M/S. SATNAM OVERSEAS LTD. A

v.

.COMMNR. OF CENTRAL EXCISE, NEW DELHI.

(Civil Appeal No. 8958 of 2003) B

MARCH 18, 2015

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

Central Excise Act, 1944 – s. 2(f) – Manufacture – Assessee engaged in packing of mixture of raw rice, dehydrated vegetables and spices in the name of rice and spice – Said mixture in pre-determined proportion is blended together and is heated, if required to sterilize the product and the mixed product packed in pouches with nitrogen flushing for a longer life – Said process, if amounts to 'manufacture' – Held: Mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under goes transformation and it becomes a distinctive and new product – Thus, mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product – Activity undertaken by assessee does not amount to manufacture and rate of duty would be nil – It continues to be a product of milling industry and classifiable under sub-heading 11.01 – Central Excise Tariff Act, 1985. C D E F

Allowing the appeal, the Court G

HELD: 1.1 The process would be treated as "manufacture" only if new product known to the

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A market comes into existence with original product losing its original character. Mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless its original identity also under B goes transformation and it becomes a distinctive and new product. Applying the said principle to the facts of the instant case, it is clear that mere addition of dehydrated vegetables and certain spices to the raw rice, would not make it a different product. Its primary C and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, this rice, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking D is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to be cooked. Therefore, the order E passed by the CEGAT that there is a transformation into a new commodity, commercially known as distinct and separate commodity, cannot be accepted. [Paras 9, 18, 19, 20] [444-B,C; 453-H, 454-A-D]

F 1.2 Since the activity undertaken by the assessee does not amount to manufacture, Rate of duty on this product, is 'nil'. Even otherwise the classification of the product by the Revenue under sub- heading 21.08 may not be correct. Since it does not amount to G `manufacture' as the essential characteristics of the product, still remains the same, namely, rice, a natural corollary would be that it continues to be the product of the milling industry and would be classifiable under sub-heading 11.01. Thus, the order of the CEGAT as H well as demand of excise duty by the Revenue is set

aside. [Para 21, 22] [454-E-H; 455-A-B] A

Crane Betel Nut Powder Works vs. Commissioner of Customs, Central Excise, Tirupathi **(2007 (210) ELT, 171 (S.C.)** ; *Commissioner of Central Excise vs. Laljee Godhoo & Co.* **(2007 (216) ELT 514 (S.C);** *Laljee Godhoo & Co. vs. Commissioner of Central Excise, Mumbai* **(2001 (132) ELT 287 (S.C.);** *Deputy Commissioner Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. PIO Food Packers* **(1980 (6) ELT 343 (S.C.) – referred to.** B C

Case Law Reference

2007 (210) ELT, 171 (S.C.)	**referred to.**	**Para 11**
2007 (216) ELT 514 (S.C)	**referred to.**	**Para 14**
(2001 (132) ELT 287 (S.C.)	**referred to.**	**Para 14**
(1980 (6) ELT 343 (S.C.).	**referred to.**	**Para 16**

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8958 of 2003. E

From the Judgment and Order dated 10.10.2002 of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/2510/01-D.

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L. Charanaya, V. Lakshmikumaran, M. P. Devanath, Vivek Sharma, Aditya BhatacharyaPrashanth S. Shivadass, R. Ramachandran, Rajesh Kumar for the Appellant.

A. K. Sanghi, Nisha Bagchi, Shweta Garg, B. Krishna Prasad for the Respondent. G

The Judgment of the Court was delivered by

A.K.SIKRI,J. 1. The appellant/assessee challenges the H

A correctness and validity of the final order dated 10.10.2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), New Delhi in the appeal which was preferred by the assessee against the order of B Commissioner (Appeals) who had upheld the Order-in-Original dated 17.3.1999 passed by the Additional Commissioner pursuant to show cause notice dated 4.8.1997 issued by him. In the said show cause notice the Additional Commissioner had proposed to classify the C product of the appellant/assessee under Heading 2108 of the Central Excise Tariff Act, 1985, as Miscellaneous Edible preparation not elsewhere specified or included.

