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**Gujarat Narmada Valley Vs. C.C.E.**

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**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-30-1994

**Reported in** : (1995)LC553Tri(Delhi)

**Appellant** : Gujarat Narmada Valley

**Respondent** : C.C.E.

**Judgement** :

1. This is an appeal against the order dated 18-3-1992 passed by the Collector of Central Excise (Appeals), Bombay. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Urea, Ammonia, Methanol and various other chemicals. They also hold an L-6 licence for the production of "Low Sulphur Heavy Stock (LSHS)" falling under Heading 27 of the Schedule to the Central Excise Tariff Act, 1987. The LSHS produced by the appellants was used without payment of duty as "Feed Stock" in the manufacture of fertilizers in terms of Notification No. 75/84-CE., dated 1-3-1984 (as amended) and a part of such LSHS was also used by the appellants for the generation of steam which was further used captively for the manufacture of fertilisers.

The Assistant Collector by his order dated 16-12-1989 confirmed 14 demands for the recovery of duty amounting to Rs. 2,55,27,664.51 on the grounds that "LSHS" used for the purpose of generation of steam not having been used as "Feed-stock" was not eligible for exemption in terms of Notification No. 75/84-C.E., dated 1-3-1984. Being aggrieved by the order passed by the Assistant Collector, the appellants filed an appeal before the Collector Central Excise (Appeals) who while

rejecting the appeal placed reliance on the Tribunal's order Nos. 834 to 839/86-C dated 17-12-1986 in the case of Collector of Central Excise v. Fertilizer Corporation of India and held that the appellants were not eligible for the exemption in respect of 'LSHS' Oil used for the generation of steam since it could not be deemed as having been used as feed stock in the manufacture of fertilisers.

2. Appearing on behalf of the appellants Shri Dushyant Dave, learned advocate stated that the issue arising for consideration in the appeal had been settled against the assessee by the Tribunal's order No.834-839/86-C dated 17-12-1986 in the case of CCE, Patna v. Fertilizer Corporation of India Ltd. which was followed by the Tribunal in Order No. 74/92 dated 6-3-1992 - 1992 (61) E.L.T. 719 (Tribunal) - in the appellants' own case. He submitted that in these orders the Tribunal had mainly relied upon its decision in the case of Neyveli Lignite Corporation v. Collector of Central Excise, Madras, reported in 1985 (19) E.L.T. 617 in which the term "Feed-stock" occurring in Notification No. 147/74-C.E., dated 30-10-1974 was held as referring to raw materials delivered to a machine for processing. Shri Dave stated that while passing the order in the case of Neyveli Lignite Corporation v. Collector of Central Excise (supra) and the subsequent orders based on that order, the Tribunal had overlooked its order in the case of Indian Oil Corporation, Barauni v. Collector of Central Excise, Patna reported in 1985 (19) E.L.T. 145 in which taking a contrary view the Tribunal had held that petroleum products utilised as fuel for producing steam and electricity for being further used in the manufacture of other finished products were eligible for exemption in terms of Notification Nos. 74/73 and 352/77. He contended that under these circumstances the issue involved in these cases cannot be deemed as having been settled by the decision in the case of Neyveli Lignite Corporation and the matter needs to be referred to a larger Bench of the Tribunal. He argued that the exemption under Notification No.75/84-C.E., dated 1-3-1984 cannot be denied to the appellants since LSHS used for the production of steam as a part of the integrated process of manufacture of fertilizers has to be deemed as a 'raw material' used in the manufacture of the end product viz. Fertilizers.

In support of his contention he cited the judgments of the Supreme Court in the case of Collector of Central Excise v. Ballarpur Industries Ltd.Collector of Central

