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M/S. SHYAM OIL CAKE LTD.

v.

COLLECTOR OF CENTRAL EXCISE, JAIPUR

NOVEMBER 23, 2004

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[S.N. VARIAVA, DR. AR. LAKSHMANAN
AND S.H. KAPADIA, JJ.]

Central Excises and Salt Act, 1944 :

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S. 2(f)—Schedule—Tariff Item 1503.10—Process “amounting to manufacture”—Process of refining edible vegetable oil—Held, neither in the Section nor in the Chapter Note nor in the Tariff Item has it been mentioned that the process indicated is to amount to manufacture—Therefore, the deeming provision cannot be brought into play—There is no manufacture and the refined oil is not excisable.

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Appellant-assessee was selling refined edible oil. The assessee purchased edible vegetable oil from the market, excise duty whereon was paid by the manufacturer, and subjected it to certain refining processes. In the classification list, the assessee mentioned that since no manufacturing activity was involved, no duty was payable on clearance of the goods. The Revenue did not accept the plea and asked the assessee to pay excise duty in respect of the goods cleared prior to March 1986 and also issued show cause notice for the period after March 1986. The appeals filed by the assessee were dismissed by the Collector (Appeals) holding that the product was classifiable under sub-heading 1503.10 and duty was payable on the same. The Customs, Excise and Gold (Control) Appellate Tribunal upheld the order. Aggrieved, the assessee filed the present appeals.

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On the question : whether processing of the edible vegetable oil purchased by the assessee results in manufacture.

Allowing the appeals, the Court

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HELD : 1. Prior to the 1986 amendment, under the definition of ‘manufacture’ as provided in section 2(f) of the Central Excises and Salt

Act, 1944, apart from actual manufacture, certain processes were considered to be manufacture. This did not include the process of refining edible oil. Therefore, this process could not be taken to amount to manufacture. Thus, for the period prior to 1986 the demand could not have been sustained in any event. [351-B-C; 352-E-F; 355-G-H]

2.1. With effect from 28.2.1986, Section 2(f) has been amended enlarging the scope of 'manufacture' by roping in processes which may or may not strictly amount to manufacture provided those processes are specified in the Section or Chapter notes of the Tariff Schedule or even in the Tariff Item, as amounting to manufacture. The language of the amended Section 2(f) indicates that what is required is not just specification of the goods but a specification of the process in relation to the said goods and a declaration that the same amounts to manufacture. [353-B-C-D]

2.2. Merely setting out a process in the Tariff Entry would not be sufficient. For a deeming provision to come into play it must be specifically stated that a particular process amounts to manufacture. In the absence of it being so specified the commodity would not become excisable merely because a separate Tariff Item exists in respect of that commodity. [355-D-E-F]

M/s. Tungabhadra Industries Ltd. v. The Commercial Tax Officer, Kurnool, [1961] 2 SCR 14; *Commissioner of Central Excise, Chandigarh-1 v. Markfed Vanaspati & Allied Industries*, (2003) 153 ELT 491 SC; *Collector of Central Excise v. Technoweld Industries*, (2003) 155 ELT 209 SC and *Aman Marble Industries Pvt. Ltd. v. Collector of Central Excise, Jaipur*, (2003) 157 ELT 393 SC, relied on.

Metlex (1) Pvt. Ltd. v. Commissioner of Central Excise, New Delhi, (2004) 165 ELT 129 SC, referred to.

2.3. In the instant case, neither in the Section nor in the Chapter Note nor in the Tariff Item is there any indication that the process indicated is to amount to manufacture. To start with, the product was edible vegetable oil. Even after the refining, it remains edible vegetable oil. As actual manufacture has not taken place, the deeming provision cannot be brought into play in the absence of it being specifically stated that the process amounts to manufacture. It is accordingly held that there is no manufacture and the refined oil is not excisable. [355-F-G; 356-A-B]

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1287-1289 of 1999.

B From the Judgment and Order dated 16.11.98 of the Central Excise Customs and Gold (Control) Appellate Tribunal, New Delhi in A. No. E/ 4367/91-C, E/1966 and 2942/92-C in F.O. Nos. 1141-1143 of 1998-C.

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C.A. No. 3923 of 1999.

C Ravindra Narain and Rajan Narain for the Appellant.

