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October, 12.

UNION OF INDIA

v.

DELHI CLOTH & GENERAL MILLS

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR,
K. N. WANCHOO, K. C. DAS GUPTA and
J. C. SHAH, JJ.)

Excise Duty—Manufacture of Vanaspati—‘Refined oil’ if an intermediate product—Liability—‘Manufacturing’ and ‘processing’—Distinction—Central Excises and Salt Act, 1944 (1 of 1944), s. 2 (f)—First Schedule, Item 23.

The respondents, who were manufacturers of Vegetable products known as Vanaspati, were assessed to excise duty under item 23 of the First Schedule to the Central Excises and Salt Act, 1944, on what the taxing authorities called the manufacture of ‘refined oil’ from raw oil which according to them fell within 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”. The common case made by the respondents in their petition under Art. 226 of the Constitution challenging the imposition was that for the purpose of manufacturing Vanaspati they purchased groundnut and *til* oil from the market and subjected them to different processes before applying hydrogenation to produce Vanaspati and that nothing that they produced at any stage was covered by that item. Affidavits by experts were filed by both the parties and the High Court found in favour of the respondents and allowed the petitions. The Union of India appealed. It was urged on its behalf that before finally producing Vanaspati the respondents produced at an intermediate stage what was known as ‘refined oil’ in the market and although they might not sell it and although Vanaspati, when produced, was liable to excise duty under another item, that could not affect their liability.

Held, that excise duty being leviable on the manufacture of goods and not on their sale, the petitioners would no doubt be liable if they produced ‘refined oil’, as known in the market, at an intermediate stage. But it was clear that there could be no ‘refined oil’ as known in the market without deodorisation according to the specification of the Indian Standards Institute and the affidavits of the experts. Since, however, the process

of deodorisation was admittedly applied in the respondents' factories only after hydrogenation was complete, they could not be said to produce 'refined oil' at any stage.

Nor could the respondents be held to manufacture some kind of 'non-essential vegetable oil'. 'Processing' cannot be equated to 'manufacture' which means bringing into existence a new substance.

The Legislature by defining the word 'manufacture' in s. 2(f) of the Act did not intend to make the mere processing of goods liable to duty.

The words "all sorts" in item 23 are intended only to make it clear that vegetable non-essential oils, whether raw or refined, from whatever raw material produced, will be liable to excise duty.

CIVIL APPELLATE JURISDICTION : Civil Appeals
Nos. 168-170 of 1960.

Appeals from the judgment and order dated April 10, 1958, of the Circuit Bench of the Punjab High Court at Delhi in Civil Writs Nos. 301, 302 and 347 of 1956.

G. S. Pathak, B. Sen and R. H. Dhebur, for the appellants.

N. C. Chatterjee, A. N. Sinha and P. K. Mukherjee, for the respondent (in C.A. No. 168/60).

A. V. Viswanatha Sastri, Sardar Bahadur, S. N. Andley and Rameshwar Nath, for the respondent in (C.A. No. 169/60).

A. V. Viswanatha Sastri, S. K. Kapur and K. K. Jain, for the respondents (in C.A. No. 170/60).

N. A. Palkhivala, J. B. Duduchanji, O. C. Mathur and Ravinder Narain, for the Interveners (in all the appeals.)

1962. October 12. The Judgment of the Court was delivered by

DAS GUPTA, J.—These three appeals are against the orders of the Punjab High Court allowing

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three petitions under Art. 226 of the Constitution. The three petitions are by three different companies manufacturing vegetable products known as Vanaspati and they challenge the legality of the imposition of Excise duty on what was called by the taxing authorities as the manufacture of "refined oil" from raw oil. These petitions raise a common question of law as regards the liability to excise duty under Item 23 of the first schedule to the Central Excises and Salt Act I of 1944, on similar facts. The petitions were heard together and disposed of by a common judgment allowing the appeals and directing the excise authorities to withdraw the impugned demand of excise duty on the petitioners. The present appeals have also been heard together.

The facts alleged in the three separate petitions filed by the three petitioners (the respondents herein), the manufacturers of Vanaspati, are practically the same. It is said that for the purpose of manufacturing Vanaspati the petitioners purchased groundnut and *til* oil from the open market or directly from the manufacturers of such oil. The oils thus purchased are subjected to different processes in order to turn them into Vanaspati. It is their case that the only finished product they manufacture from the raw materials thus purchased is Vanaspati which is liable to excise duty as a vegetable product. They contend that at no stage do they produce any new product which can come within the item described in the Schedule as "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." Accordingly, it is said, the demand for excise duty on the ground that they produce from the raw oils purchased a product which is liable to duty under item 23 of the Schedule (now item 12) is illegal.