Excise v. Eastend Paper Industries Ltd. reported in 1989 (43) E.L.T. 201, wherein it has been held that anything that enters into and forms part of that process must be deemed to be raw material or component part of the end product and must be deemed to have been used in the completion or manufacture of the end product. In support of his contention he referred to the judgment of the Supreme Court in the case of State of Haryana v. Dalmia Dadri Cement Ltd., reported in 1988 (14) ECR 292 in which it has been held that the expression "for use" in the generation or distribution of electrical energy would mean "intended for use" and not actual use and therefore cement sold for intended use in the generation or distribution of electrical energy was entitled to exemption. Shri Dave also cited judgment of the Gujarat High Court in the case of Saurashtra Calcine Bauxite and Allied Industries v. State of Gujarat, reported in 1994 (45) ECC 17 in which the High Court held that set-off in respect of purchase tax paid on furnace oil was admissible under Rule 42-A of Gujarat Sales Tax Rules, 1970 since heat treatment was key process in the manufacture of the end product and such process could not have been accomplished without the use of furnace oil. Relying upon the Supreme Court judgment in the case of Collector of Central Excise, Bombay-1 v. Parle Exports (P) Ltd., reported in 1989 (19) ECC 49, the learned counsel submitted that the relevant notification has to be interpreted having regard to the object and purpose for which the exemption has been granted.

3. On behalf of the respondents Shri Somesh Arora, ld. JDR stated that the issue arising for consideration stands fully settled against the appellants by the Tribunal's order in the case of Neyveli Lignite Corporation v. Collector of Central Excise, Madras (supra) and Tribunal's order No. 834-839/86-C dated 17-12-1986 in the case of CCE, Patna v. Fertilizers Corporation of India Ltd. He stated that there is no force at all in the appellants contention that while passing the order in the case of Neyveli Lignite Corporation v. Collector of Central Excise, the Tribunal had overlooked the fact that in the order passed in the case of Indian Oil Corporation, Barauni v. Collector of Central Excise, Patna the Tribunal had taken a contrary view and on that account the matter needed to be referred to a larger Bench. He submitted that in the case of Indian Oil Corporation, Barauni, the Notification No. 352/77 dated 16-12-1977, which came up for interpretation, exempted "Petroleum Products, fall under Item Nos. 6 and 11A of the First

Schedule, produced in refineries wherein refining of crude products is carried on and utilised as fuel within the same premises for the production or manufacture of other petroleum products." He added that in the case of Neyveli Lignite Corporation Notification No. 147/74-C.E., dated 30-10-1974 the notification which was required to be interpreted was differently worded since it exempted 'furnace oil' "intended for use as feed stock in the manufacture of fertilisers". He stated that the Tribunal had held that the term "feed-stock" occurring in Notification No. 147/74-C.E., dated 30-10-1974 refers to raw materials delivered to a machine for process.

He contended that under these circumstances it was not necessary for the Tribunal to take into account the decision in the case of Indian Oil Corporation, Barauni v. Collector of Central Excise, Patna while considering the issues involved in the case of Neyveli Lignite Corporation. He added that the judgment cited by the learned counsel for the appellants were not relevant since in none those cases the words "intended for use as Feed Stock" as occurring in Notification No.174/74 was required to be interpreted. He, therefore, pleaded for the rejection of the appeal.

4. In his reply the learned counsel for the appellants stated that in the context of the Supreme Court's judgment in the case of Collector of Central Excise v. Ballarpur Industries Ltd, (supra), "raw material" even when used indirectly for the manufacture of the final product has to be deemed as "feed stock".

5. We have examined the records of the case and considered the submissions made on behalf of both sides. The main question that arises for consideration in this case is whether the Collector (Appeals) was correct in holding that Low Sulphur Heavy Stock (LSHS) falling under sub-heading 2713.50 used for generation of steam was not eligible for the benefit of the exemption under Notification No. 75/84 dated 1-3-1984 (as amended by Notification No. 127/88-C.E., dated 1-3-1988).

6. It is seen that the finding in the impugned order that Low Sulphur Heavy Stock (LSHS) used for generation of steam was" not be eligible for the benefit of the exemption under Notification No. 75/84-C.E., dated 1-3-1984 (as amended) was based on the reasoning that use of LSHS for the generation of steam does not