D 2. It may be stated that assessee is engaged in the packing combination of mixture of raw rice, dehydrated vegetables and spices in the name of 'Rice and Spice'. The exact process which is taken note of by the Tribunal as explained by Cl. R.L. Mehta, Deputy General Manager of E the assessee is as follows:

> "This product i.e. Rice Spice is a combination of Raw Rice, Dehydrated vegetables and certain spices and condiments mixed in a pre-determined proportion F and that blended together in a mixer for uniformity and the blended mixer is heated, if required, to sterlize the product. The mixed product is the packed in pouches with Nitrogen flushing for a longer shelf life".

G 3. The defence putforth by the assessee to the show cause notice issued by the Additional Commissioner was that the aforesaid process does not amount to 'manufacture' within the meaning of Section 2(f) of the Central Excise Act, 1944. H It was also argued that, in any case, the product was not

classifiable under Heading 2108 of the Central Excise Tariff Act, 1985 as claimed by the Revenue but it should be covered under Heading 11.01. That Heading applies to products of the milling industry, including flours, groats, meal and grains of cereals, and flour, meal or flakes of vegetables on which nil duty is payable. It was, thus, contended that in no case the assessee was under any obligation to pay the duty on the aforesaid process.

4. The Additional Commissioner did not agree with the contention of the assessee holding it to be a manufacturing process, and opinion of the Additional Commissioner is accepted by the Commissioner (Appeals) as well as by CEGAT.

5. Ms. Charanaya, the Learned counsel appearing for the appellant argued before us that the authorities committed serious error in holding the aforesaid process of the assessee as "manufacturing process". Her arguments was that from the reading of the process described above, it would be manifest that it only involved mixing of raw rice, dehydrated vegetable with some spice and did not bring about any new product. It was submitted that the aforesaid mixture, which is sold in a packaged form, is raw food and still needs to be cooked to make it edible. She pointed out that on the packing/pouch of the product even the cooking instructions are mentioned in the following manner:

> "All cooking appliances vary in performance, these are guidelines only. Empty contents into 375 ml (2/3 pints) of cold water, stir well. Add I tablespoon of butter or margarine. Bring to boil, uncovered, in a small saucepan. Reduce heat, cover the saucepan and

A simmer gently for approximately 15 minutes or until all water is absorbed."

7. It was further submitted that there was no new product which came into existence as that product was still known as B rice which did not lose its essential character and therefore it could not be treated as 'manufacture'. In support the aforesaid submission Ms. Charanya referred to certain judgments which shall be discussed by us at the later stage.

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8. In support of her other submission viz. that the product would still be classified under Heading 11.01, the learned counsel referred to the 'Rule of Interpretation' contained in the Schedule of Excise Tariff known as "Rules for the D Interpretation of this Schedule". In this behalf Rule 3 and in particular clause (b) thereof was pressed into service. Therefore it would be apposite to take note of this clause as well which we reproduce below:

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"When by application of sub-rule (b) of rule 2 or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

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(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or G substances contained in mixed or composite goods or to part only of the items in a set, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete H or precise description of the goods.

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in the numerical order among those which equally merit consideration."

8. Mr. A.K. Sanghi learned senior counsel appearing on behalf of the Revenue, countered the aforesaid submission by pointing out that a specific finding was arrived at by the Tribunal, affirming the finding of the quasi-judicial authorities below to the effect that a new product had come into existence as a result of the processes undertaken by the assessee. It was specifically held by the CEGAT that rice did not remain rice at all as a mixed product containing rice, vegetable and spices emerges after the specific process was undertaken by the assessee. He also referred to those observations of the CEGAT where it has remarked that there is a transformation of a new commodity commercially known as distinct and separate commodity having its own character, use and name. Be it the result of one process or several processes in fact ' manufacture' had taken place. He, thus, argued that when a new commodity had come into existence as held by CEGAT, this was the trigger point for the levy of excise duty under the Excise Act. He further submitted that in view of the aforesaid, viz. coming into existence a new

A product, that particular edible product had to be fallen under Chapter 11 of the Tariff as it is not a product of milling industry not classifiable under Chapter 11 of the Tariff.

