

AHURA CHEMICAL PRODUCTS PVT. LTD.

v.

UNION OF INDIA

September, 3, 1981

[P.N. BHAGWATI AND V. BALAKRISHNA ERADI, JJ.]

Central Excise and Salt Act 1944, Notification—Word “Open market”—Meaning of.

The appellant company manufactured various process chemicals required for the Textile Industry. The process chemicals so manufactured by them are substances known as emulsifiers and wetting out agents and they fall within the scope of tariff item 15AA of the first schedule to the Central Excise and Salt Act 1944. The appellant purchased 164500 kgs. of organic surface active agents from the “Industrial General Products Pvt. Ltd.”. The organic surface active agents sold to the appellant by the Industrial General Products Pvt. Ltd. had not been subjected to the levy of excise duty in as much as the said supplier company was eligible for exemption from payment of Excise Duty on account of the fact that the goods were manufactured by it without the aid of power.

Emulsifiers/wetting out agents etc. intended for use in any industrial process were exempted from the levy of duty under entry 15AA, by a notification dated 20.1.1968 issued by the Government of India, subject to the condition that if in respect of surface active agents used in the manufacture of such emulsifiers, wetting out agents, softeners and other like preparations the appropriate amount of the duty of excise or the additional duty under section 2A of the Indian Tariff Act 1934 (32 of 1934), has already been paid or where such surface active agents are purchased from the open market on or after the 20th day of January, 1968.

It is common ground that the organic surface active agents used by the appellant as raw-material for the manufacture of emulsifiers/wetting out agents were purchased by it subsequent to the 20th day of January, 1968. The Central Excise authorities originally treated the manufactured product, namely the emulsifiers etc. as exempt from levy of duty by virtue of the Notification dated January 20, 1968. But, subsequently by a notice dt. August 6, 1974 issued by the superintendent of Central Excise, the appellant was directed to show cause why an amount of Rs. 1, 21,709.57 should not be recovered from the appellant by way of excise duty in respect of the period August 1973 to February 1974 on the ground that the said amount represented escaped duty in respect of the emulsifiers/wetting out agents manufactured by the appellant during the aforesaid period. The appellant in reply contended that it was entitled to the benefit of exemption from levy of duty in respect of the manufactured products under the notification dated 20.1.1968. This contention was rejected by the Assistant

A Collector and his order was confirmed by the appellate collector of central excise.

B A revision petition filed by the appellant before the respondents (union of India) was rejected by order dated August 3, 1978 wherein the Central Government took the view that "purchases made from a particular manufacturer, the production from whose factory is exempt from payment of duty, being manufactured without the aid of power, cannot be treated at par with purchases made from the open market". In the appeal filed by special leave, it was contended that the condition that the surface active agents should have been purchased from the 'open market' on or after the 20th day of January 1968 was fully satisfied in the present case, and hence the appellant was entitled to the benefit of the exemption granted by the Notification.

C Allowing the appeal,

HELD : 1. The appellant Company is entitled to the benefit of the exemption granted by the Notification dated January 20, 1968 in respect of the emulsifiers, wetting out agents, softners etc. manufactured by the Company for use during the relevant period (August 1973 to February 1974). [628 G]

D 2. In determining the eligibility of a person for the benefit of the exemption conferred by the Notification on the basis of the fulfilment of the second of the aforementioned conditions, it is wholly irrelevant to enquire whether duty of excise had already been paid in respect of the surface active agents purchased and utilised as raw material for the manufacture of the emulsifiers/wetting out agents. [627 A-B]

E 3. Having due regard to the context in which the expression "open market" has been used in the Notification, it would be wholly wrong to understand the said expression "open market" as connoting only a market-yard, bazar or a shopping complex where goods are offered for sale. Industrial Chemicals (which have to be ordinarily purchased in bulk for use as raw-material in the manufacture of secondary products) are not commodities that are usually exposed for sale in bazars and shops. Such bulk purchases of chemicals etc., are effected by placing orders with the concerned manufacturing units. [627 E-G]

F 4. If the transactions of sale and purchase are effected under conditions enabling every person desirous of purchasing the goods in question to place orders with such manufacturing unit and obtain supplies, they will constitute purchases "from the open market". [627 G-H, 628 A]

G *Inland Revenue Commissioners v. Clay*, [1914] 3 K.B. 466 referred to.

H 5. In the present case, it was open to every person desirous of purchasing the surface active agents to place orders with the manufacturing company, namely M/s Industrial General Products Private Limited, and obtain the supply on payment of the price at the prevailing rate. The sales by the said Company were not to a limited class only. Hence, the purchases of the surface active agents effected by the appellant from M/s Industrial General Products Private Limited have to

be treated as purchases made "from the open market". The denial to the appellant of the benefit of the exemption provided for by the Notification was, therefore, clearly illegal. [628 D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2201 of 1978.

From the judgment and order dated the 13th September, 1978 of the Central Govt., Ministry of Finance Department of Revenue, New Delhi in Order No. 819 of 1978.

