TATA OIL MILLS CO. LTD.

v.

COLLECTOR OF CENTRAL EXCISE

AUGUST 14, 1989

[S. RANGANATHAN AND T.K. THOMMEN, JJ.]

Central Excises and Salt Act, 1944: Central Excise Rules 1944—Sections 3, 4 and 35L/Rule 8(1) and Notification No. 46/72, 153, 73 and 25/75—Rice Bran Oil converted into hydrogenated oil used in manufacture of soap—Whether entitled to rebate scheme in respect of excise duty.

The petitioner-appellant is engaged in the manufacture of various varieties of soaps. The dispute arose as to the eligibility of the appellants to the concession under rule 8(1) of the Central Excise Rule 1944 through Notification No. 46 of 1972 subsequently amended by Notification Nos. 153 of 1973 dated 24.7.73 of 25 of 1975 dated 1.3.75.

Resolving the dispute as to the interpretation of rules whether rice bran fatty acid is different from the rice Bran Oil as held by the Tribunal the Court came to the conclusion that the view taken by the Excise authorities as well as by the Tribunal proceeded upon too narrow an interpretation of the notification and erred in not granting the exemption to the assessee. While allowing the appeals, this Court,

HELD: Rice bran oil contains glycerol and other impurities which have to be removed by a process of hydrolysis or hydrogenation and it is only the resultant purified rice bran oil that is actually used in the manufacture of soap. [843G]

A factory which consumes rice bran oil in the manufacture of soap in its factory first converts the oil into hydrogenated oil or fatty acid and then manufactures soap out of the latter. [844A]

In trying to understand the language used by an exemption notification one should keep in mind two important aspects; (a) the object and purpose of the exemption and (b) the nature of the actual process involved in the manufacture of the commodity in relation to which exemption is granted. [843F]

Construing the notifications literally but reasonably in the light of

A **the process of manufacture as explained by the Tribunal, the soap manufactured by the assessee is "soap made from indigenous rice bran oil" and is entitled to the exemption under the notifications to the extent permissible thereunder. [844H-845A]**

The terms of the notification do not have the effect of excluding B **cases where the manufacture of soap is done out of rice bran oil but the entire process is not carried out by the assessee itself. [849A]**

Tungabhadra Industries Ltd. **v.** *C.T.O.,* **[1961] 2 SCR 14 and** *Collector of Central Excise* **v.** *Jayant Oil Mills etc.,* **(CA 729 of 1983 and 2479 of 1987) decided by this Court on 31.3.89, referred to.**

C

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1304-1305 of 1987.

From the Judgment and Order dated 7.1.1987 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal D No. 1120/83-C and 1806 of 1983-C.

Soli J. Sorabjee, Ravinder Narain, A.N. Haksar, P.K. Ram and D.N. Misra for the Appellant.

A.K. Ganguli, P. Parmeshwaran, A. Subba Rao and Ms. E Sushma Suri for the Respondent.

The Judgment of the Court was delivered by

RANGANATHAN, J. These are appeals under section 35L of F the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). The appellant, Tata Oil Mills Company Limited, is engaged in the manufacture of various varieties of soaps. The present dispute has arisen in relation to its factory at Ghaziabad in the State of Uttar Pradesh.

G The dispute pertains to the eligibility of the appellant to the concession granted by the Central Government under Rule 8(1) of the Central Excise Rules, 1944 through notification No. 46 of 1972, subsequently amended by the notification nos. 153 of 1973 dated 24.7.73 and 25 of 1975 dated 1.3.75. Even though there are three notifications, the point is common and both the appeals involve the same question.

