

M/S INDIAN OIL CORPORATION LTD.

v.

COMMISSIONER OF CENTRAL EXCISE, VADODARA
(Civil Appeal Nos. 4530-4532 of 2005)

JANUARY 13, 2012

[A.K. PATNAIK AND ANIL R. DAVE, JJ.]

Central Excise Rules, 1944 – Chapter X, r.192 – Exemption from excise duty – Entitlement to – Reduced Crude Oil (RCO) – Held: Proviso in the exemption notification made it clear that for availing exemption two conditions were to be satisfied: First, that it was proved to the satisfaction of the excise officer that the goods were used for intended use and second, where such use was elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules was followed – Plea of appellant that if the first condition is satisfied, exemption has to be granted, not acceptable – RCO produced by appellant was not to be used in its factory but at the place of generation of electricity by the Ahmedabad Electricity Company Ltd. – Hence, the second condition laid down in the proviso was also to be complied with – Language of Rule 192 of Chapter X of the Rules clearly provided that for availing concession from excise duty on excisable goods used in a specified industrial process, a person must obtain a registration certificate from the Collector and that “the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate”– Registration certificate of Ahmedabad Electricity Company Ltd. had expired on 31.12.1995, hence, exemption granted under the notification ceased on 31.12.1995 – Fresh registration certificate in favour of the Ahmedabad Electricity Company Ltd. was issued only on 26.06.1996 and such registration was not for any period prior to 26.06.1996 – As procedure laid down in Rule 192 of Chapter X of the Rules was not complied with, the appellant was not entitled to avail the exemption of excise

A *duty under the exemption notification during the period from 01.01.1996 to 25.06.1996 – Exemption Notification – Notification No. 75/84-CE dated 01.03.1984.*

B *Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 – r. 3 – Exemption from excise duty – Entitlement to – Naptha – Held: The exemption notification made it clear that exemption was to be allowed if it was proved to the Central Excise Officer having jurisdiction that the goods were cleared for the intended use – In addition, there was a further condition*
 C *in the exemption notification that where the intended use was elsewhere than the factory of production, exemption was to be allowed if the procedure set out in the 2001 Rules was followed – Since in the instant case, the Naphtha produced by the appellant in its factory was to be used for the manufacture of*
 D *fertilizer elsewhere than in its own factory, i.e. in the factory of Indo Gulf Corporation Limited, exemption could be allowed only if the procedure set out in the 2001 Rules was followed – Rule 3(1) of the 2001 Rules made it amply clear that the manufacturer, who intends to use subject goods for specified*
 E *use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be – No such application was made by Indo Gulf Corporation Limited*
 F *in the form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise – As the procedure set out in the 2001 Rules was not followed, the appellant was not entitled to exemption on the Naphtha cleared from its factory for supply to Indo Gulf Corporation*
 G *Limited for manufacture of fertilizer – Exemption Notification – Notification No. 3/2001-CE dated 01.03.2001.*

H *Two different set of appeals under Section 35L (b) of the Central Excise Act, 1944 viz. Civil appeal nos. 4530-4532 of 2005 and Civil Appeal No.8048 of 2004 came up*

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for consideration before this Court.

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Civil appeal nos. 4530-4532 of 2005

The appellant in this matter produces *inter alia* Reduced Crude Oil ("RCO"). By Notification No. 75/84-CE dated 01.03.1984, the Central government in exercise of its powers under Sub-Rule 1 of Rule 8 of the Central Excise Rules, 1944 exempted certain goods from duty of excise subject to the intended use, or the conditions, if any. The proviso in the notification stated two conditions subject to which the exemption was granted and one of the conditions was that where the intended use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is followed. Rule 192 in Chapter X of the Rules provided *inter alia* that where the Central Government has by notification under Rule 8 sanctioned the remission of duty on excisable goods other than salt used in a specified industrial process and it is necessary for this purpose to obtain an excise registration certificate, he should submit the requisite application along with the proof of payment of the registration fee and shall then be granted a registration certificate in the proper form. Rule 192 further provided that the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate. The Ahmedabad Electricity Company Ltd. had obtained a registration certificate in Form CT-2 under Rule 192 of Chapter X of the Rules and on the strength of such registration certificate, purchased RCO from the appellant availing the exemption from excise duty under Notification No. 75/84 dated 01.03.1984. The registration certificate obtained by the Ahmedabad Electricity Company Ltd. expired on 31.12.1995 and a fresh registration was granted in its favour on 26.06.1996. The Assistant Commissioner of Central Excise passed orders demanding excise duty from the appellant for RCO

