A COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH-I

*v.*

M/S. MARKFED VANASPATI AND ALLIED INDUSTRIES

APRIL 9, 2003

B [S.N. VARIAVA AND H.K. SEMA, JJ.]

*Excise Tariff Act, 1985; Tariff Item 1507:*

C *Classification—Spent earth—Levy of excise duty—Tests of manufacture and marketability—Significance of—Held: goods though covered by tariff entry may not be excisable unless it satisfies the tests of 'manufacture and marketability'—The product "spent earth" remains 'earth' even after undergoing processing—Burden to prove is on Revenue—Revenue failed to produce evidence of marketability and manufacture—Since excise duty on the* D *product 'earth' levied and paid by assessee, levy of excise duty on 'spent earth' would amount to double levy on the same product.*

*Words and Phrases:*

*Marketability and Manufacture'—Meaning of in the context of excise* E *laws.*

**The questions which arose in these appeals were whether "spent earth" is excisable merely because it falls within a tariff entry and whether the well settled tests of 'manufacture and marketability' cease to apply if goods falls within tariff entry.**

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**It was contended for the Revenue that since goods 'spent earth' falls within one of the tariff items, it becomes excisable.**

**Answering both the questions in the negative, the Court**

G **HELD: 1.1. Prior to the entry of 'spent earth' as tariff item in the Excise Tariff Act, it had been consistently held that the product "spent earth" was not manufactured; that "spent earth" remained "earth" even after undergoing processing; that its absorption capacity was reduced; that duty having been paid on "earth", no duty was leviable on "spent earth"**

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**as it remained the same product; and that levying of duty on "spent earth" would amount to double levy. Hence the product "spent earth" was not excisable. [482-F-G]**

**1.2. A larger Bench of the apex Court in the case of *Collector of Central Excise, Indore v. Universal Cable Ltd., [1995] Supp. 2 SCC 465 held that a good does not become excisable because it is covered by Tariff entry. Subsequently in the case of **M/s. Cadila Laboratories Pvt. Ltd. v. CCE, Vadodara in C. A. No. 6745 of 1999 decided on 13.2.2003 this Court held that merely because an item falls in a Tariff Entry, it does not become excisable unless there is manufacture and the good is marketable. Thus, it is not possible to accept the contention that merely because an item falls in a Tariff Entry it must be deemed that there is manufacture. The law still remains that the Revenue must prove that there is manufacture. In the instant case no new evidence is placed to show that there is manufacture. The product 'spent earth' remains earth even after the processing. Since excise duty was already levied on earth and paid by the assessee, any levy of excise duty on spent earth thereon would amount to levying double duty on the same product. [483-E-F, G, H; 484-A]**

***Collector of Central Excise, Indore v. Universal Cable Ltd., [1995] Supp. 2 SCC 465, followed.**

**B.P.L. Pharmaceuticals Ltd. v. Collector of Central Excise, [1995] Supp. 3 SCC 1, relied on.**

**Lal Woollen & Silk Mills (P) Ltd., Amritsar v. Collector of Central Excise, Chandigarh, [1999] 4 SCC 466, distinguished.**

****M/s. Cadila Laboratories Pvt. Ltd. v. CCE, Vadodara, [2003] 4 SCC 12, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 77-80 of 2001.

From the Judgment and Order dated 12.11.1999 of the Customs Excise, and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/32, 299/90-C, 3134/91-C, 309/92-C in F. O. Nos. E/102-105 of 1999.

WITH

C.A. Nos. 7668, 1074 of 2001.

A Raju Ramachandran, Additional Solicitor General, Hemant Sharma, Sanjiv Sen and B. Krishna Prasad for the Appellant.

Rajesh Mehale for the Respondents.