H

The question arises this way. *Ad Valorem* excise duty at 20% is levied on soap which falls under item 15 of the first schedule to the Act. Notification No. 46 of 1972 exempts "such soap as is made from indigenous rice bran oil or or from a mixture of such oil with any other oils from so much of the duty of excise leviable thereon as is equivalent to the amount of duty calculated at the rate of one rupee and fifty paise per metric tonne of such soap for each additional percentage point increase in the use of such rice bran oil which is in excess of fifteen per cent of the total oils used in the manufacture of such soap." To put it in simpler words, the notification intends to grant a concession where the percentage of the rice bran oil used in the manufacture of soap exceeds fifteen per cent of the total oil consumption in the manufacture. The extent of exemption is graded according to the percentage of rice bran oil in excess of fifteen per cent. For example, if the rice bran oil is twenty per cent of the total oils used in the manufacture, the duty exemption will be Rs.7.50 per metric tonne of soap manufactured. The 1973 notification is on the same lines with the only difference that the duty exemption per metric tonne is Rs.7.50 instead of Rs.1.50. The notification of 1975 raised the percentage of rice bran oil referred to in the 1972 notification from fifteen per cent to twenty five per cent but reduced the duty rebate from Rs.7.50 to Rs.3.50 per metric tonne. Another notification No. 118/75 has been referred to in the papers before us but it has no relevance to the question that falls to be decided here and is left out of account.

The difficulty in the interpretation has arisen because the process of manufacture of soap in the assessee's factory at Ghaziabad did not involve the use of rice bran oil as such. This factory manufactured soap from rice bran fatty acid. The rice bran fatty acid was extracted from rice bran oil in the assessee's factory elsewhere. Incidentally, it may be mentioned that the other factory is also licensed under the Excise Act for the manufacture of rice bran fatty acid. The excise authorities rejected the appellant's plea for exemption under the first three notifications on the ground that rice bran fatty acid and rice bran oil are technically and commercially two separate commodities. It was pointed out that the concession under the notifications is available only where soap is made from indigenous rice bran oil and other oils. This meant that rice bran oil must form part of the process of manufacture of soap in the factory which is manufacturing the soap and claiming the exemption. The notification will not apply merely because the soap is manufactured out of rice bran fatty acid which in turn has been obtained by hydrolysis of rice bran oil in a different factory (may be one belonging to the same assessee which is a separate

unit of manufacture for purpose of excise duty).

The Tribunal confirmed this view. It considered the terms of notification No. 25/75 and held:

> "We observe that the concession given under notification No. 25/75 is apparently with a view to encourage the use of rice bran oil in the soap industry. The point for consideration is whether the rice bran oil for the purpose of benefit of notification should be brought into the factory of manufacturer as such and then subjected to various pre-treatments required for its use in the soap industry or whether the same could be treated outside the factory and the necessary fraction of the rice bran oil namely rice bran fatty acid required for the manufacture of soap alone could be brought into the factory as raw material and concession availed. It is not denied that for the use of rice bran oil, the same has necessarily to be pre-treated first and rice bran fatty acid is required to be separated from glycerine. The appellants in the instant case have only brought in the rice bran fatty acid which has been obtained from rice bran oil by a process of pre-treatment in one of their other factories. It is seen that the Government of India have clarified vide their letter No. P/92/2/72-CH. III dated 18.7.74 that rice bran oil as such sometimes cannot be used directly and has to be subjected to pre-treatment before use in the manufacture of soap and that the exemption will be admissible in respect of rice bran oil even after pre-treatment for use in the manufacture of soap. Thus we find that the pre-treatment of rice bran oil is required to be done as a matter of necessity for its use in the manufacture of soap. The short point therefore is whether such treatment should be done in the factory of the manufacturer or could be arranged to be done outside. In the scheme of Central Excise, the various concessions, levies etc., are in respect of products manufactured by a particular licencee in the manufacturing unit so licensed and the necessary mechanism of controls and accountability is with reference to a particular licensee and the manufacturer. The eligibility to or the concessional assessment of a product manufactured by the manufacturer has to be determined with reference to the particular manufacturer subject to the fulfilment of the conditions as may be set out in the rele-

vant concessional notification. In the instant case, a verification will be required to be done in respect of the following:

(1) The nature of the oil used—whether rice bran oil or otherwise;

(2) The quantum used;

(3) the processes of pre-treatment carried out on the rice bran oil and the fraction thereof used for the soap making.