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A supplied to the Ahmedabad Electricity Company Ltd. during the period 01.01.1996 to 25.06.1996 on the ground that the said company did not have a registration certificate in Form CT-2 under Rule 192 of Chapter X of the Rules during this period and, therefore, the RCO
 B supplied by the appellant to the Ahmedabad Electricity Company Ltd. during this period was not exempt from excise duty. The appellant paid the excise duty and subsequently applied for refund contending that the
 C registration certificate in Form CT-2 had been obtained by the Ahmedabad Electricity Company Ltd. on 26.06.1996. The refund claims were rejected by the Assistant Commissioner. The Commissioner of Central Excise (Appeals) confirmed the demands of excise duty for the period from 01.01.1996 to 25.06.1996 and the order
 D rejecting the refund claim. The appellant then filed appeals before the Tribunal which dismissed the same holding that as the statutory requirement of conditional exemption notification had not been complied with by the appellant it was not entitled to the exemption benefit.

E Civil Appeal No.8048 of 2004:

The appellant herein produces *inter alia* Naphtha. By Notification no. 3/2001-CE dated 01.03.2001 issued under Section 5A of the Central Excise Act, 1944, the Central
 F Government exempted *inter alia* Naphtha cleared for the intended use in the manufacture of fertilizers from excise duty subject to conditions specified in the annexure to the notification. In the annexure to the exemption
 G notification, one of the conditions specified was that where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure set out in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 is followed. Rule 3(1) of the
 H 2001 Rules provided that a manufacturer who intends to

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receive subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be. Indo Gulf Corporation Limited placed an order on 16.07.2001 on the appellant for supply of Naphtha for the purpose of manufacture of fertilizers and furnished a letter to the appellant saying it has made an application to the Commissioner of Excise for authorization for dispatch of one rake of Naphtha. The appellant supplied Naphtha to Indo Gulf Corporation Limited and while clearing the aforesaid Naphtha from its factory did not make any payment of Central Excise duty. The Commissioner of Central Excise made demand of duty on the Naphtha cleared on 16.07.2001 and also imposed a penalty equivalent to the duty amount. On appeal, the Tribunal held that under the exemption notification, the appellant could be exempted from duty on Naphtha supplied to the manufacturer of fertilizer only if the conditions specified in the exemption notification are fulfilled; that one of the conditions specified in the exemption notification was that where the goods were to be used elsewhere than in the factory of production, the exemption would be allowed if the procedure set out in the 2001 Rules was followed and in this case Rule 3(1) of 2001 Rules has not been followed, inasmuch as, the manufacturer, namely, Indo Gulf Corporation Limited had not submitted application in the form at Annexure-1 for obtaining Naphtha without payment of duty and that as the condition of the exemption notification was not complied with, the appellant was not entitled to clear naphtha without payment of excise duty and accordingly sustained the demand of excise duty. The Tribunal further held that penalty was also imposable on the appellant, but in the facts and circumstances of the case reduced the penalty amount.

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A Dismissing all the appeals, the Court

In re: Civil appeal nos. 4530-4532 of 2005

B HELD: 1.1. The proviso in the exemption notification makes it clear that for availing the exemption two conditions must be satisfied: First, that it is proved to the satisfaction of the excise officer that the goods are used for intended use specified in Column (5) of the Table annexed to the exemption notification and second, where such use is elsewhere than in the factory of production, C the procedure set out in Chapter X of the Rules is followed. One cannot, therefore, accept the contention of the appellant that if the first condition is satisfied, i.e. it is proved to the satisfaction of the Central Excise officer that the goods are used for the intended use, the exemption D has to be granted. Unless the second condition is also satisfied, i.e. the procedure set out in Chapter X of the Rules is followed where the use of the goods is elsewhere than in the factory of production, the exemption cannot be granted under the exemption E notification. [Para 7] [978-G-H; 979-A-C]

