M/S. BOMBAY CHEMICAL PRIVATE LIMITED

v.

THE COLLECTOR OF CENTRAL EXCISE, BOMBAY I, BOMBAY

APRIL 18, 1995

[R.M. SAHAI, S.B. MAJMUDAR AND SUJATA V. MANOHAR, JJ.]

Central Excises and Salt Act/Rules, 1944: Rule 8(1)—First Schedule—Item 68—Notification No. 55/75 CE dated 1.3.1975 as amended by Notification No. 62/78 dated 1.3.1978—Disinfectant fluids—Whether falls under item no. 18 of the amended Notification and entitled to exemption—Held : Yes.

The appellant has been manufacturing disinfectant fluids and claimed exemption under Notification No. 55/75-CE dated 1.3.1975, as amended by notification No. 62/78 dated 1.3.1978. As per the amended notification item 18 was added which included insecticides, pesticides, weedicides and fungicides. The Assistant Collector negatived the claim and held that the disinfectant fluids produced by the appellant did not have the property of killing any insect or pest and therefore could not be covered in the exemption notification. The appellate authority held that in common parlance the products of the appellant were nothing but fungicides.

On appeal, the Tribunal held that the exemption notification being meant to cover particular formation with well defined uses and especially for killing insects, they cannot be equated or interpreted to include disinfectants which are preparations for general disinfection purposes and used in bathrooms, gutters, floor cleaning etc. It also held that though the disinfectant fluids were produced by the appellant from phenolic compounds (tar acids) could destroy bacteria and fungi, this being a part of function as disinfectant fluids, it cannot be classified as fungicide or pesticide.

The assessee has preferred the present appeal against the Tribunal's order.

Allowing the appeal, this Court

HELD : 1. The goods produced by the appellant from phinolic

A compounds and high boiling tar acid being disinfectant fluids which have the capability of killing bacteria which are nothing but pests, the appellant was entitled to exemption under Item 18 of the notification issued in 1978. [376-B]

2.1. It cannot be disputed that a disinfectant is also a killing agent. B Even the Tribunal found that the goods produced by the appellant which contained high boiling tar acid kill the bacteria in the gutters and the bathrooms. In the Report of the Deputy Chief Chemist it was mentioned that the products were formulations containing high boiling tar acid as the principal active ingredient. [373-H, 374-A]

C 2.2. A disinfectant which is used for killing may broadly be covered in the word 'pesticide'. Disinfectants, may be of two types; one to disinfect and other to destroy the germs. The former, i.e., those products which are used as disinfectant, for instance lavender etc. may not be covered in the expression 'pesticide'. But those products which are used for killing insects D by use of substances such as high boiling tar acid have the same characteristic as 'pesticide'. [374-H, 375-A]

3.1. Where entries are descriptive of category of goods they have certain characteristics. Therefore, when a question arises whether a particular good is covered in any category or not, it has to be examined if it E satisfies the characteristic which go to make it a good of that category. And whether in trade circle it is understood as such and if it is a good of technical nature then whether technically it falls in the one or the other category. Once it is found that a particular good satisfies the test then the issue which arises for consideration is whether it should be construed F broadly or narrowly. One of the settled principles of construction of an exemption notification is that it should be construed strictly, but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly. [375-C to E]

G 3.2. Each of the words insecticides, pesticides, fungicides or weedicides are understood both in the technical and common parlance as having broad meaning. Therefore, if any goods or items satisfy the test of being covered in either of the expression, then it is entitled to exemption. The broad and basic characteristic for exemption under the notification H is that the goods must have the property of killing germs and bacteria,

insects or pest and it should be understood in the common parlance as well as being covered in one of the broad categories mentioned in the notification. Since the goods produced by the appellant are capable of killing bacteria and fungi which too, is covered in the expressions 'pesticide' and 'fungicide' there appears no reason to exclude the goods from the aforesaid notification. [375-G, H, 376-A]

Webster Comprehensive Dictionary, Concise Oxford Dictionary of Current English, Encyclopedia Britanica, **Volume 4,** *Butterworths Medical Dictionary, Second Edition & Pesticides in the Indian Environment, by P.K. Gupta p.2,* **referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2276 of 1986.

From the Judgment and Order dated 10.3.86 of the Central Excise and Salt Act, 1944 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. 1302/83-C (order No. 126 & 127/86-C).