In resisting these petitions the Union of India contended, in substance, that in the course of the

manufacture of Vanaspati, the vegetable product from raw groundnut and *til* oil, the petitioners bring into existence at one stage, after carrying out some processes with the aid of power, what is known to the market as "refined oil". This "refined oil" falls within 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," and so is liable to excise duty. The affidavit filed by Mr. P. S. Krishnan, Chief Chemist, Central Revenue, Central Laboratory, Government of India, in support of this contention of the appellant, describes the process by which raw oil is manufactured into Vanaspati thus :—

"The manufacture of vegetable product consists in hydrogenating oils using a catalyst. The catalyst is a sensitive material and is liable to be poisoned and made ineffective if certain impurities like mucilaginous matter, free oxidised fatty acid and moisture are present. In order therefore, to successfully manufacture vegetable product the hydrogenation has to be done on a refined vegetable non-essential oil. The refined vegetable non-essential oil (an oil free from major impurities mentioned in paragraph 2 above) is the penultimate raw material for the manufacture of vegetable product.

The vegetable non-essential oils as obtained by crushing containing the impurities mentioned earlier are raw vegetable non-essential oils. The process of refining them consists in adding an aqueous solution of an alkali which will combine with the free fatty acids to form a soap and settle down with it a large amount of suspended and mucilaginous matter; after settling the clear supernatant layer is drawn off and treated with an appropriate quantity of bleaching earth and carbon is then filtered. In

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this process the colouring matter is removed and the moisture that was originally present in the neutralised oil will also be removed. At this stage the oil is a refined oil and is suitable for hydrogenation into vegetable product. This process of refining generally involves the use of power and machinery.”

He then goes on to say :—

“Depending upon the quality of the seed used for crushing and that of the original raw oil this refined oil will now generally be suitable for edible purposes of discriminating users and for the manufacture of toilet goods like hair oils and high class soaps. For certain users who are even more discriminating this oil may be subjected to a further process of deodorisation.

The difference between raw vegetable non-essential oils and refined vegetable oils will clearly be seen on examination of the two products. The refined oil will generally be colourless or only slightly coloured. It will be perfectly clear and in many cases it may have no odour. The raw oil, on the other hand, will have a certain amount of turbidity or sediment at the bottom and will also be somewhat deep in colour. I further say that sometimes refined oil obtained above is subjected to a process of further deodorization. Such oil can be correctly described as refined and deodorised oil.

As far as known to me, the two grades of oils are separately marketed in the country; as for example, ‘groundnut oil’ and ‘refined groundnut oil’ the latter generally with a distinctive label when marketed in containers of approximately 4 gallons or less.”

The experts who have filed affidavits in support of the petitioners' case agree with Mr. Krishnan that common oils, like groundnut, sesame, mustard, cottonseed, etc., in their raw stage always contain varying amounts of impurities and these impurities have to be removed by different processes before hydrogenation for the purpose of producing Vanaspati can be applied. There is however this important difference between the view of Dr. Homi Ruttonji Nanji who has filed an affidavit in support of the petitions, and that of Mr. Krishnan that while according to Mr. Krishnan the raw oil which has been freed from impurities but not deodorised is sold in the market as refined oil, Dr. Nanji is definite in his statement that refined oil for edible purposes, as understood by the manufacturers as well as by the trade, is oil to which all the three processes, *viz.*, neutralization, bleaching and deodorisation have been applied. He goes on to say: "In fact I would not regard any oil as refined oil unless it was also deodorised, since the failure to deodorise oil leaves behind in the oil certain impurities in the shape of compounds which give off bad odours." (Vide para. 5 of his affidavit in the petition filed by the Delhi Cloth & General Mills Co., Ltd.).

As already stated the High Court accepted the petitioners' contention that the oil in their hands after some amount of refinement in the course of being converted into Vanaspati was not liable to excise duty under item 23 (Now item 12) and so allowed the petitions.

In support of the appeals, Mr. Pathak has advanced a two-fold argument. He first argues that the respondent concerns after they buy the raw oil with all its impurities, manufacture by the application of certain processes of refinement, a refined oil which is the same as the refined oil available in the market, and the aid of power is taken in some of these

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processes; and that it is "refined oil" thus produced that becomes after further processes "vegetable product". When the vegetable product comes into existence it becomes liable to excise duty as vegetable product under the present cl. 13, which appears to be the same as old cl. 11. That however cannot alter the position that at an earlier stage, these same respondents have manufactured "refined oil" as is known to the market. That substance comes squarely within cl. 23 (now cl. 12) and is therefore liable to duty under this clause; and the fact that they do not put this "refined oil" on the market but use it to produce a finished product known as vanaspati product cannot affect this liability.

