultural purposes by crushing these smaller lumps. In June, 1980 they received a letter from the Superintendent

of Central Excise, Dalmia Nagar directing them to apply for a L-4 licence for the manufacture of A.G. Pyrites and also to pay duty under the Central Excise Tariff Item No. 68 of the First Schedule to the Act. Thereafter on 29-8-1981 a show cause notice was also issued to the respondents alleging the contravention of Rules 174, 173E, 173F, L73G as well as Rules 9, 52A and 226 of the Central Excise Rules, 1944 (hereinafter in this order referred to as the 'Rules')- They were also to show cause to the Collector as to why penalties should not be imposed upon them under Rule 173Q of the Rules. Another show cause notice dated 28-10-1981 was also issued by the Assistant Collector alleging contravention of Rules 173B, 173E and 173G alongwith the other rules referred to in the first show cause notice. The respondents obtained L-4 licence under protest.

The Collector of Central Excise, Patna in his order dated 29-1-1982 held that the A.G. pyrites manufactured by the respondent were excisable goods falling under Central Excise Tariff Item No. 68 of the First Schedule to the Act and also held that they have violated the provisions of Rules 9, 52A, 226, 173B, 173C, 173F and 173G of the Rules. The respondents went in appeal before the Central Board of Excise and Customs. The learned Board set aside the order of the Collector of Central Excise, Patna and allowed the appeal on the ground that the levy of duty under Central Excise Tariff Item No. 68 could not be made applicable as the pyrites lumps were being crushed within the mine premises and also the crushing would not result in the manufacture of a new commodity. The Government of India decided to review the order passed by the Central Board of Excise and Customs and issued a Notice to the appellants calling upon them to show cause to the Government as to why the order of the Board be not set aside and why the Collector's order be not restored. Further, pending decision by the Government in the proceedings, the operation of the order of the Board had been stayed.

3. At the outset the prayer of the respondents has been for vacation of the stay of the operation of the order of the Board pending the disposal of the proceedings so as to avoid holding up of stocks of lower grade pyrites lumps for which there is not sufficient storage space; supply the same to the farmers during the short season from November to May and avoid labour unrest, lay-off of staff and other complications which may result in by such holding up of such material.

It has been felt that in view of the reasons put forward by the respondents the case may be straightaway heard and disposed of without any delay.

4. Shri Kampani on behalf of the respondents urged that the legislative background of Tariff Item No. 68 of the Central Excise would clearly show that the important criterion for the levy of duty of excise on the goods falling under Tariff Item No. 68 was that those goods should be manufactured in a factory as defined under Section 2(m) of the Factories Act, 1948 and there has been no change in that criterion till date. He contended that the Department had not produced any evidence to show that the pyrites were being crushed in a factory licensed or working under the Factories Act, 1948. He has drawn our notice to the reference made by the Collector of Central Excise, Patna to the Chief Inspector of Factories, Bihar who in turn referred the same to the Director-General, Mines Safety, Dhanbad to check up if the premises where crushing was being carried by the respondents should be considered as a factory or not. He has also drawn our notice to the clarification given by the Director-Genaral, Mines Safety vide his letter No. 5(1) 81-Genl/1338 dated 6-2-1982 stating that the crushing plants, automobile workshop and three power houses were adjacent to the mining lease area and the working in those is being done exclusively for the mines and hence they come within the definition of the mine as per Section 2(1)(j) of the Mines Act, 1952. Shri Kampani claimed that the crushers are exclusively used for crushing the refuse of the pyrites and that they are located within the precincts of the mine and they are under the same management and as such, in the absence of any exemption notification by the Central Government, the premises would clearly be covered by Section 2(1)(j) of the Mines Act, 1952. In support of his claim he had referred to the affidavit of the General Manager of the Mines at Amjhore and certificates given by the Director, Mines Safety and the Director-General, Mines Safety stating that the crushers and the seiving plants are located within the precincts of the mine as defined in the Mines Act, 1952. As such, according to him, the distance between the crushers and the mine being hardly 560 metres and not 3 kilometers as mentioned by the Collector, would fall within the description of the word 'adjacent' which has a dictionary meaning 'nearby'. He concluded his first point stating that though the Central Government observed while issuing the show cause notice as to whether the particular premises fall within the purview of the expression 'mine'

as defined in Section 2(1)(j) of the Mines Act which is essentially a question of fact yet no effort had been made by the department to study the facts or to file an affidavit or other evidence to rebut the contention of the respondents.

5. Secondly, he argued that the crushing of the pyrites is not a process of manufacture as no change is taking place in the chemical composition of the pyrites. For this he relied on the decision of the Hon'ble Supreme Court in the case of Minerals and Metals Trading Corporation of India Ltd. v. Union of India and Ors.-1973-I-SCR-1997 wherein it had been held that wolfram ore when crushed still remains wolfram as the chemical structure remains the same. He also referred to certain other decisions of various High Courts in support of his argument to establish that crushing or powdering is not manufacture.