R. Mohan, Additional Solicitor General, Rupesh Kumar and B. Krishna Prasad for the Respondent.

D The Judgment of the Court was delivered by

S.N. VARIAVA, J. : These Appeals are against the Judgment dated 16th November, 1998 of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT).

E Briefly stated the facts are as follows :

F The Appellants purchase edible vegetable oil from the open market. On the oil purchased by them excise duty has been paid by the manufacturer. The Appellants subject this oil to certain processes for the purposes of refining the oil. After refining the oil, the Appellants sell the refined edible oil in the market. The Appellants filed, on 1st September, 1984, a clarification list in respect of the refined oil sought to be cleared the factory. It was mentioned therein that since no manufacturing activity was involved, no duty was payable on their clearances. On 17th September, 1984, the Superintendent of Central Excise returned the Classification List and called upon the Appellants to clear the goods on payment of excise duty at the rate of Rs. 100 per metric ton and special excise duty at 5% of the basic excise duty. The Appellants filed Civil Writ Petition No. 3215 of 1984 in the Rajasthan High Court contending that since there was no manufacture, excise duty was not payable. On 23rd October, 1984, the Rajasthan High Court passed an interim order permitting the Appellants to clear the refined

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oil from its factory subject to the Appellants furnishing a solvent security at the rate of Rs. 105 per metric on. This interim order was confirmed on 5th February, 1987.

Pursuant to the interim order, for the period prior to March 1986, the Appellants cleared their goods on furnishing security. For the period after March 1986, the Appellants were issued show-cause notices. The Appellants filed reply to the show-cause notices. By an order 1st January, 1988 the Assistant Collector held that the refined oil cleared by the Appellants was classifiable under Tariff Item 1503.10 and duty of Rs. 40,47,586.25 was payable by the Appellants. The Appellants filed an Appeal against the Order of the Assistant Collector.

On 25th January, 1991, Writ Petition No. 3215/84 was finally disposed of by the Rajasthan High Court. A direction was issued to the Assistant Collector to decide the issue of classification of the said oils. Pursuant to the directions of the High Court, the Assistant Collector gave a personal hearing to the Appellants and then passed Orders dated 18/19th February, 1991 holding that a new and distinct product had been manufactured. It was held that the said product was classifiable under sub-heading 1503.10 and duty was payable on the same. Against this Order also, an Appeal was filed by the Appellants on 2nd March, 1991.

The Appeal filed by the Appellants against the Order dated 1st January, 1988 was dismissed by the Collector (Appeals) on 30th July, 1991. The Appellants then filed a further Appeal to CEGAT against the order dated 30th July, 1991.

On 22nd January, 1992, the Collector (Appeals) dismissed the Appeal filed against the Order dated 18/19th February, 1991. Against this Order, the Appellants filed Appeals before CEGAT.

The Appeal against Order dated 30th July, 1991, was taken up for hearing by CEGAT. A difference of opinion arose between the Judicial Member and the Technical Member. Therefore, the matter was referred to a Third Member of the Tribunal. The Third Member of the Tribunal agreed with the Technical Member and held that there was manufacture and the Appellants goods were classifiable under Tariff Item 1503.10. It is held that

A duty is leviable on the same. Against this Order, the present Civil Appeals have been filed.

B On 26th February, 1999 the CEGAT also disposed of the Appeal filed by the Appellants against the Order dated 22nd January, 1992. Against that Order Civil Appeal No. 3923 of 1999 has been filed.

C The question for consideration is whether processing of the edible vegetable oil, purchased by the Appellants, results in manufacture. It is not denied that the refined oil, which is derived after the process, is a marketable commodity.

As set out hereinabove, all the authorities below have held that there is manufacture and that the refined edible oil falls under Tariff Item 1503.10.

It is necessary, at this stage, to note the concerned Tariff Item.