V. J. Taraporavala, J. B. Dadachanji and Shri Narain for the appellants.

N.C. Talukdar and R.N. Poddar for the Respondent.

The Judgment of the Court was delivered by

BALAKRISHNA ERADI, J. This appeal by special leave is directed against an Order dated August 3, 1978 passed by the Government of India under Section 36 of the Central Excise and Salt Act, 1944 (hereinafter referred to as the Act), rejecting a Revision Petition filed by the present appellant and confirming the view taken by the Appellate Collector of Excise, Bombay, that the appellant herein is not entitled to the benefit of the exemption from duty of excise conferred by a Notification No. 4/68-CE dated January 20, 1968.

The appellant-Company which has its factories at Sion East and Andheri East in Bombay is engaged in the manufacture of various process chemicals required for the Textile Industry. Amongst the process chemicals so manufactured by them are substances known as emulsifiers and wetting out agents. These products fall within the scope of Tariff Item 15AA of the First Schedule to the Act, which reads :

"Organic Surface Active Agents (other than soap);
Surface Active preparations and washing preparations,
whether or not containing soap."

For use as raw-material for the manufacture of the emulsifiers/wetting out agents, the appellant-Company had purchased a total quantity of 1,64,500 kgs. of organic surface active agents from another company called 'The Industrial General Products Private

A Limited'. The aforesaid organic surface active agents sold to the appellants by the Industrial General Products Private Limited had not been subjected to the levy of excise duty inasmuch as the said supplier-Company was eligible for exemption from payment of excise duty on account of the fact that the goods were manufactured by it without the aid of power.

B Emulsifiers/wetting out agents, etc. intended for use in any industrial process were exempted from the levy of duty under Entry 15AA of the First Schedule to the Act, subject to certain conditions, by a Notification dated January 20, 1968 issued by the Government of India. The relevant part of that Notification is in the following terms :

C "The Central Government has exempted the excisable goods specified in column (2) of the Table hereto annexed and falling under this Item from the whole of the duty of excise leviable thereon subject to the conditions laid down in the corresponding entries in column (3) of the said Table.

TABLE

Sl. No.	Description	Conditions
(1)	(2)	(3)
1.
2.
3.
F 4.	Emulsifiers, wetting out agents, softness and other like preparations intended for use in any industrial process.	If in respect of surface active agents used in the manufacture of such emulsifiers, wetting out agents, softeners and other like preparations the appropriate amount of the duty of excise or the additional duty under section 2A of the Indian Tariff Act 1934 (32 of 1934), has already been paid or where such surface active agents are purchased from the open market on or after the 20th day of January, 1968."
G		
H		

It is common ground that the organic surface active agents used by the appellant as raw-material for the manufacture of emulsifiers/wetting out agents were purchased by it subsequent to the 20th day of January 1968. The Central Excise authorities originally treated the manufactured product, namely the emulsifiers etc. as exempt from levy of duty by virtue of the Notification dated January 20, 1968. But, subsequently, by a notice dated August 6, 1974, issued by the Superintendent of Central Excise, Inspection Group No. 1, Bombay Division V, the appellant-Company was directed to show cause why an amount of Rs. 1,21,709.57 should not be recovered from the Company by way of excise duty in respect of the period August 1973 to February 1974 on the ground that the said amount represented escaped duty in respect of the emulsifiers/wetting out agents manufactured by the petitioner-Company during the aforesaid period.

In reply to the said notice, the appellant-Company objected to the said demand contending that it was entitled to the benefit of exemption from levy of duty in respect of the manufactured products under the Notification dated January 20, 1968 inasmuch as surface active agents used in the manufacture of the emulsifiers/wetting out agents had been purchased by the appellant from the open market after the 20th day of January 1968. This contention was rejected by the concerned Assistant Collector. He took the view that, in order to attract the exemption provided for in the aforesaid Notification, duty should actually have been paid in respect of the surface active agents used as raw-material and since the appellant had purchased the raw-material from a manufacturing unit which was exempt from the levy of excise duty for the reason that the manufacture was carried out by it without the aid of power, the conditions prescribed in the Notification were not fulfilled. The said order was confirmed by the Appellate Collector of Central Excise, Bombay, before whom the matter was carried in appeal by the present appellant. While upholding the view taken by the Assistant Collector that the benefit of the exemption granted by the Notification would be available only in cases where the raw-material, namely, the surface active agents had been subjected to duty at the primary stage, the Appellate Collector went further and held that the purchase of the aforesaid raw-material effected by the appellant from M/s. Industrial General Products Private Limited could not be regarded as "purchased from the open market" and that for this

A additional reason also, the appellant was ineligible to claim the benefit of the exemption.

B A Revision Petition filed by the appellant before the Government of India was rejected by the Order (Exh. 'A') dated August 3, 1978, wherein the Central Government took the view that "purchases made from a particular manufacturer, the production from whose factory is exempt from payment of duty, being manufactured without the aid of power, cannot be treated at par with purchases made from the open market". It is against this order of the Government of India that the appellant has come up to this Court with this appeal.