Thirdly, he argued that no evidence had been produced by the department to show that the product is marketed as 'kala-khad', and as against that the respondents could show their bills, invoices and other documents indicating the same as A.G. Pyrites. He went on to argue that even if it is conceded that it is 'kala-khad', which means Black Fertiliser it gets the benefit of exemption from the duty of excise available to fertilisers.

6. Smt. Vijaya.Zutshi on behalf of the Department argued that the low grade pyrites were being supplied to crushing plant for being crushed and screened by means of rollers and sieves which were operated mechanically and as such the whole process falls within the meaning of the word "manufacture". She further contended that the crushing plant is not really adjacent to the mine but is located at a distance of 3 kilometers separated by a P.W.D. road meant for public traffic. She also contended that more important than the adjacence of an area is the fact that Section 2(1) (j)(x) of the Mines Act, 1952 visualises any adjacent area as a mine only if the premises in such adjacent area are used for any process, ancillary to the getting, dressing or preparation for sale of minerals. According to her, the process carried out is not dressing or preparation of pyrites for sale as mineral but sold as 'kala-khad' which is being sold in the market as soil stabilizer and not as mineral. She contended that, by specific manufacturing process with the aid of power, the ore is being made marketable as a soil stabiliser and it is known as

'kala-khad' in the market. She continued her argument stating that the word "manufacture" always implies a change as laid down by the Supreme Court and various High Courts (Relied on Union of India and Ors. v. Delhi Cloth and General Mills Co.

Ltd. and Ors., 1977 ELT (SC) (J 199), South Bihar Sugar Mills Ltd. and Anr. etc. v. Union of India and Anr. etc. & Tata Chemicals Ltd. Bombay v. R.M. Desai, Inspector, Central Excise, Mithapur and Ors., 1978 ELT (SC) (J 336), Hyderabad Asbestos/Cement Product Ltd. v. Union of India 1980 ELT (Del.) 735, P.C. Cherian v. Mrs. Barfidevi ELT 1979 (SC) 593, Kores {India), Ltd. v. Union of India 1982 ELT (Bom.) 253 and Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, 1980 ELT (SC) 383 and since in this case a new and different article with a different name, character and use has come out of the manufacturing process, it normally falls within the definition of "manufacture" and the premises on which the whole manufacture is being carried on, not being adjacent to the mine, should be categorised as factory. She concluded by stating that this new product will definitely fall under Tariff Item No. 68 and as such it attracts the duty of excise.

7. Shri Raghavan Iyer reiterated the points raised by Mrs Vijaya Zutshi and added that the definition of the 'mine'contained in the Mines Act, 1952 should not ba taken into for the purpose of the levy of excise duty since the Mines Act being basically a labour welfare legislature the word 'mine' is given an extensive meaning.

8. We have carefully gone through the records and considered the various points raised by both the parties. The case involves two issues. The first one is whether the pyrites of low grade would cease to be a mineral after crushing. It is evident from the records that it does not and it is also clear that no chemical change occurs after crushing. Thus the important test laid down by the Hon'ble Supreme Court in the M.M.T.C. v. Union of India referred to above has been met with viz that the chemical structure of the pyrites remains the same even after crushing. As the Hon'ble Supreme Court observed in the said case, "it is not important whether it is in granule form or in powder or otherwise". The second one is wh.2th.er the process of crushing and sieving amounts to 'manufacture'. As no new product has

come into existence, the crushing and sieving process cannot be treated as manufacture. As regards the point raised by the Appellants that the crushing process was being carried on in a factory, it is clear from the definition of factory vide Section 2(m) of the Factories Act, 1948 that it does not fall within the description of factory given therein since the crushing process in the instant case cannot be treated as manufacturing process. Further we agree with the contention of the respondents to the effect that the premises where the crushing of pyrites is being carried on will fall within the definition of Section 2(1)(j) of the Mines Act, 1952 si ace the premises are adjacent to the mine and on these premises crushing is carried on for getting low grade pyrites prepared for sale. Thus, this would squarely fall within the ambit of Item (X) of Section 2(1)(j) of the Mines Act, 1952. As regards Shri Raghavan. Iyer's contention of the definition of mine, it can only be stated that it is for the legislature to assign the necessary meaning, either restricted or extensive, to a particular term and it is not for us to go beyond the Act and assign a restricted meaning.

9. We hold that the low grade pyrites mined at Amjhore near Dehri-on-Sone in the State of Bihar remained pyrites even after undergoing the process of crushing and seiving and such process did not fall within the meaning of the expression "manufacture". We also hold that the premises on which the whole process was being carried on was not a factory within the meaning of the Factories Act, 1948 but a part of mine within the meaning of Section 2(1)(j) of the Mines Act, 1952.

Hence, we uphold the order of the Central Board of Excise and Customs and drop the proceedings initiated by the Central Government with the issue of their show cause notice and as a result the stay issued by the Central Government gets vacated automatically.