D It reads as follows :

“15.03 *Fixed vegetable oils, other than those of heading No. 15.02*

E 1503.10 — Which have undergone, Rs. 5,000
subsequent to their extraction, per tonne
any one or more of the
following processes, namely :

F (1) Treatment with an
alkali or acid

(2) Bleaching

(3) Deodorisation

G 1503.90 — Other Nil”

H Thus it is to be seen that Tariff Item 15.03 is in respect of “Fixed vegetable oils other than those under the heading No. 15.02”. Tariff Item 15.03 is sub-divided into two categories. Tariffs Item 1503.10 covers fixed

vegetable oils, which have undergone, subsequent to the extraction, any one or more of the following processes, namely, (1) Treatment with an alkali or acid; (2) Bleaching; and (3) Deodorisation. All other fixed vegetable oils fall under Tariff Item 1503.90. It is fairly not disputed that the Appellants undertake process mentioned in Tariff Item 1503.10. The question still remains whether by undergoing such a process there is manufacture.

Prior to 1986, Section 2(f) of the Central Excises and Salt Act, 1944 defined "manufacture" as follows :

"Manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and

(i) in relation to tobacco, includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff;

(ia) in relation to manufactured tobacco, includes the labelling or re-labelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;

(ii) in relation to salt, includes collection, removal, preparation, steeping, evaporation, boiling, or any one or more of these processes, the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce elementary salt, and the excavation or removal of natural saline deposits or efflorescence;

(iii) in relation to patent or proprietary medicines as defined in Item No. 14E of the First Schedule and in relation to cosmetics and toilet preparations as defined in Item No. 14F of that Schedule, includes the conversion of powder into tables or capsules, the labelling or re-labelling of containers intended for consumers and re-packing from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumer;

(iv) in relation to goods comprised in Item No. 18A of the First Schedule, includes sizing, beaming, warping, wrapping, winding or

A reeling, or any one or more of these processes, or the conversion of any form of the said goods into another form of such goods;

(v) in relation to goods comprised in Item No. 19-I of the First Schedule, includes bleaching, mercerizing, dyeing, printing, waterproofing, rubberizing, shrink-proofing, organdie processing or any other process or any one or more of these processes;

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(vi) in relation to goods comprised in Item No. 21(1) of the First Schedule, includes milling, raising, blowing, tentering, dyeing or any other process or any one or more of these processes;

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(vii) in relation to goods comprised in Item No. 22(1) of the First Schedule, includes bleaching, dyeing printing, shrink-proofing, tentering, heat-setting, crease resistant processing or any other process or any one or more of these processes.

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(viii) In relation to aluminium, includes lacquering or printing or both of plain containers, and the words, "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods but also any person who engages in their production or manufacture on his own account."

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Thus, under this definition, apart from actual manufacture certain processes were considered to be manufacture. This did not include the process of refining edible oil.

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With effect from 28th February, 1986 the definition of the term "manufacture" has been changed. Now under Section 2(f) "Manufacture" has been defined as follows :

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"2(f) "manufacture" includes any process,—

(i) incidental or ancillary to the completion of a manufactured product; and

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(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act,

1985 as amounting to manufacture;

and the word “manufacturer” shall be construed accordingly and shall include not only a person who employs hired labour in production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.”

Thus, the amended definition enlarges the scope of manufacture by roping in processes which may or may not strictly amount to manufacture provided those processes are specified in the Section or Chapter notes of the Tariff Schedule as amounting to manufacture. It is clear that the Legislature realised that it was not possible to put in an exhaustive list of various processes but that some methodology was required for declaring that a particular process amounted to manufacture. The language of the amended Section 2(f) indicates that what is required is not just specification of the goods but a specification of the process and a declaration that the same amounts to manufacture. Of course, the specification must be in relation to any goods.

The question whether any manufacture takes place when edible vegetable oil is processed and refined was considered by a Constitution Bench of this Court in *M/s. Tungabhadra Industries Ltd. v. The Commercial Tax Officer, Kurnool*, reported in [1961] 2 SCR 14. This Court *inter alia* considered whether the refined oil could be said to be in the same form in which it was when extracted and held as follows :

“Whether raw groundnut oil is converted into refined oil, there is no doubt processing, but this consists merely in removing from raw groundnut that constituent part of the raw oil which is not really oil. The elements removed in the refining process consist of free fatty acids, phosphotides and unsaponifiable matter. After the removal of this non-oleic matter therefore, the oil continues to be groundnut oil and nothing more. The matter removed from the raw groundnut oil not being oil cannot be used, after separation, as oil or for any purpose for which oil could be used. In other words, the processing consists in the non-oily content of the raw oil being separate and removed, rendering the oily content of the oil 100 per cent. For this reason refined oil continues to be groundnut oil within the meaning of rules 5(1)(k) and 18(2) notwithstanding that such

A oil does not possess the characteristic colour, or taste, odour, etc. of the raw groundnut oil.”