9. From the aforesaid arguments advanced by counsel
B on the either side, it is clear that there is no dispute about the legal proposition that the process would be treated as "manufacture" only if new product known to the market comes into existence with original product losing its original
C character.

10. The only question is as to whether this test is satisfied on the facts of the present case. Before we embark on the discussion on this issue and answer the same, it would be
D advisable to take note of few judgments wherein legal position that prevails on this subject is stated with elaboration.

11. The first judgment which we want to mention, which was cited by Ms. Charanya, is Crane Betel Nut Powder Works
E vs. Commissioner of Customs, Central Excise, Tirupathi (2007 (210) ELT, 171 (S.C.). In the said case the assessee was engaged in the business of marketing betel nuts in different sizes after processing them by adding essential/non-
F essential oils, menthol, sweetening agent etc. Initially, the assessee cleared the goods under Chapter Sub-heading 2107 of the Central Excise Tariff and was paying duty accordingly. However, the assessee filed a revised classification declaration under Rule 173B of the Central
G Excise Rules, 1944, with effect from 17th July, 1997, claiming classification of its product under Chapter Sub-heading 0801.00 of the Central Excise Tariff. It was contended by the assessee that the crushing of betel nuts into smaller pieces
H with the help of machines and passing them through different

sizes of sieves to obtain goods of different sizes/grades and sweetening the cut pieces did not amount to manufacture in view of the fact that mere crushing of betel nuts into smaller pieces did not bring into existence a different commodity which had a distinct character of its own.

12. Though the authorities below had decided against the assessee, this Court reversed the said view holding that the said process would not amount to 'manufacture' as the process involving manufacture does not always result in the creation of a new product. In the instant case notwithstanding the manufacturing process, it could not be said that a transformation had taken place resulting in the formation of a new product. The relevant portion of the judgment is reproduced below:

> ".30. In our view, the process of manufacture employed by the appellant- company did not change the nature of the end product, which in the words of the Tribunal, was that in the end product the `betel nut remains a betel nut'. The said observation of the Tribunal depicts the status of the product prior to manufacture and thereafter. In those circumstances, the views expressed in the D.C.M. General Mills Ltd. (supra) and the passage from the American Judgment (supra) become meaningful. The observation that manufacture implies a change, but every change of not manufacture and yet every change of an article is the result of treatment, labour and manipulation is apposite to the situation at hand. The process involved in the manufacture of sweetened betel nut pieces does not result in the manufacture of a new product as the end product

A continues to retain its original character though in a modified form."

13. What is to be highlighted is that even after the betel nut which had been cut to different sizes and had undergone B the process, the Court did not treat it as 'manufacture' within the meaning of Sec.2(f) of the Act on the ground that the end product was still a betel nut and there was no change in the essential character to that article even when it was the result C of treatment, labour and manipulation, inasmuch as even after employing the same it had not resulted in the manufacture of a new product as the end product continued to retain its original character.

D 14. Another judgment which was referred to by learned counsel for the appellant is Commissioner of Central Excise vs. Laljee Godhoo & Co. (2007 (216) ELT 514 (S.C). Vide this judgment the Court affirmed the view taken by the CEGAT, E holding that the process of subjecting raw asafetida (hing) resulting in formation of compounded asafoetida does not amount to manufacture, even when this process has undergone chemical change, because of the reason that the said chemical change had not brought even after it underwent F a process, any new product as the product remained the same at starting and terminal points of the process. Though the exact process undertaken is not discernible from the judgment, the learned counsel pointed out that this process G is described in the order passed by the CEGAT against which the appeal was preferred by the Department. The order of the CEGAT is reported in Laljee Godhoo & Co. vs. Commissioner of Central Excise, Mumbai (2001 (132) ELT 287 (S.C.). The process noted in the judgment of the CEGAT H

runs thus:

> "The gum Arabic and wheat flour are blended in the sigma mixers. Filtered water mixed asafoetida is then poured slowly into the mixer over the gum and wheat flour. This gets the product ready. Further the resultant product is given a heat treatment by suction in pipes through which a heater is attached and the moisture is sucked out. The powder is then passed through a hammer mill where it is crushed thoroughly. This powder is then passed through a sieve, which contains magnet balls absorbing any fine iron particles. The compounded asafoetida in powder form is then packed in different grammage bottles. In case of lump form, the gum and wheat flour along with filtered water mixed with asafoetida is poured into the sigma mixer. This process takes about 40 minutes. After this the mixture, which has by now made into lumps is extracted and put into the aluminium trays and dried for a day before it is packed in cartons."