F 1.2. In the facts of the present case, the RCO was not to be used in the factory of the appellant but at the place of generation of electricity by the Ahmedabad Electricity Company Ltd. Hence, the second condition laid down in the proviso was also to be complied with. The language of Rule 192 of Chapter X of the Rules is clear that for availing concession from excise duty on excisable goods used in a specified industrial process, a person must obtain a registration certificate from the Collector and that G “the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate”. Admittedly, the registration certificate of the appellant expired on 31.12.1995. Hence, the exemption granted under the notification ceased on 31.12.1995. The fresh H registration certificate in favour of the Ahmedabad

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Electricity Company Ltd. was issued on 26.06.1996 and it is found on a reading of the copy of the CT-2 certificate annexed as Annexure P5 that the registration certificate was not for any period prior to 26.06.1996. As the procedure laid down in Rule 192 of Chapter X of the Rules has not been complied with, the appellant is not entitled to avail the exemption of excise duty under the exemption notification during the period from 01.01.1996 to 25.06.1996. [Para 8] [979-D; 980-E-H]

M/s Chunni Lal Parshadi Lal v. Commissioner of Sales Tax, U.P., Lucknow (1986) 2 SCC 501: 1986 (1) SCR 891; Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd. (2005) (189) ELT 401 (SC); Commissioner of Central Excise, New Delhi v. Harichand Shri Gopal 2010 (260) ELT 3 (SC); Thermax Private Limited v. The Collector of Customs (Bombay), New Customs House (1990) 4 SCC 440; Collector of Customs, Bombay v. J.K. Synthetics Limited (1997) 10 SCC 224; Collector of Central Excise, Jaipur v. J.K. Synthetics 2000 (2000) 10 SCC 393; Commissioner of Central Excise, New Delhi v. Hari Chand (2011) 1 SCC 236: 2010 (13) SCR 820 – referred to.

In re: Civil Appeal No.8048 of 2004:

2.1. By the exemption notification the Central Government exempted the excisable goods from duty “subject to the relevant conditions specified in the Annexure” to the exemption notification. It will be clear from Para 3 of the Annexure to the exemption notification that the exemption shall be allowed if it has been proved to the Central Excise Officer having jurisdiction that the goods are cleared for the intended use specified in column 3 of the table. In addition to this condition, there is a further condition in Para 4 of the Annexure to the exemption notification that where the intended use is elsewhere than the factory of production, the exemption shall be allowed if the procedure set out in the 2001 Rules

A is followed. The plea of the appellant that as the Naphtha
cleared from the factory of the appellant has been used
for manufacture of fertilizer, the appellant would be
entitled to exemption even if the condition specified in
Para 4 of the Annexure to the exemption notification is
not followed, is not acceptable. [Para 5] [983-D-H; 984-A-
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2.2. The condition specified in Para 4 in the Annexure
to the exemption notification states that where the intend
use is elsewhere than in the factory of production, the
exemption shall be allowed if the procedure set out in the
2001 Rules is followed. In the facts of this case, the
Naphtha produced by the appellant in its factory was to
be used for the manufacture of fertilizer elsewhere than
in its own factory, i.e. in the factory of Indo Gulf
Corporation Limited. Hence, the exemption could be
allowed only if the procedure set out in the 2001 Rules
was followed. [Para 6] [983-C-G]

2.3. Rule 3(1) of the 2001 Rules makes it amply clear
that the manufacturer, who intends to use subject goods
for specified use at concessional rate of duty, shall make
an application in quadruplicate in the Form at Annexure-
1 to the jurisdictional Assistant Commissioner or Deputy
Commissioner of Central Excise, as the case may be.
Admittedly, no such application was made by Indo Gulf
Corporation Limited in the form at Annexure-1 to the
jurisdictional Assistant Commissioner or Deputy
Commissioner of Central Excise. As the procedure set
out in the 2001 Rules has not been followed, the appellant
was not entitled to exemption on the Naphtha cleared
from its factory for supply to Indo Gulf Corporation
Limited for manufacture of fertilizer. [Para 7] [984-G-H;
985-A-B]

Case Law Reference:

H 1986 (1) SCR 891 referred to Para 4

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(2005) (189) ELT 401 (SC)	referred to	Para 5	A
2010 (260) ELT 3 (SC)	referred to	Para 6	
(1990) 4 SCC 440	referred to	Para 6	
(1997) 10 SCC 224	referred to	Para 6	B
(2000) 10 SCC 393	referred to	Para 6	
2010 (13) SCR 820	referred to	Para 6	

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
4530-4532 of 2005. C

From the Judgment & Order dated 15.03.2005 of
Customs, Excise and Service Tax Appellate Tribunal, West
Zonal Bench, Mumbai in Appeal Nos. E/2329/99, E/2734/2000
and E/835/37. D

WITH

C.A. Nos. 8048 of 2004.

Alok Yadav, M.P. Devanath, Krishna Mohan Menon,
Rajesh Kumar for the Appellant. E

Anup Choudhary, Ashok K. Srivastava, Sunita Rani Singh,
B. Krishna Prasad, Anil Katiyar for the Respondent.

The Judgment of the Court was delivered by F

A.K. PATNAIK, J.

CIVIL APPEAL NOS. 4530-4532 OF 2005:

1. These are appeals under Section 35L (b) of the Central
Excise Act, 1944 against the order dated 15.03.2005 of the
Customs, Excise and Service Tax Appellate Tribunal, West
Zonal Bench, Mumbai, (for short "the Tribunal"). G

2. The facts very briefly are that the appellant produces
inter alia Reduced Crude Oil (for short "RCO"). By Notification H

- A No. 75/84-CE dated 01.03.1984, the Central government in exercise of its powers under Sub-Rule 1 of Rule 8 of the Central Excise Rules, 1944 (for short "the Rules") exempted goods described in Column 3 of the table annexed to the notification from so much of the duty of excise as is specified
- B in the notification subject to the intended use, or the conditions, if any, laid down in Column 5 of the table annexed to the notification. One of the goods exempted from excise duty by the notification was RCO, if produced only from indigenous crude oil subject to intended use as fuel for generation of
- C electrical energy by electricity undertakings owned or controlled by the Central Government or any State Government or any State Electricity Board or any local authority or any licensee under Part-II of the Indian Electricity Act, 1910 except those who produce electrical energy not for sale but for their own
- D consumption or for supply to their own undertakings. The proviso in the notification stated two conditions subject to which the exemption was granted and one of the conditions was that where the intended use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is
- E followed. Rule 192 in Chapter X of the Rules provided inter alia that where the Central Government has by notification under Rule 8 sanctioned the remission of duty on excisable goods other than salt used in a specified industrial process and it is necessary for this purpose to obtain an excise registration
- F certificate, he should submit the requisite application along with the proof of payment of the registration fee and shall then be granted a registration certificate in the proper form. Rule 192
- G further provided that the concession shall, unless renewed by the Collector, cease on the expiry of the registration certificate.
- H 3. The Ahmedabad Electricity Company Ltd. had obtained a registration certificate in Form CT-2 under Rule 192 of Chapter X of the Rules and on the strength of such registration certificate, purchased RCO from the appellant availing the exemption from excise duty under Notification No. 75/84 dated 01.03.1984 (for short 'the exemption notification'). The

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registration certificate obtained by the Ahmedabad Electricity Company Ltd. expired on 31.12.1995 and a fresh registration was granted in its favour on 26.06.1996. After issuing two show-cause notices, the Assistant Commissioner of Central Excise passed two orders demanding excise duty of Rs. 32,35,485/- from the appellant for RCO supplied to the Ahmedabad Electricity Company Ltd. during the period 01.01.1996 to 25.06.1996 on the ground that the said company did not have a registration certificate in Form CT-2 under Rule 192 of Chapter X of the Rules during this period and, therefore, the RCO supplied by the appellant to the Ahmedabad Electricity Company Ltd. during this period was not exempt from excise duty. The appellant paid the excise duty and subsequently applied for refund contending that the registration certificate in Form CT-2 had been obtained by the Ahmedabad Electricity Company Ltd. on 26.06.1996. The refund claims were rejected by the Assistant Commissioner. Thereafter, the appellant filed appeals before the Commissioner of Central Excise (Appeals) who confirmed the demands of excise duty for the period from 01.01.1996 to 25.06.1996. The appellant then filed three appeals before the Tribunal against the orders of Commissioner of Central Excise (Appeals) confirming demand and the order rejecting the refund claim. By the impugned order, the Tribunal dismissed the appeals saying that as the statutory requirement of conditional exemption notification had not been complied with by the appellant it was not entitled to the exemption benefit.