Excise duty is on the manufacture of goods and not on the sale. Mr. Pathak is therefore right in his contention that the fact that the substance produced by them at an intermediate stage is not put in the market would not make any difference. If from the raw material has been brought into existence a new substance by the application of processes one or more of which are with the aid of power and that substance is the same as "refined oil" as known to the market an excise duty may be leviable under Item 23 (the present item 12). But has it been shown that the substance produced by the petitioners is at any intermediate stage before Vanaspati comes into existence, "refined oil" as known to the market? We are not satisfied that this has been shown. As already stated, a summary of the numerous processes necessary to turn the raw groundnut or *til* oil into vegetable product has been given in the affidavits sworn to by the experts on both sides. It does not appear to be disputed that the process of deodorisation is applied in the petitioners' factory after hydrogenation is complete. The appellant's case is that before hydrogenation has started the substance in the hands of these petitioners is "refined oil" as known to the market. That raises the important question whether any

oil is known as 'refined oil' in the market before deodorization has taken place. As already indicated, the appellant's case is that deodorization is not necessary for "refined oil" to come into existence; the respondents' case on the other hand is that without deodorisation the substance is not "refined oil".

We have already referred to the affidavits on this question as sworn to by Mr. Krishnan on behalf of the appellant and Dr. Nanji on behalf of the respondents-petitioners. In his affidavit Dr. Nanji has also referred to the specification of "refined oil" by the Indian Standards Institution and has given these in an annexure to his affidavit. From this annexure we find the following specification by the Indian Standards Institution:—

*"Refined groundnut oil:—*Groundnut oil which has been refined by neutralisation with alkali bleached with fuller earth and/or Activated Carbon, and deodorised with steam, no other chemical agent being used.

*Refined Cotton Seed Oil:—*Cotton seed oil which has been refined by neutralisation with alkali, bleached with alkali, bleached with fullers' earth and/or Activated Carbon and Deodorised."

This specification by the Indian Standards Institution furnishes very strong and indeed almost incontrovertible support for Dr. Nanji's view and the respondents' contention that without deodorisation the oil is not "refined oil" as is known to the consumers and the commercial community. Further support, if any was needed, is found in the several affidavits of several concerns who market refined groundnut oil under the brand names—Falika, Tripti, Kitchen, Kiran, Temple, Sovereign, Lotus, Nirmal, Dilkhus, Kamdhenu, Radio, Deer, Dog, Sepoy, Cocogem, Tushar and Ginutol. They agree in asserting that

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the oil is always deodorised before it is marketed as refined oil under these brand names. As against this it has to be noticed that the appellant could not produce evidence of one single case of marketing of refined oil without deodorisation. Instead of that Mr. Pathak produced before us copies of extracts of a book by Alton Bailey of the name "Cottonseed and Cottonseed Products" and another book by the same author of the name "Industrial Oil and Fat Products" and a third book of the name "Vegetable Fats and Oil" by G. S. Jamieson. Mr. Jamieson's statement does not at all make it clear that refined oil is put on the market without deodorisation. Mr. Bailey appears to have stated in his book on "Industrial Oil and Fat Products" that the term "refining" refers to any purifying treatment designed to remove free fatty acids, phosphatides or mucilaginous material, or other gross impurities in the oil; it excludes "bleaching" and also "deodorisation". The extracts from this book also do not clearly show that before deodorisation the oil which has been refined by the purifying treatment, is put on the market. The extract from Bailey's book on "Cottonseed and Cottonseed Products" contains a passage in these words :—

"In a discussion of the composition and characteristics of cottonseed oil, three kinds of oil are to be distinguished. They are : (a) crude oil, which is the oil as it is expressed from the seed, and the commodity shipped from the oil mills; (b) refined oil, or oil which has been freed of most of its nonglyceride constituents by treatment with alkali, with or without subsequent bleaching or deodorisation, and (c) hydrogenated oil."

Mr. Pathak has relied on Bailey's statement that the oil which has been freed of most of its nonglyceride constituents by treatment with alkali, with or without subsequent bleaching or deodorization is

“refined oil”, for his contention that even without deodorisation the oil is known as “refined oil”.