Now, if the rice bran oil has been pre-treated outside the appellant's factory, it is not possible for (the) jurisdictional authority to verify the facts in regard to above."

The Tribunal observed that concessional rates are allowed as incentives for use of certain raw materials and these rates are determined after taking into consideration the economics of operation involving the use of the said material in the manufacturing process in the manufacturer's factory. Holding that the notification did not envisage the use of rice bran fatty acid and it is the rice bran oil which is required to be used in the manufacture of soap for concessional assessment purposes, the Tribunal dismissed the appeals of the assessee. Hence these appeals.

We are of opinion that the view taken by the Excise Authorities as well as by the Tribunal proceeds upon too narrow an interpretation of the notification. It is true, as Mr. Ganguli contended, that an assessee claiming relief under an exemption provision in a taxing statute has to show that he comes within the language of the exemption. But, in trying to understand the language used by an exemption notification, one should keep in mind two important aspects: (a) the object and purpose of the exemption and (b) the nature of the actual process involved in the manufacture of the commodity in relation to which exemption is granted. So far as (b) is concerned, it is common ground before us that rice bran oil as such is not directly used in the manufacture of soap. Rice bran oil contains glycerol and other impurities which have to be removed by a process of hydrolysis or hydrogenation and it is only the resultant purified rice bran oil that is actually used in the manufacture of soap. In fact, the Tribunal has given a clear finding that a pre-treatment to rice bran oil is required to be done as a matter of necessity for its use in the manufacture of soap.

A Thus even a factory which consumes rice bran oil in the manufacture of soap in its factory first converts the oil into hydrogenated oil or fatty acid and then manufactures soap out of the latter. So far as (a) is concerned, the object of the notification—as even the Tribunal finds-is to grant a concession to a manufacturer of soap who manufactures soap from rice bran oil to a substantial extent and thus discourage the B use of edible oils in the manufacture. If these two aspects are considered together, it is clear that the emphasis in the notification is not that rice bran oil should be used as raw material in the very factory which produces the soap. The requirement is that the soap manufacture should, to a prescribed extent, be from rice bran oil as contrasted with other types of oil. The contrast is not between the use of rice bran oil as opposed to rice bran fatty acid or hydrogenated rice bran oil; the C contrast is between the use of rice bran oil as opposed to other oils. That is the ordinary meaning of the words used. These words may be construed literally but should be given their fullest amptitude and interpreted in the context of the process of soap manufacture. There are no words in the notification to restrict it to only to cases where rice D bran oil is directly used in the factory claiming exemption and to exclude cases where soap is made by using rice bran fatty acid derived from rice bran oil. The whole purpose and object of the notification is to encourage the utilisation of rice bran oil in the process of manufacture of soap in preference to various other kinds of oil (mainly edible oils) used in such manufacture and this should not be defeated E by an unduly narrow interpretation of the language of the notification even when it is clear that rice bran oil can be used for manufacture of soap only after its conversion into fatty acid or hydrogenated oil.

The position will perhaps become clearer if we consider a case where an assessee manufactures soap out of hydrogenated rice bran oil F (which process of hydrogenation, again, is akin to the process of hydrolysis which yields rice bran fatty acid). The assessee will then be clearly entitled to the exemption under the notification inasmuch as the hydrogenated rice bran oil does not cease to be rice bran oil. See in this connection: *Tungabhadra Industries Ltd.* v. *C.T.O.*, [1961] 2 S.C.R. 14 and *Collector of Central Excise* v. *Jayant Oil Mills etc.*, (CA G 729 of 1983 and 2479 of 1987, decided by this Court on 31.3.89). The answer cannot be different where rice bran oil is treated to yield rice bran fatty acid before soap is manufactured even if it be assumed that, unlike hydrogenated oil the fatty acid is, commercially speaking, a different commodity. We are, therefore, of opinion that, construing the notifications literally but reasonably in the light of the process of H manufacture is explained by the Tribunal, the soap manufactured by

the assessee is "soap made from indigenous rice bran oil" and is entitled to the exemption under the notifications to the extent permissible thereunder. A