amount to use as 'feedstock'. In support of his finding the Collector (Appeals) referred to the Tribunal's order Nos. 834 to 839/86-C dated 17-12-1986 in the case of Collector of Central Excise v. Fertilizer Corporation of India in which following the principles enunciated in the case of Neyveli Lignite Corporation v. Collector of Central Excise, Madras (supra) it was held that Furnace Oil/Low Sulphur Heavy Stock (LSHS) used for generation of steam could not be treated as having been used as feed stock in the manufacture of fertilizers. Paras 8 and 9 of the said order being relevant are reproduced below :- "8. As already stated above, the only question in these appeals is whether use of FO/LSHS used for generation of steam would be used as feed stock within the meaning of Notification No. 147/74. For ease of reference, Notification No. 147/74-CE dated 30-10-1974 is reproduced below :- "The Central Government has exempted furnace oil falling respectively under Item No. 10 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and intended for use as feed-stock in the manufacture of fertilizers, from - (b) the whole of the additional duty of excise leviable thereon under the Mineral Products (Additional) Duties of Excise and Customs) Act, 1958; (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." From the notification produced above, it would be seen that the decision of this appeal depends on meaning of the expression 'feed stock' in the manufacture of fertilizers used in the notification.

While Shri Banerjee has no doubt contended that the Review notice drawing upon the meaning of expression 'feed stock' in glossary of petroleum terms IS-406978 to mean "Primary material introduced into a plant for processing" would mean setting up a new case and cause prejudice to the respondents, we are not impressed with this argument. At all material times, the question was whether FO/LSHS obtained by the respondents at nil rate of duty was used as feed stock in the manufacture of fertilizers. The precise meaning of the word 'feed stock' not have been in the show cause notice; if they have been put in the show cause notice, this does not mean that the respondent has to meet new case. The expression has to be interpreted according to law in the mode permissible. Glossary of petroleum terms products reflects commercial understanding of the

expression because undoubtedly FO/LSHS are in a larger sense petroleum products. The same cannot be shut out or ignored on the ground that earlier this meaning was not set out in the show cause notice or figure at an early stage of the proceedings because meaning of an expression is often a subject for interpretation at different stages before the judicial and quasi-judicial authorities and this interpretation has to be done in accordance with law having recourse to well accepted principles.

9. "Shri Banerjee did not contend that if the meaning under glossary of terms of petroleum products be assigned to the expression feed stock used in the notification, then also it will merit exemption under the Notification. This apart, the Tribunal in Neyvdi Lignite Corporation's case (supra) on which Shri Tripathi has placed reliance after referring to technical and other dictionary with reference to the very same notification, hold that the expression refers to raw material delivered to a machine for process. Following the principles enunciated this case FO/LSHS used for generation of steam cannot be held to be used as feed stock in the manufacture of fertilizers. In view of this decision of the Tribunal, the view of the Board holding use of FO/LSHS for generation of steam as used as feed stock in the manufacture of fertilizers cannot be said to be proper, legal or correct. This part of the impugned order would have, therefore, to be set aside and the order to that extent modified." 7. While admitting that the matter is fully covered against the appellants by the Tribunal's Order No. 834 to 839/86-C, dated 17-12-1986 in the case of Collector of Central Excise v. Fertilizer Corporation of India andNeyveli Lignite Corporation v. Collector of Central Excise, Madras (supra), the ld. counsel for the appellants has contended that the question decided in these cases needs to be referred to a larger Bench since in arriving at its findings in these matters the Tribunal had not taken into account the fact that on the same issue a contrary view has been taken by the Tribunal in the case of Indian Oil Corporation, Barauni v.Collector of Central Excise, Patna (supra). In this regard the ld.Departmental Representative has contended that in the case of Indian Oil Corporation, Barauni, the Notification No. 352/77 which was required to be interpreted was differently worded.