C The language used in Columns (2) and (3) of the Table appended to the Notification dated January 20, 1968 is simple and unambiguous. It shows that the benefit of the exemption will be available in respect of the emulsifiers/wetting out agents provided that *either* of the following two conditions is fulfilled :

- D**
- (a) Excise duty (inclusive of additional duty under section 2A) should have been already paid in respect of the surface active agents used as raw-material in the manufacture of the emulsifiers, wetting out agents, etc...
 - E** (b) The surface active agents used as raw-material for the manufacture of the emulsifiers/wetting out agents should have been purchased from the open market on or after the 20th day of January, 1968.

F The first of the aforementioned conditions was obviously not satisfied in the present case since the surface active agents were purchased by the appellant-Company from a manufacturer who was exempt from payment of excise duty on account of the fact that the process of manufacture was being carried out without the aid of power. The appellant-Company contends that the second of the aforesaid conditions, namely, that the surface active agents should have been purchased from the open market on or after the 20th day of January 1968 was fully satisfied in the present case, and hence it was entitled to the benefit of the exemption granted by the Notification. That the appellant had purchased the surface active agents used in the manufacture of the emulsifiers/wetting out agents subsequent to the 20th day of January, 1968 is undisputed. The purchases of the raw-material had been made by the appellant from

G

H

the Industrial General Products Private Limited. The short question to be considered is, whether those transactions of purchase effected by the appellant from the Industrial General Products Private Limited can be regarded as purchases "from the open market"?

In determining the eligibility of a person for the benefit of the exemption conferred by the Notification on the basis of the fulfilment of the second of the aforementioned conditions, it is wholly irrelevant to enquire whether duty of excise had already been paid in respect of the surface active agents purchased and utilised as raw-material for the manufacture of the emulsifiers/wetting out agents. The sole question to be examined is, whether the surface active agents used in the manufacture of the emulsifiers were purchased "from the open market" on or after the 20th day of January, 1968?

The Assistant Collector as well as the Appellate Revisional Authorities have taken the view that the exemption granted by the Notification will get attracted only if the surface active agents used as raw-material had been already subjected to levy of duty at the primary stage. In our opinion, the said view is based on an erroneous interpretation of the provisions contained in item 4 of the Table appended to the Notification. The condition that the duty of excise should have already been paid on the raw-material (surface active agents) has no application to cases covered by the second part of Column (3) of Sl. No. 4 of the Table, namely, cases where the surface active agents were purchased from the open market on or after the 20th day of January, 1968.

That brings us back to the question, whether the purchases effected by the appellant from M/s. Industrial General Products Private Limited were purchases "from the open market"? Having due regard to the context in which the expression "open market" has been used in the Notification, it would be wholly wrong to understand the said expression "open market" as connoting only a market-yard, bazar or a shopping complex where goods are offered for sale. Industrial chemicals (which have to be ordinarily purchased in bulk for use as raw-material in the manufacture of secondary products) are not commodities that are usually exposed for sale in bazars and shops. Such bulk purchases of chemicals etc., are effected by placing orders with the concerned manufacturing units. In our opinion, if the transactions of sale and purchases are effected under conditions enabling every person desirous of purchasing the goods in question to place orders with such manufac-

A

B

C

D

E

F

G

H

A turing unit and obtain supplies, they will constitute purchases “from the open market”. We may in this context refer with advantage to the following observations of Swinfen Eady, J. in *Inland Revenue Commissioners v. Clay*⁽¹⁾, where the Court of appeal had to consider the scope of the expression “open market” occurring in section 25 (1) of the Finance Act, 1910 (10 Edw. 7, c. 8) :

B “The market is to be the open market, as distinguished from an offer to a limited class only, such as the members of the family. The market is not necessarily an auction sale. The section means such amount as the land might be expected to realize if offered under conditions enabling every person desirous of purchasing to come in and make an offer, and if proper steps were taken to advertise the property and let all likely purchasers know that the land is in the market for sale.”

C We fully agree with these observations.

D In the present case, it was open to every person desirous of purchasing the surface active agents to place orders with the manufacturing Company, namely, M/s. Industrial General Products Private Limited, and obtain the supply on payment of the price at the prevailing rate. The sales by the said Company were not to a limited class only. Hence, the purchases of the surface active agents effected by the appellant from M/s. Industrial General Products Private Limited have to be treated as purchases made “from the open market.” The denial to the appellant of the benefit of the exemption provided for by the Notification was, therefore, clearly illegal.

E Accordingly, we allow this appeal, set aside the orders passed by the Government of India, the Appellate Collector, Bombay and the Assistant Collector of Central Excise, Bombay, and declare that the appellant-Company is entitled to the benefit of the exemption granted by the Notification dated January 20, 1968 in respect of the emulsifiers, wetting out agents, softeners etc., manufactured by the Company for use during the relevant period (August 1973 to February 1974). The respondent shall pay costs to the appellant-Company in this appeal.

F N.K.A.

Appeal allowed.

G **H** (1) [1914] 3 K.B. 466.