Reference was made, in the course of the arguments before us, to a tariff advice issued as early as July, 1974 by the Ministry of Finance in relation to the notification of 1972. It reads as under: B

> "I am directed to invite a reference to this Ministry's notification No. 46/72 C.E. dated the 17th March, 1972, which grants exemption from duty on soap which is produced from rice bran oil or from a mixture of rice bran oil and other oils. It has been brought to the notice of this Ministry that the benefit of exemption is not being allowed by the Central Excise Officers where rice bran oil or oil mixture is hydrogenated or pre-treated before the soap is produced. The matter has been considered in detail with the concerned authorities and keeping in view the technical opinion tendered by them that rice bran oil as such sometimes cannot be used directly and has to be pre-treated before use in the manufacture of soap, it is hereby clarified that the exemption will be admissible when the rice bran oil is, after processing or pre-treatment, used in the manufacture of soap. *In this connection it may be stated that the exemption Notification does not preclude any processing or pre-treatment including hydrogenation in the manufacture of soap if such processes are incidental and ancillary to the manufacturing operating.*"
>
> (Underlining ours)

C D E

This circular clarifies that the exemption will be admissible when the rice bran oil after processing or pre-treatment—that is to say, when hydrogenated rice bran oil or rice bran fatty acid—is used in the manufacture of soap. But the counsel for the Union of India would have it that the circular postulates such exemption only where the pre-treatment or processing is done is the same factory. He invites attention to the last sentence of the circular, underlined by us above. We do not think this is the correct interpretation of the circular. In the first place, it will be noticed that the circular does not specifically say that the pre-treatment or processing should be in the same factory of the assessee. Secondly, no clarification by a circular or tariff advice is at all necessary to cover cases where the conversion from rice bran oil into rice bran fatty acid is done in the same factory for, to such a case, F G H

A the notification will clearly apply. If it had been the intention to pin down the concession to cases where the pre-treatment or processing is part of the manufacturing process within the same factory, the last sentence would not have stated the obvious but would have read something like this:

B

> "In this connection it is emphasised that the exemption notification precludes any processing or pre-treatment, including hydrogenation in the manufacture of soap, *except where* such processes are incidental and ancilliary to the manufacturing operations."

C The Tribunal has pointed out that the notification refers to the percentage of rice bran oil consumption and that, unless such oil is directly used in the factory, it will not be possible to work back, from the weight of fatty acid used by the assessee, the weight of rice bran oil out of which such acid had been obtained. There are two answers to this objection. One is that, if what we have stated is the correct D interpretation of the notification, the mere fact that there may be some difficulty in ascertaining the weight of oil, cannot be a justification to refuse to give effect to that interpretation. The second is that a practical solution to this difficulty has in fact been evolved and that, too, in the case of the same assessee. Our attention has been invited to a circular issued by the Assistant Collector, Ernakulam II dated 23.6.77. E This circular states that the matter had been considered pursuant to an appellate order passed in one of the cases relating to the same assessee and it had been decided to fix the formula for arriving at the correlation between rice bran oil on the one hand and hydrogenated rice bran oil or rice bran fatty acid on the other as below:

F	(a)	100 M.T. of hydrogenated rice bran oil	=	100 MT of rice bran oil
	(b)	100 M.T. of Fatty acid	=	115 MT of raw rice bran oil

The circular refers to the fact that the present assessee (in relation to its Cochin factory) had accepted the abovesaid formula and that the G formula as given above was, therefore, "finally fixed in arriving at the rice bran oil contents of hydrogenated rice bran oil and of rice bran fatty paid for ascertaining the amount of exemption as per notification nos. 45 and 46 of 1972". It is true that this is only a local instruction issued by certain assessing authorities in Cochin. It is being referred to only show that there is no insuperable difficulty in ascertaining the H weight of rice bran oil that that has been converted into fatty acid and thus

entered the process of manufacture in the assessee's factory particularly in view of the fact that even the process of conversion of rice bran oil into fatty acid or hydrogenated oil is carried but in a factory subject to excise jurisdiction. A