4. Mr. Alok Yadav, learned counsel for the appellant, submitted that the Tribunal failed to appreciate that the RCO supplied by the appellant to Ahmedabad Electricity Company Ltd. was in fact used as fuel for generation of electrical energy and therefore the appellant was entitled to the benefit of the exemption of excise duty under the exemption notification. He cited the decision of this Court in *M/s Chunni Lal Parshadi Lal v. Commissioner of Sales Tax, U.P., Lucknow [(1986) 2 SCC 501]* wherein it was held that a dealer can prove by any way

- A other than the way contemplated by Rule 12A of the U.P. Sales Tax Rules, 1948 that the goods purchased from him were for resale. According to Mr. Yadav, the registration certificate in Form CT-2 is not the only way to prove that the goods sold by the appellant to the Ahmedabad Electricity Company Ltd. were used as fuel for generation of electricity. He also relied on *Commissioner of Customs (Imports), Mumbai v. Tullow India Operations Ltd.* [(2005) (189) ELT 401 (SC)] wherein this Court held that ONGC being a government company would get the requisite exemption, subject, of course, to its fulfilling the condition of obtaining the essentiality certificate. He argued that the appellant being a government company should not be denied the exemption on a technical ground that there was no registration certificate during the period 01.01.1996 to 25.06.1996.
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- D 5. Mr. Anup Chaudhary, learned senior counsel appearing for the respondent, on the other hand, submitted that the exemption notification stipulated in the proviso the conditions under which the exemption from excise duty would be available and if the conditions were not fulfilled, the exemption would not be available to the manufacturer. He submitted that one of the conditions was that where the goods were to be used in a place other than in the factory of production, the procedure set out in Chapter X of the Rules is to be followed. He submitted that the procedure laid down in Rules 192 to 196 BB in Chapter X of the Rules, therefore, have to be followed, and if the procedure is not followed in any case, the exemption cannot be granted under the exemption notification. He submitted that since under Rule 192, the Ahmedabad Electricity Company Ltd. was required to obtain a registration certificate in Form CT-2 and the said company did not obtain a certificate for the period 01.01.1996 to 25.06.1996, RCO supplied by the appellant to the Ahmedabad Electricity Company Ltd. during this period was exigible to excise duty. He cited the judgement of the Constitution Bench of this court in *Commissioner of Central Excise, New Delhi v. Harichand Shri Gopal* [2010 (260) ELT
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3 (SC)] in which it has been held that if a party wants remission of duty, he has to follow certain prerequisites, the object of which is to see that the goods are not diverted or utilised for some other purpose under the guise of the exemption notification and, therefore, a plea that the goods were meant for intended use specified in the exemption notification has to be rejected.

6. The question whether it was enough to prove to the satisfaction of the Central Excise Officer that the goods are for the intended use specified in the notification of exemption or whether in addition the procedure laid down in Rule 192 of Chapter X of the Rules was also to be complied with for availing concession under the exemption notification was raised before this Court in *Thermax Private Limited v. The Collector of Customs (Bombay), New Customs House* [1992 (61) ELT 352 (SC)] = [(1990) 4 SCC 440] and a two-Judge Bench of this Court held that the possession of a license or production of a C-2 certificate as provided in Rule 192 of Chapter X of the Rules enables the applicant to secure the necessary concession and that the entitlement to the concession will depend on whether the purchaser is the holder of a L-6 license (or C-2 certificate) or not. These observations made in *Thermax Private Limited v. The Collector of Customs (Bombay), New Customs House* (supra) were held by a two-Judge Bench of this Court in *Collector of Customs, Bombay v. J.K. Synthetics Limited* [1996 (87) ELT 582 (SC)] = [(1997) 10 SCC 224] as not laying down principle and held to be limited to eligibility for concession under Rule 192 of the Rules. In the aforesaid decision in the case of *Collector of Customs, Bombay v. J.K. Synthetic Limited* (supra) this Court took the view that where there was evidence on record that show the intended use of the material, the benefit of exemption could be granted. In a subsequent decision in the case of *Collector of Central Excise, Jaipur v. J.K. Synthetics* [2000 (120) ELT 54 (SC)] = [(2000) 10 SCC 393] a three-Judge Bench of this Court took the view that if there was substantial compliance of the procedure laid down in Chapter X of the Rules, exemption could