It will be unsafe however to base any conclusion on this extract without knowing the entire context in which the statement has been made or what has been made or what has been said in other parts of the same book. The book itself was not produced before us. It is worth noticing that while the above statement is made by Mr. Bailey in respect of cottonseed oil the oil with which we are concerned is produced from groundnut oil and *til*—neither of which is cottonseed. Apart from all this we are of opinion that the view of the Indian Standards Institution as regards what is refined oil as known to the trade in India must be preferred to the opinion of this author. In this connection it has also to be mentioned that the affidavits filed on behalf of the respondents are clear and categorical, while Krishnan’s affidavit on which reliance was placed on behalf of the appellant is somewhat vague, halting and not categorical.

On a consideration of all these materials we have no doubt about the correctness of the respondents’ case that the raw oil purchased by the respondents for the purpose of manufacture of Vanaspati does not become at any stage “refined oil” as is known to the consumers and the commercial community. The first branch of Mr. Pathak’s argument must therefore be rejected.

The other branch of Mr. Pathak’s argument is that even if it be held that the respondents do not manufacture “refined oil” as is known to the market they must be held to manufacture some kind of “non-essential vegetable oil” by applying to the raw material purchased by them, the processes of neutralisation by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel “manufacture” is complete as soon as by the application

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of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus :—

'Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use.'

It is helpful to consider also in this connection the ordinary meaning of the word "goods". For, by the very words of the Central Excises and Salt Act, 1944, excise duty is leviable on "goods". The Act itself does not define "goods" but defines "excisable goods" as meaning "goods specified in the First Schedule as being subject to a duty of excise and includes salt." On the meaning of the word "goods" an interesting passage is quoted in the Words and Phrases, Permanent Edition, Vol. 18, from a judgment of a New York Court thus :—

'The first exposition I have found of the word 'goods' is in Bailey's Large Dictionary of 1732, which defines it simply 'merchandise'; and by Johnson, who followed as the next lexicographer, it is defined to be movables in a house; personal or immovable estates; wares; freight; merchandise.'

Webster defines the word "goods" thus :—

"Goods, noun, plural; (1) movables; household furniture; (2) Personal or movable estate, as horses, cattle, utensils, etc., (3) Wares; merchandise; commodities bought and sold by merchants and traders."

These definitions make it clear that to become "goods" an article must be something which can ordinarily come to the market to be bought and sold.

This consideration of the meaning of the word "goods" provides strong support for the view that 'manufacture' which is liable to excise duty under the Central Excises and Salt Act, 1944, must be the "bringing into existence of a new substance known to the market." "But," says the learned Counsel, "look at the definition of 'manufacture' in the definition clause of the Act and you will find that 'manufacture' is defined thus: 'Manufacture' includes any process incidental or ancillary to the completion of a manufactured product (s.2(f))". We are unable to agree with the learned Counsel that by inserting this definition of the word "manufacture" in s. 2 (f) the legislature intended to equate "processing" to "manufacture" and intended to make mere "processing" as distinct from "manufacture" in the same sense of bringing into existence of a new substance known to the market, liable to duty. The sole purpose of inserting this definition is to make it clear that at certain places in the Act the word 'manufacture' has been used to mean a process incidental to the manufacture of the article. Thus in the very item under which the excise duty is claimed in these cases, we find the words : "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power". The definition of 'manufacture' as in s. 2(f) puts it beyond any possibility of controversy that if power is used for any of

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the numerous processes that are required to turn the raw material into 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. It is only with this limited purpose that the legislature, in our opinion, inserted this definition of the word 'manufacture' in the definition section and not with a view to make the mere "processing" of goods as liable to excise duty.

Mr. Pathak wanted to derive some assistance for his argument from the words "all sorts" as used in the clause. According to him, the words "all sorts" will be superfluous unless interpreted to mean "whether bringing into existence a new substance or not." The reasoning is clearly fallacious. The words "all sorts" have been used to make it clear that "vegetable non-essential oils" whether raw or refined and from whatever raw material produced will be liable to excise duty. Refined oil is one sort; raw oil is another sort. But as the duty is on the manufacture of goods, that is, on the bringing into existence a new substance known to the market, the raw oil or the refined oil must be some substance known to the market before it can be subjected to duty.

We are therefore of opinion that the High Court was right in its conclusion that there was no legal basis for the demands of excise duty which were made on the petitioners and in directing the authorities to withdraw these demands.

The appeals are accordingly dismissed with costs.

Appeals dismissed.