The appellant has drawn our attention to certain extracts from a letter of the Ministry of Finance dated 6.4.76. It poses the problem thus: B

> "A doubt has been raised whether rebate of Central Excise duty would be admissible under Notification No. 24 and 25/75 CE, dated 1-3-75 (predecessor Notification Nos. 45 and 46 of 1972) where rice bran oil and other minor oils are hydrogenated in one factory and sent to another factory for manufacture of soap." C

The answer furnished is this:

> "The matter has been considered in the Ministry and it is felt that the purpose of rebate scheme of rice bran oil as well as other minor oils envisaged in the Notifications Nos. 24/75 and 25/75 (including their predecessor notifications) is to encourage the use of inedible oils in the manufacture of soap so as to relieve the pressure on edible oils. In Board's letter F. No. 92/2/72-CX. 3 dated 18-7-74 and F. No. 92/6/74-CX. 3, dated 27-12-74, it was clarified that in respect of rice bran oil as well as other minor oils where such oils are subjected to various treatments, including hydrogenation, such treatment would not debar them from the rebate scheme in as much as such processing is essential in the process of manufacture of soap. D E F
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> As the notifications in question permit the rebate subject to identification of the oil as such, had the manufacturer placed the matter before the concerned Collector pointing out his practical difficulties, the Collector would have advised for suitable documentation (if the existing documentations are not enough) for the receipt, processing, movement and accounting of the oils for the concession in question. In the circumstances, it is felt that the benefit of rebate cannot be denied to the manufacturers for want of prescribing a satisfactory procedure, especially, when it is contended by the manufacturers that they have opted for G H

A the rebate scheme, their factories are under excise control, they have sufficient documentary evidence about the receipt, processing, movement, incorporation/use in the manufacture of soap. If, as contended by the manufacturers, there is sufficient record maintained by them for excise purposes and the reasonable correlation is possible
B about the identity and use of such oils it would not be correct to deny the concession. In this connection, it is of relevance to mention that a problem of similar nature had arisen with reference to some other excisable product* and the Law Ministry was also consulted. An extract of their opinion is appended. It is, therefore, requested that taking
C into account the local practical situations existing in his jurisdiction, the Collector may prescribe suitable procedures for identification of such oils for a meaningful implementation of the Rebate Scheme. A copy of the Trade Notice issued in this regard by the Collector may be sent to DICCE under intimation to this Ministry."

D

Following this, trade notices were issued on 25.8.76 and 8.2.77 in certain central excise jurisdiction, the relevant portion of which reads thus:

E "A doubt has been raised whether the rebate on Central Excise Duty would be admissible under Notification No. 40/72-CE & 46/72-CE both dated 17.3.72 as amended, where the Rice Bran Oil and other Minor Oils are hydrogenated in one factory and sent to another factory for use in the manufacture of soap.

F It has been clarified that in respect of Rice bran oil and other Minor oils where such oils are subject to various treatment, including hydrogenation, such treatment would not debar them from the rebate scheme as envisaged in the above said Notifications."

G The trade notice proceeds to set out the procedural safeguards to be followed in granting this relief which are unnecessary for our purpose. We endorse this as embodying the correct approach to the issue in this case.

"This related to a claim of exemption in respect of fertilisers (super-phosphates)
H manufactured from sulphuric acid in a case where sulphuric acid was converted elsewhere into phosphoric acid and then used for the manufacture of the chemicals.

We are, therefore, of the view that the terms of the notification do not have the effect of excluding cases where the manufacture of soap is done out of rice bran oil but the entire process is not carried out by the assessee itself. The question which one has to ask is: does the assessee manufacture soap partly or wholly out of indigenous rice bran oil? and the answer, we think, can only be in the affirmative. We therefore hold that that the assessee is entitled to the exemption under the notifications referred to above and that the departmental authorities and the Tribunal erred in not granting the said exemption to the assessee. The appeals are, therefore, allowed. However, in the circumstances of the case, we make no order as to costs.

R.N.J. Appeals allowed.