A be granted. In the case of *Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal* [2010 (260) ELT 3 (SC)] = [(2011) 1 SCC 236] a Constitution Bench of this Court considered the decisions of this Court in *Thermax Private Limited v. The Collector of Customs (Bombay)*, *New Customs House (supra)* and *Collector of Central Excise, Jaipur v. J.K. Synthetics (supra)* and held that a provision for exemption, concession or exception, as the case may be, has to be construed strictly and if the exemption is available only on complying certain conditions, the conditions have to be

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C complied with. In the aforesaid decision, the Constitution Bench further held that detailed procedures have been laid down in Chapter X of the Rules so as to curb the diversion and utilization of goods which are otherwise excisable and the plea of substantial compliance or intended use therefore has to be

D rejected.

7. When we strictly construe the exemption notification in this case, we find that the proviso in the exemption notification reads as under:

E Provided that where any such exemption is subject to the intended use, the exemption in such case shall be subject to the following conditions namely:-

(i) That it is proved to the satisfaction of an officer not below the rank of the Assistant Collector of Central Excise that such goods are used for the intended use specified in Column (5) of the said Table: and

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(ii) Where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Central Excise Rules, 1944, is followed.

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Thus, the proviso makes it clear that for availing the exemption two conditions must be satisfied: First, that it is proved to the satisfaction of the excise officer that the goods are used for intended use specified in Column (5) of the Table annexed to

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the exemption notification and second, where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of the Rules is followed. We cannot, therefore, accept the contention of the learned counsel of the appellant that if the first condition is satisfied, i.e. it is proved to the satisfaction of the Central Excise officer that the goods are used for the intended use, the exemption has to be granted. In our considered opinion, unless the second condition is also satisfied, i.e. the procedure set out in Chapter X of the Rules is followed where the use of the goods is elsewhere than in the factory of production, the exemption cannot be granted under the exemption notification.

8. In the facts of the present case, the RCO was not to be used in the factory of the appellant but at the place of generation of electricity by the Ahmedabad Electricity Company Ltd. Hence, the second condition laid down in the proviso was also to be complied with. Rule 192 of Chapter X of the Rules is quoted hereinbelow:

“RULE 192. Application for concession.—

Where the Central Government has, by notification under rule 8, or section 5A of the Act, as the case may be, sanctioned the remission of duty on excisable goods other than salt, used in a specified industrial process, any person wishing to obtain remission of duty on such goods, shall make application to the Collector in the proper Form stating the estimated annual quantity of the excisable goods required and the purpose for and the manner in which it is intended to use them and declaring that the goods will be used for such purpose and in such manner. If the Collector is satisfied that the applicant is a person to whom the concession can be granted without danger to the revenue, and if he is satisfied, either by personal inspection or by that of an officer subordinate to him that the premises are suitable and contain a secure store-room suitable for the storage of the goods, and if the applicant

A agrees to bear the cost of such establishment as the
 Collector may consider necessary for supervising
 operation in his premises for the purposes of this Chapter,
 the Collector may grant the application, and the applicant
 shall then enter into a bond in the proper Form with such
 B surety or sufficient security, in such amount and under such
 conditions as the Collector approves. Where, for this
 purpose, it is necessary for the applicant to obtain an
 Excise registration certificate, he shall submit the requisite
 application along with the proof for payment of registration
 C fee and shall then be granted a registration certificate in
 the proper Form. The concession shall, unless renewed by
 the Collector, cease on the expiry of the registration
 certificate:

D Provided that, in the event of death, insolvency or
 insufficiency of the surety, or where the amount of the bond
 is inadequate, the Collector may, in his discretion, demand
 a fresh bond; and may, if the security furnished for a bond
 is not adequate, demand additional security.”