Vinod Bobde, Gaurab Banerjee, J.D. Masani, R.N. Karanjawala, Mrs. Manik Karanjawala, Mallick and Ms. Vidula Mehendab for the Appellant.

Joseph Vellapally, G. Prakash, V.K. Varma and Parmeswaran for the Respondent.

The Judgment of the Court was delivered by

R.M. SAHAI, J. This appeal under Section 35-L of the Central Excises and Salt Act, 1944 raises the question whether disinfectant fluids manufactured by the appellant were entitled to exemption under Notification No. 55/75-CE dated 1.3.1975, as amended by Notification No. 62/78 dated 1.3.1978.

Notification No. 55/75-CE reads as under:-

> "In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods of the description specified in the Schedule annexed hereto, and falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon.

THE SCHEDULE

1. All kinds of food products and food preparations, including–

(i) meat, and meat products;

(ii) dairy products;

(iii) fruits and vegetable products;

(iv) fish and sea foods;

(v) bakery products, and

(vi) grain mill products.

2. Electric light and power."

In 1978 Item 18 was added to it which reads as under:-

"18. Insecticides, Pesticides, Weedicides and Fungicides".

The appellant claimed that the disinfectant fluids manufactured by it were entitled to exemption after addition of item No. 18 in 1978. The Assistant Collector did not find any merit in the claim as insecticides, pesticides, weedicides and fungicides are necessarily required to possess the property and capability of killing insects, pests, fungi and weeds. It was held that the disinfectant fluids produced by the appellant did not have the property of killing any insect or pest, therefore, the goods produced by the appellant could not be held to be covered in the exemption notification. The appellate authority did not agree with this reasoning as in common parlance the products of the appellant were nothing but fungicides. In further appeal by the Department the two members out of the three who constituted the Bench did not agree with the reasoning of the Collector and reversed the order passed by him. It is the correctness of this order which is assailed in this appeal.

The Tribunal found that there was no dispute that the disinfectants were exciseable goods and that they were classifiable under Tariff Item 68. It was further found that these were being referred to and marketed as disinfectants and that the preparations in question were capable of killing various bacteria and fungi, but it refused to extend the benefit of the

exemption notification as the notification being confined to specified categories, the appellant was not entitled to claim exemption by extension of the principle that since the goods produced by the appellant satisfied the broad test of killing insecticides, it should be held to be pesticides or fungicides. According to the Tribunal, the exemption notification being meant to cover particular formulation with well-defined uses and especially for killing insects, they cannot be equated or interpreted to include disinfectants which are preparations for general disinfection purposes and which are used in the bathrooms, gutters, floor cleaning etc. The Tribunal considered various text books and literature produced by the appellant and the Department and observed that various authors have explained the terms used in the notification and the 'disinfectant' in different senses, some giving wider meaning to it and others norrower, therefore, it was not possible to draw any conclusion as to exact demarcation between various terms. The Tribunal held that it would be unsafe to classify any product as covered in the notification merely because it has the property to kill without reference to its normal use. It then found that some of the disinfectants produced by the appellant are referred to as 'deodorant fluid'. Others contain perfumery materials, i.e., Bioflor Lavender Type and Bioflor Jasmine Type. The Tribunal held that the substances used for killing insects, pests, etc. are by their nature noxious and one is used to their having an unpleasant or irritating smell. On the other hand, the disinfectants are used either to neutralise existing unpleasant smell or even to add a pleasant smell. Consequently, even though the disinfectant fluids produced by the appellant from phenolic compounds (tar acids) could destroy bacteria and fungi, but this being a part of function as disinfectant fluids, it cannot be classified as fungicide or pesticide.

'Disinfectant' is defined in Webster Comprehensive Dictionary 'as a substance used to disinfect or to destroy the germs of infectious and contagious diseases'. In the Concise Oxford Dictionary of Current English, 'disinfectant' is defined as 'a commercially produced chemical liquid that destroy germs'. In Encyclopedia Britanica, Volume 4, it is explained to mean, 'any substance, such as creosote or alcohol, applied to inanimate objects to kill microorganisms. Disinfectants and antiseptics are alike in that both are germicidal, but antiseptics are applied primarily to living tissue. The ideal disinfectant would rapidly destroy bacteria, fungi, viruses, and protozoans, would not be corrosive to surgical instruments, and would not destroy or discolour materials on which it is used'. It thus cannot be

A disputed that a disinfectant is also a killing agent. Even the Tribunal found that the goods produced by the appellant which contained high boiling tar acid kill the bacteria in the gutters and the bathrooms. In the Report of the Deputy Chief Chemist it was mentioned that all above products numbering 14 were formulations containing high boiling tar acid as the principal active ingredient. It then noticed definition of pesticide and disinfectant and observed that, 'it appears from the above definition that disinfectants are used for killing or inactivating micro-organisms, in some literature for oils (containing high boiling tar acid) are mentioned in pesticide manual'. But he opined that it was not clear whether the formulations containing tar acids, as in the case of the goods produced by the appellant which were used as disinfectants, will be covered broadly by the term 'pesticides'.