15. We would like to reproduce para 5 of the order of the CEGAT, since this judgment was upheld by this Court in the said case. This para is to the following effect:

> "It is common ground that the processes to which the raw asafoetida is subjected, resulting in the lump or powder which is sold does not bring about any chemical change in the asafoetida.The process, as we have seen, is nothing more than the addition to the asafoetida of wheat flour and gum arabic.It is stated that gum Arabic is added in order that the particles of the asafoetida and wheat flour adhere to each other. Neither the gum

A arabic nor the wheat flour reacts chemically with the asafoetida. The contention is that while the raw asafoetida itself is used in cases where its very strongly pungent flavour is required, for example, in the making of pickles and papad, it is compounded in order to render it more suitable for use in day-to-day cooking where a lighter flavour is desired. The essential character of the product therefore does not change. It is used in both its concentrated and blended form only as an addition to food preparation, flavouring agent or for the medicinal properties that it is reputed to possess."

16. Again the test which was applied was that essential character of the product did not change and, therefore, it would not amount to manufacture. It was so held even when gum arebic as well as wheat flour were mixed in the process. A pertinent aspect which was noted was that mixing of these articles did not result in chemical reaction with asafoetida.

17. Last judgment to which we would like to refer to is Deputy Commissioner Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. PIO Food Packers (1980 (6) ELT 343 (S.C.). In that case, the process undertaken by the assessee was to wash the pineapple, after purchase, and then remove inedible portion, the end crown as well as skin and inner core. After removing those inedible portions the pineapple fruit used to be sliced and the slices were filled in canes after adding sugar as preservative. Thereafter, canes would be sealed under temperature and then put in a boiled water for sterlisation. Identical question was posed viz. whether this process amounted to 'manufacture'. Giving

the answer in the negative, the Court held that even when with each process suffered, the original commodity experienced a change, such a change would not amount to 'manufacture' unless it seized to be the original commodity and a new and distinct article was produced therefrom. This is explained in detail in paras 4 and 5 of the said judgment and therefore we would like to reproduce the same as under:

> 4. Section 5-A(1)(a) of the Kerala General Sales Tax Act envisages the consumption of a commodity in the manufacture of another commodity. The goods purchased should be consumed, the consumption should be in the process of manufacture, and the result must be the manufacture of other goods. There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where

there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

5. A large number of cases has been placed before us by the parties, and in each of them the same principle has been applied: Does the processing of the original commodity bring into existence a commercially different and distinct article ? Some of the cases where it was held by this Court that a different commercial article had come into existence include Anwarkhan Mehboob Co. v. The State of Bombay and Others (where raw tobacco was manufactured into bidi patti), A Hajee Abdul Shukoor and Co. v. The State of Madras (raw hides and skins constituted a different commodity from dressed hides and skins with different physical properties), The State of Madras v. Swasthik Tobacco Factory (raw tobacco manufactured into chewing tobacco) and Ganesh Trading Co. Karnal v. State of Haryana and Another, (paddy dehusked into rice). On the other side, cases where this Court has held that although the original commodity has undergone a degree of processing it has not lost its original identity include Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool (where hydrogenated groundnut oil was regarded as groundnut oil) and Commissioner of Sales Tax, U.P., Lucknow v. Harbiles Rai and sons (where bristles plucked from pigs, boiled, washed with soap and other chemicals and sorted out

in bundles according to their size and colour were regarded as remaining the same commercial commodity, pigs bristles)."