The Judgment of the Court was delivered by

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**VARIAVA, J.** These appeals are against the judgment of the larger bench of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT). The question for consideration is whether "spent earth" is liable to excise duty or not. Under the Tariff, prior to its amendment in 1985, it had been consistently held that "spent earth" was not liable to duty. However, C with the enforcement of new Tariff in 1985, a conflict arose between various benches of the Tribunal. Some benches held that "spent earth" was still not excisable, whereas other benches held that, as it now stood included by a specific sub-heading, it became excisable. In view of these conflicting decisions, the matter was placed before the larger Bench of the CEGAT D which by the impugned judgment has held that "spent earth" was still not dutiable. Hence these Appeals.

The only question for consideration for us is whether a goods becomes excisable merely because it falls within a tariff item. After 1985 Tariff item 1507 reads as "residue resulting from the treatment of fatty substances". It is E submitted that "spent earth" is a residue resulting from treatment and is thus now excisable. What we have to consider is whether the well settled twin tests of "manufacture and marketability" cease to apply if a good falls within a tariff entry.

F Prior to this Entry being introduced in 1985, it had been consistently held that "spent earth" was not manufactured. It had been consistently held that "spent earth" remained "earth" even after processing. It had been consistently held that all that happened was that its capacity to absorb was reduced. It had been consistently held that duty having been paid on "earth", no duty was leviable on "spent earth" as it remained the same product. It had G been held that to levy duty on "spent earth" would amount to levying duty twice. It is on this ground that it has been held that "spent earth" was not excisable. Even now it has not been shown that there is manufacture. The only submission is that "spent earth" is a residue resulting from the treatment of fatty substances. The submission is that now that there is a specific Entry which makes "residue resulting from the treatment of fatty substances" H

excisable, duty has to be paid on "spent earth". In other words, what is submitted is that merely because a good falls within one of the Tariff items it becomes excisable.

In support of their submission, reliance is placed on the case of *Lal Woollen & Silk Mills (P) Ltd., Amritsar* v. *Collector of Central Excise, Chandigarh,* reported in [1999] 4 SCC 466. In this case the question was whether excise duty was to be paid on dyed worsted woolen yarn made from duty paid worsted woolen grey yarn. It was argued that there was no manufacture. The Court however held as follows:

> "Admittedly both "dyed yarn" and "grey yarn" are covered by two separate distinct heads of tariff items with different duty. So this itself recognizes them to be two different goods with separate levy. In view of this it cannot be urged that there is no manufacture of "dyed yarn" from the "grey yarn".

Undoubtedly this authority appears to support the contention which is raised.

However, it appears to us that the observation made in this authority are "per incuram". In so observing, the decision of a larger Bench of this Court in the case of *Collector of Central Excise, Indore* v. *Universal Cable Ltd.* reported in [1995] Supp. 2 SCC 465, has not been noted or considered. In this case an argument that a goods become excisable because it is covered by Tariff Entry, has been negatived. In the case of *B. P. L. Pharmaceuticals Ltd.* v. *Collector of Central Excise* reported in [1995] Supp. 3 SCC 1 it has also been held that merely because there is a change in the Tariff Item the goods does not become excisable. Subsequently in a judgment dated 13th February, 2003 in Civil Appeal No. 6745 of 1999 it has been held that merely because an item falls in a Tariff Entry, it does not become excisable unless there is manufacture and the good is marketable. In *Lal Woolen & Silk Mills'* case (supra) it has not been held that the twin test of manufacture and marketability is not to apply. It is not possible to accept the contention that merely because an item falls in a Tariff Entry it must be deemed that there is manufacture. The law still remains that the burden to prove that there is manufacture and that what is manufactured is on the revenue. In this case no new evidence is placed to show that there is manufacture. "Spent earth" was "earth" on which duty has been paid. It remains earth even after the processing. Thus if duty was to be levied on it again, it would amount to levying double

A duty on the same product.

Under the circumstances, we find no infirmity in the impugned judgment. The Appeals stand dismissed. There shall be no order as to costs.

S.K.S. Appeals dismissed.

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