'Pesticide' has been defined in Butterworths Medical Dictionary, Second Edition, as 'a comprehensive word to include substances that will kill any form of pest, e.g., insects, rodents and bacteria'. The term 'pesticide' includes a large variety of compounds of diverse chemical nature and biological activity grouped together usually on the basis of what pests they are used to destroy or eliminate. Under the US Federal Environment Pesticide Control Act, the term 'Pesticide' has been defined to include '(1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, insect, rodent, nematode, fungus, weed, other forms of terrestrial or aquatic plants or other forms of animal life e.g., viruses, bacteria, or other microorganisms, which the administrator declares to be a pest and (2) any substance or mixture of substances intended for use as a plant regulator defoliant or desiccant' [Pesticides in the Indian Environment, by P.K. Gupta p.2].

'Fungicide' inhibits growth or destroys fungi pathogenic to man or other animals or inanimate surfaces. The appellant had imported tar acid to manufacture insecticide pesticide and fungicide. The Director General had permitted import for this purpose. In the letter written by the appellant claiming exemption, it was stated that disinfectant fluids manufactured by it were capable of being used for the purpose of destroying fungi of medical importance.

A disinfectant which, therefore, is used for killing may broadly be covered in the word 'pesticide'. Disinfectants, may be of two types; one to

disinfect and other to destroy the germs. The former, i.e., those products which are used as disinfectant for instance lavender etc. may not be covered in the expression 'pesticide'. But those products which are used for killing insects by use of substances such as high boiling tar acid have the same characteristic as 'pesticide'.

Item No. 18 which was added in 1978 grants exemption to the categories of goods which can be classified as insecticides, pesticides, weedicides or fungicides. They have to be understood in broad sense. The reasoning of the Tribunal that if an expression is capable of a broader and a narrower meaning then it is the latter which could be preferred does not appear to be correct. Where entries are descriptive of category of goods they have certain characteristics. Therefore, when a question arises whether a particular good is covered in any category or not, it has to be examined if it satisfies the characteristic which go to make it a good of that category. And whether in trade circle it is understood as such and if it is a good of technical nature then whether technically it falls in the one or the other category. Once it is found that a particular good satisfies the test then issue which arises for consideration is whether it should be construed broadly or narrowly. One of the settled principles of construction of an exemption notification is that it should be construed strictly, but once a good is found to satisfy the test by which it falls in the exemption notification then it cannot be excluded from it by resorting to applying or construing such notification narrowly. Item 18 is an exemption notification. As stated earlier, mentions broad categories of goods which are entitled to exemption. Once a good is found to fall even narrowly in any of these categories, there appears no justification to exclude it. The test of strict construction of exemption notification applies at the entry, that is, whether a particular good is capable of falling in one or the other category but once it falls then the exemption notification has to be construed broadly and widely. Each of the words insecticides, pesticides, fungicides or weedicides are understood both in the technical and common parlance as having broad meaning. Therefore, if any goods or items satisfy the test of being covered in either of the expression, then it is entitled to exemption. The broad and basic characteristic for exemption under the notification is that the goods must have the property of killing germs and bacteria insects or pest and it should be understood in the common parlance as well as being covered in one of the broad categories mentioned in the notification. Since the goods produced by the appellant are capable of killing bacteria

A and fungi which too, is covered in the expressions 'pesticide' and 'fungicide' there appears no reason to exclude the goods from the aforesaid notification.

In the result, this appeal succeeds and is allowed. The order passed by the Tribunal is set aside and it is held that the goods produced by the B appellant from phenolic compounds and high boiling tar acid being disinfectant fluids which have the capability of killing bacteria which are nothing but pests, the appellant was entitled to exemption under Item 18 of the notification issued in 1978. The appellant shall be entitled to its costs.

G.N. Appeal allowed.