18. Another important aspect which needs to be highlighted from this judgment is that the argument of the Revenue that the sale of pineapple slices after the aforesaid process, was at a higher price in the market than the original fruit and, therefore, it constituted a different commercial commodity. The Court negatived this contention as well by observing that the process undertaken by the assessee may have made value addition to the product but the essential character of the product did not undergo any change, which is the determinative factor, inasmuch as pineapple remained the pineapple; albeit in slice form and continued to be known as pineapple in the market. For this proposition the Court decided to rely upon a foreign judgment where the U.S. Supreme Court had held that dressed and frozen chicken was not a commercially distinct article from the original chicken. Detailed discussion of the said judgment appears in para 7 which reads as follows:

7. While on the point, we may refer to East Taxes Motor Freight Lines vs. Frosen Food Express, where the U.S. Supreme Court held that dressed and frozen chicken was not a commercially distinct article from the original chicken. It was pointed out:

"killing, dressed and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk from pasteurising, homogenizing, adding vitamin concentrates, standardizing and bottling".

A It was also observed:

".....there is hardly less difference between cotton in the

B field and cotton at the gin or in the bale or between cotton seed in the field and cotton seed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cotton seed, as well as the dressed chicken, have gone through a C processing stage. But neither has been 'manufactured' in the normal sense of the word.

Referring to Anheuser-Busch Brewing-Association v. D United States the Court said:

"Manufacture implies a change but every change is not manufacture and yet every change in an article is the result of treatment, labour and manipulation. But E something more is necessary.....There must be transformation; a new and different article must emerge having distinctive name, character on use."

And further:

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"At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been manufactured."

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The comment applies fully in the case before us. Although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, H

notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it. It is contended for the Revenue that pineapple slices have a higher price in the market than the original fruit and that implies that the slices constitute a different commercial commodity. The higher price, it seems to us, is occasioned only because of the labour put into making the fruit more readily consumable and because of the cane employed to contain it. It is not as if the higher price is claimed because it is a different commercially commodity. It is said that pineapple slices appeal to a different sector of the trade and that when a customer asks for a cane of pineapple slices he had in mind something very different from fresh pineapple fruit. Here again, the distinction in the mind of the consumer arises not from any difference in the essential identity of the two, but is derived from the mere form in which the fruit is desired. Learned counsel for the Revenue contends that even if no manufacturing process involved, the case still falls within Section 5(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale."

19. It follows from the above that mere addition in the value, after the original product has undergone certain process, would not bring it within the definition of 'manufacture' unless

A its original identity also under goes transformation and it becomes a distinctive and new product.

20. When we apply the aforesaid principle to the facts of this case, it is clear that mere addition of dehydrated B vegetables and certain spices to the raw rice, would not make it a different product. Its primary and essential character still remains the same as it is continued to be known in the market as rice and is sold as rice only. Further, C this price, again, remains in raw form and in order to make it edible, it has to be cooked like any other cereal. The process of cooking is even mentioned on the pouch which contains cooking instructions. Reading thereof amply demonstrates that it is to be cooked in the same form as any other rice is to D be cooked. Therefore, we do not agree with the CEGAT that there is a transformation into a new commodity, commercially known as distinct and separate commodity.

E 21. Since we are holding that the activity undertaken by the assessee does not amount to manufacture, this appeal is liable to succeed on this ground itself inasmuch in the absence of any manufacture there is no question of payment of any excise duty. We may, however, remark that even F otherwise the classification of the product by the Revenue under sub- heading 21.08 may not be correct. In fact, the CEGAT has accepted that classification only on the ground that the product after mixing of raw rice with dehydrated vegetable G and spice, has become a new product as it amounts to 'manufacture' and on that basis it has held that it no longer remains product of milling industry. As we have held that it does not amount to 'manufacture' as the essential characteristics of the product, still remains the same, namely, H

rice, a natural corollary would be that it continues to be the product of the milling industry and would be classifiable under sub-heading 11.01. Rate of duty on this product, in any case, is 'nil'.

22. This appeal, accordingly, succeeds and is allowed. The order of the CEGAT as well as demand of excise duty by the Revenue are hereby set aside.

23. No costs.

Nidhi Jain

Appeal allowed.