E The language of Rule 192 of Chapter X of the Rules is clear
 that for availing concession from excise duty on excisable goods
 used in a specified industrial process, a person must obtain a
 registration certificate from the Collector and that “the
 concession shall, unless renewed by the Collector, cease on
 F the expiry of the registration certificate”. Admittedly, the
 registration certificate of the appellant expired on 31.12.1995.
 Hence, the exemption granted under the notification ceased on
 31.12.1995. The fresh registration certificate in favour of the
 Ahmedabad Electricity Company Ltd. was issued on
 G 26.06.1996 and we find on a reading of the copy of the CT-2
 certificate annexed as Annexure P5 that the registration
 certificate was not for any period prior to 26.06.1996. As the
 procedure laid down in Rule 192 of Chapter X of the Rules has
 not been complied with, the appellant is not entitled to avail the
 exemption of excise duty under the exemption notification
 H during the period from 01.01.1996 to 25.06.1996.

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9. The appeals are, therefore, dismissed but there shall be no order as to costs.

CIVIL APPEAL NO.8048 OF 2004:

This is an appeal under Section 35L (b) of the Central Excise Act, 1944 against the order dated 02.07.2004 of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (for short "the Tribunal").

2. The facts very briefly are that the appellant produces inter alia Naphtha. By Notification no. 3/2001-CE dated 01.03.2001 (for short "the exemption notification") issued under Section 5A of the Central Excise Act, 1944 (for short "the Act") the Central Government exempted inter alia Naphtha cleared for the intended use in the manufacture of fertilizers from excise duty subject to relevant conditions specified in the annexure to the notification. In the annexure to the exemption notification, one of the conditions specified was that where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure set out in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 (for short "the 2001 Rules") is followed. Rule 3(1) of the 2001 Rules provided that a manufacturer who intends to receive subject goods for specified use at concessional rate of duty, shall make an application in quadruplicate in the Form at Annexure-1 to the jurisdictional Assistant Commissioner or Deputy Commissioner of Central Excise, as the case may be. Indo Gulf Corporation Limited placed an order on 16.07.2001 on the appellant for supply of Naphtha for the purpose of manufacture of fertilizers and furnished a letter to the appellant saying it has made an application to the Commissioner of Excise for authorization for dispatch of one rake of Naphtha. The appellant supplied 2241.908 MT of Naphtha to Indo Gulf Corporation Limited and while clearing the aforesaid Naphtha from its factory did not make any payment of Central Excise duty. The Commissioner of Central Excise issued show cause notice

A dated 13.06.2002 to the appellant and after considering the
reply of the appellant passed the order dated 30.09.2002
confirming the demand of duty amounting to Rs. 44,71,902/-
on the Naphtha cleared on 16.07.2001 and also imposed a
penalty equivalent to the duty amount. The appellant filed an
B appeal against the order of the Commissioner before the
Tribunal and the Tribunal held in the impugned order that under
the exemption notification, the appellant could be exempted
from duty on Naphtha supplied to the manufacturer of fertilizer
only if the conditions specified in the exemption notification are
C fulfilled. The Tribunal further held that one of the conditions
specified in the exemption notification was that where the goods
were to be used elsewhere than in the factory of production,
the exemption would be allowed if the procedure set out in the
2001 Rules was followed and in this case Rule 3(1) of 2001
D Rules has not been followed, inasmuch as, the manufacturer,
namely, Indo Gulf Corporation Limited had not submitted
application in the form at Annexure-1 for obtaining Naphtha
without payment of duty and had only cleared the Naphtha
without payment of duty on the basis of a letter dated
E 16.07.2001 wherein it was mentioned that it has submitted its
application to the Commissioner for issuance of authorization
for dispatching one rake of Naphtha. The Tribunal held that as
the condition of the exemption notification has not been
complied with, the appellant was not entitled to clear naphtha
without payment of excise duty and accordingly sustained the
F demand of excise duty. The Tribunal also held that as the
appellant had cleared Naphtha without payment of duty and
without getting the requisite Annexure-1 from its customer,
penalty was also imposable on the appellant, but on the facts
and circumstances of the case the penalty was excessive. The
G Tribunal accordingly reduced the penalty to Rs.1,00,000/- only.