B Thus, this Court has held that prior to refining, it was raw groundnut oil and after refining even though the characteristic colour, taste and odour may have changed it remained ground oil. In other words, this Court held that there was no manufacture of a new and distinct commodity.

C This Court has held in a number of decisions that merely because some process has been carried on it is not necessary that a new commodity has come into existence. In the case of *Commissioner of C. Ex., Chandigarh-I v. Markfed Vanaspati & Allied Indus*, reported in (2003) 153 E.L.T. 491 S.C., the question was whether there was any manufacture when earth was processed and spent earth derived therefrom. This Court held that the burden to prove of manufacture is always on Revenue. It was held that merely because an Item falls in a Tariff Entry, it could not be presumed or deemed that there was manufacture. It was held that to begin with the product was earth and that even after processing it remained earth. It was held that the duty having been paid on earth, no duty was leviable on spent earth.

E In the case of *Collector of Central Excise v. Technoweld Industries*, reported in (2003) 155 E.L.T. 209 S.C., the question was whether the drawing of wires from wire rods amounted to manufacture. It was held that both the products were wires and merely because they were covered by two separate Entries did not mean that the product was excisable. It was held that in the absence of any manufacture the product did not become excisable merely because there were two separate Entries.

G In the case of *Metlex (I) Pvt. Ltd. v. Commissioner of C. Ex., New Delhi*, reported in (2004) 165 E.L.T. 129 S.C., it was again held that the burden of proving of manufacture laid on the Revenue. It was held that laminated/ metalised film remained a film and no new or distinct product has come into existence.

H In the case of *Aman Marble Industries Pvt. Ltd. v. Collector of C. Ex., Jaipur*, reported in (2003) 157 E.L.T. 393 S.C., the question was whether cutting of marble blocks into marble slabs amounted to manufacture. It was submitted that such an activity had been specifically brought into the Tariff

Item by indicating the process. It was submitted that once the process had been indicated in the Tariff Item, it would amount to manufacture. These arguments were negated. It was held that to start with the commodity was a marble and even after cutting it remained marble. It was held that there was no manufacture.

It was submitted that the decision in *Aman Marble Industries* case is not laying down the correct law inasmuch as it has not taken note of the amended definition of the term "manufacture" in Section 2(f). It was submitted that for a process to amount to manufacture it need not be so mentioned only in the Section or Chapter Note and that it could also be so mentioned in the Tariff Item. It was true that the amended definition has not been taken note of. We are in agreement with the submission that under the amended definition, which is an inclusive definition, it is not necessary that only in the Section or Chapter Note it must be specified that a particular process amounts to manufacture. It may be open to so specify even in the Tariff Item. However, either in the Section or Chapter Note or in the Tariff Entry it must be specified that the process amounts to manufacture. Merely setting out a process in the Tariff Entry would not be sufficient. If the process is indicated in the Tariff Entry, without specifying that the same amounts to manufacture, then the indication of the process is merely for the purposes of identifying the product and the rate which is applicable in that product. In other words, for a deeming provision to come into play it must be specifically stated that a particular process amounts to manufacture. In the absence of it being so specified the commodity would not become excisable merely because a separate Tariff Item exists in respect of that commodity.

In this case, neither in the Section nor in the Chapter Note nor in the Tariff Item do we find any indication that the process indicated is to amount to manufacture. To start with the product was edible vegetable oil. Even after the refining, it remains edible vegetable oil. As actual manufacture has not taken place, the deeming provision cannot be brought into play in the absence of it being specifically stated that the process amounts to manufacture.

In any event, for the period prior to 1986 i.e. before the definition of the term "Manufacture" was amended, this process could not be taken to amount to manufacture. Thus for the period prior to 1986 the demand could not have been sustained in any event.

A In this view of the matter, we are unable to sustain the Orders of the authorities below. It is accordingly held that there is no manufacture and the refined oil is not excisable. The Orders of the authorities below holding that there is manufacture and refined oil is excisable are hereby set aside. The demand notices issued are quashed.

B Accordingly, the Appeals are allowed. There will, however, be no order as to costs.

R.P.

Appeals allowed.