8. It is seen that in the appellants' case the Collector (Appeals) has held that LSHS used for the generation of steam meant for use in the manufacture of fertilizers was not eligible for exemption under Notification No. 75/84 as amended by Notification No. 127/88-C.E., dated 1-3-1988 since LSHS used for the generation of steam could not be deemed to have been used as feed stock for the manufacture of fertilizers. In arriving at this finding the Collector (Appeals) relied upon the Order No. 834 to 839/86-C, dated 17-12-1986 in the case of the Collector of Central Excise, Patna v. Fertilizer Corporation of India in which the Tribunal took into account its earlier decision in the case of Neyveli Lignite Corporation v. Collector of Central Excise, Madras and held that LSHS used for the generation of steam could not be deemed as eligible for exemption under Notification No. 147/74, dated 30-10-1974 which exempted furnace oil and Heavy Petroleum Stock intended for use as "feed stock" in the manufacture of fertilizers provided it was provided to the satisfaction of the Assistant Collector that such furnace oil or Heavy Petroleum Stock was so used. In these cases the main point for determination was the meaning of the term "Feed stock". The Tribunal observed that as per various technical and other dictionaries the term "feed stock" occurring in the notification could be deemed to be referring only to raw materials delivered to a machine for process. On the basis of this finding it was held that use of furnace oil etc. in the generation of steam could not be deemed as use in the manufacture of fertilizers. We find that Notification No.352/77, dated 16-12-1977 which was required to be interpreted in the case of Indian Oil Corporation, Barauni v. Collector of Central Excise (supra) provided for exemption of "Petroleum Products" falling under Item Nos. 6 to 11A of the First Schedule, produced in refineries were exempted provided they were utilized as fuel within the same premises for the production or manufacture of other petroleum products. It is well settled that in a taxing statute there is no room for any intendment but regard must be had to the clear meaning of the words and language of the notification. We are, therefore, inclined to agree with the learned Departmental Representative that in view of the difference in the wordings of the Notification 147/74-C.E., dated 30-10-1974 and Notification No. 352/77-C.E., dated 16-12-1977, findings of the Tribunal in the case of Indian Oil Corporation, Barauni v. Collector of Central Excise, Patna were not relevant for deciding the issue which arose for consideration in the case

of Fertilizer Corporation of India (Order No. 834 to 839/86-C, dated 17-12-1986) and Neyveli Lignite Corporation v. Collector of Central Excise, Madras (supra). For these reasons we are not inclined to accept the contention of the learned counsel for the appellants that the Tribunal's Order No. 834 to 839/86-C, dated 17-12-1986 in the case of CCE v. Fertilizer Corporation of India cannot be deemed to have finally settled the question whether LSHS used for generation of steam would be eligible for exemption under Notification No. 147/74-C.E. and matter needs to be referred to a larger Bench.

9. The learned counsel for the appellants has contended that LSHS when used for generation of steam meant for use in the manufacture of fertilizers has even otherwise to be deemed as eligible for exemption under Notification No. 147/74-C.E., dated 30-10-1974. In support of his contention he has placed reliance on the judgment in the case of Ballarpur Industries Ltd. (supra) in which relying upon the earlier judgment in the case of Collector of Central Excise v. Eastend Paper Industries Ltd. (supra) the Supreme Court has held that inputs used in integrated process of manufacture have to be treated as "raw material" having been used in the end-product. He has also cited the judgment of the Gujarat High Court in the case of Saurashtra Calcine Bauxite and Allied Industries v. State of Gujarat (supra) in which it has been held that set off in respect of purchase tax paid on furnace oil was admissible under Rule 42-A of Gujarat Sales Tax Rules, 1970 since heat treatment was the key process in the manufacture of the end-product and such process could not have been accomplished without the use of furnace oil. In this regard the appellants have also placed reliance on the judgment of the Supreme Court in the case of The State of Haryana v. Dalmia Dadri Cement Ltd. (supra) in which it was held that the words 'for use' mean 'intended use' and exemption cannot be denied if some part of the goods is not actually used' for the specified purpose so long as the certificate of use is not disproved. In our view these judgments cannot be of any assistance to the appellants since in this case the question to be decided is whether LSHS used by the appellants for generation of steam could be deemed as eligible for exemption under Notification No. 75/84 which exempts LSHS intended for use as 'feed stock' in the manufacture of fertilizers. In arriving at his finding that LSHS used for the generation of steam was not eligible for exemption under the said notification, the Collector (Appeals) relied

upon the Tribunal's order No. 834 to 839/86-C dated 17-12-1986 which followed the principle laid down in Tribunal's order in the case of Neyveli Lignite Corporation Ltd. v. Collector of Central Excise, Madras (supra) that the term 'feed stock' occurring in the notification has to be deemed as referring to raw materials delivered to a machine for process. In our view the case law cited by the appellants is not relevant since none of the judgments relate to the examination of the scope of any notification exempting any goods subject to the condition requiring their use as .'feed stock' and also in view of the fact that each notification is to be interpreted strictly according to its language and there can be no room for intendment.

10. In view of the above discussion and having regard to the fact that the matter is admittedly covered against the appellants by the Tribunal's order No. 834 to 839/86-C dated 17th December, 1986, we reject the appeal.

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