3. Mr. Alok Yadav, learned counsel for the appellant,
submitted that as the Naphtha supplied to Indo Gulf Corporation
Limited was in fact used for manufacture of fertilizer, the
H appellant was entitled to the benefit of exemption notification.

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He further submitted that as the appellant was a government company, he should not be denied the exemption on a technical ground that the application at Annexure-1 was not submitted to the authorities by the manufacturer of fertilizer as provided in Rule 3(1) of the 2001 Rules.

4. Mr. Anup Chaudhary, learned senior counsel appearing for the respondent, on the other hand, submitted that one of the conditions specified in the exemption notification was that where the goods were to be used in the place other than in the factory of production, the procedure set out in the 2001 Rules has to be followed and in this case the procedure set out in Rule 3(1) of the 2001 Rules has not been followed.

5. We have considered the submissions of the learned counsel for the parties and we find that by the exemption notification the Central Government exempted the excisable goods from duty "subject to the relevant conditions specified in the Annexure" to the exemption notification. Paras 3 and 4 in the Annexure to the exemption notification read as follows:

"3. The exemption shall be allowed if it has been proved to the satisfaction of an officer not below the rank of the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction that such goods are cleared for the intended use specified in column 3 of the table.

4. Where such use is elsewhere than in the factory of production, the exemption shall be allowed if the procedure set out in the Central Excise (Removal of Goods at Concessional Rate of Duty for manufacture of Excisable Goods) Rules, 2001 is followed."

It will be clear from Para 3 of the Annexure to the exemption notification that the exemption shall be allowed if it has been proved to the Central Excise Officer having jurisdiction that the goods are cleared for the intended use specified in column 3

A of the table. In addition to this condition, there is a further
 condition in Para 4 of the Annexure to the exemption
 notification that where the intended use is elsewhere than the
 factory of production, the exemption shall be allowed if the
 procedure set out in the 2001 Rules is followed. We, therefore,
 B do not accept the submission of Mr. Yadav that as the Naphtha
 cleared from the factory of the appellant has been used for
 manufacture of fertilizer, the appellant would be entitled to
 exemption even if the condition specified in Para 4 of the
 Annexure to the exemption notification is not followed.

C 6. The condition specified in Para 4 in the Annexure to the
 exemption notification states that where the intend use is
 elsewhere than in the factory of production, the exemption shall
 be allowed if the procedure set out in the 2001 Rules is
 followed. In the facts of this case, the Naphtha produced by the
 D appellant in its factory was to be used for the manufacture of
 fertilizer elsewhere than in its own factory, i.e. in the factory of
 Indo Gulf Corporation Limited. Hence, the exemption could be
 allowed only if the procedure set out in the 2001 Rules was
 followed.

E 7. Rule 3(1) of the 2001 Rules is extracted hereinbelow:

F **“Rule 3. Application by the manufacturer to obtain the
 benefit. – (1) A manufacturer who intends to receive
 subject goods for specified use at concessional rate of
 duty, shall make an application in quadruplicate in the Form
 at Annexure-1 to the jurisdictional Assistant Commissioner
 or Deputy Commissioner of Central Excise, as the case
 may be (hereinafter referred to as the said Assistant
 Commissioner or Deputy Commissioner).”**

G Rule 3(1) makes it amply clear that the manufacturer, who
 intends to use subject goods for specified use at concessional
 rate of duty, shall make an application in quadruplicate in the
 Form at Annexure-1 to the jurisdictional Assistant
 H Commissioner or Deputy Commissioner of Central Excise, as

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the case may be. Admittedly, no such application was made A
by Indo Gulf Corporation Limited in the form at Annexure-1 to
the jurisdictional Assistant Commissioner or Deputy
Commissioner of Central Excise. As the procedure set out in
the 2001 Rules has not been followed, the appellant was not
entitled to exemption on the Naphtha cleared from its factory B
for supply to Indo Gulf Corporation Limited for manufacture of
fertilizer.

8. We, therefore, do not find any merit in the appeal and
we accordingly dismiss the same. There shall be no order as C
to costs.

B.B.B.

Appeals dismissed.