Swadeshi Polytex Ltd vs Collector Of Central Excise on 23 November, 1989

Equivalent citations: 1990 AIR 301, 1989 SCR SUPL. (2) 262, AIR 1990 SUPREME COURT 301, 1990 (2) SCC 358, (1989) 44 ELT 794, 1990 CRILR(SC&MP) 116, (1990) 40 DLT 61, 1990 SCC(TAX) 292

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji, B.C. Ray

PETITIONER:
SWADESHI POLYTEX LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE

DATE OF JUDGMENT23/11/1989

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
RAY, B.C. (J)

CITATION:
1990 AIR 301 1989 SCR Supl. (2) 262
1990 SCC (2) 358 JT 1989 Supl. 347
1989 SCALE (2)1208
CITATOR INFO :
F 1992 SC1532 (4)

ACT:
Central Excises and Salt Act, 1944: Sections 4 and 35L'Assessee-Manufacturing polyester fibre--Inputs ethylene glycol and dimethye tetraphthalate--Whether entitled to claim set off of duty on ethylene glycol.

HEADNOTE:
The appellant was engaged in the manufacture of polyester fibre (man-made) falling under tariff item 18 of the erstwhile Central Excise Tariff. In its manufacture, the appellant was using, among other things, ethylene glycol and DMT (Dimethyle Tetraphthalate)--duty paid ethylene glycol

falling under tariff item No. 68. During the course of manufacture of polyester fibre, two basic raw materials DMT and Glycol interact and thereby certain waste comes into existence. This interaction also gave rise to methanol, a by-product.

Notification No. 201/79 dated 4.6.1979 exempted all excisable goods on which duty of excise was leviable and in the manufacture of which any goods failing under tariff item 68 had been used, from so much of the duty of excise as was equivalent to the duty of excise paid on the imputs.

Exemption notification No. 201/79 was amended by notification No. 102/81 with effect from 11th April, 1981. By this amended notification, a second proviso was added which provided that the credit of the duty allowed in respect of inputs could not be denied or varied on the ground that part of the inputs was contained in any waste, refuse or by-product arising during the manufacture, irrespective of the fact that such waste, refuse or by-product was exempt from the whole of duty of excise leviable thereon or was chargeable to nil rate of duty.

Earlier, in the case of proforma credit procedure under rule 56-A of the Central Excise Rules, clarification had been issued by the Collector of Central Excise, under trade notice dated 19.7.1980 to the effect that proforma credit was permissible even where at an intermediate state of manufacture, a final product which was fully exempt from duty came into being, provided that the fully exempted product was consumed in

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the production or manufacture of the finished product. This trade notice categorically stated that the clarification would also be applicable to exemption notification No. 201/79.

The appellant claimed set off of duty paid on ethylene glycol used in the manufacture of polyester fibre under notification No. 201/79. The Assistant Collector of Central Excise held on 6.8.1980 that no proforma credit was allowable in respect of ethylene glycol used/consumed in the methanol, the ethylene glycol residual waste and polyester fibre waste.

The Collector of Central Excise (Appeals), however, allowed the appeals filed by the appellant and set aside the Assistant Collector's order and the demands. The Collector observed that the procedure under notification No. 201/79 was materially the same as the procedure under rule 56A of the Central Excise Rule.

The revenue went up in appeal before the Customs, Excise

JUDGMENT:

was contended on behalf of the revenue that prior to 11th April, 1981 there was no provision in notification No. 201/79 entitling the manufacturer to obtain credit of the duty of excise already paid on the inputs resulting in waste or by-products or refuse which arose in the manufacture of excisable

products which used the inputs; that the trade notice issued pertained to rule 56-A and not to the notifi- cation; that the rule and notifications were different enactments and the provisions of one could not be read into another even after 11th April, 1981; that the exemption was only in respect of duty on inputs in the manufacture of excisable goods and their waste, by-product or refuse; and that since methanol was not excisable, it was not eligible for set off of duty on the glycol content in its manufac- ture.

On behalf of the appellant, however, it was contended that glycol was used totally in the production of polyester fibre; that methanol resulted out of the reaction of DMT and glycol; and that the Government always maintained parity between rule 56-A and notification No. 201/79. The Tribunal was of the opinion that the Collector's observation that the procedure under notification No. 201/79 was materially the same as the procedure under rule 56-A and consequently the amending notification deemed to have retro- spective effect was not, in the absence of any such indica- tion, acceptable. In the premises, the Tribunal allowed the appeals, of the Revenue.

Allowing the appeals, this Court, HELD: (1) On an analysis and comparison of the notifi- cations No. 201/79, No. 102/81 and the circulars, it is clear that the clarification in the form of trade notice issued in respect of rule 56-A was as much applicable to that rule as to notification No. 201/79. [272D] (2) It is true that when in a fiscal provision, is benefit of exemption is to be considered, this' should be strictly considered. But the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented and trade notices in these matters clarify the stand of the Government for the trade. [272E-F] (3) The quantity of ethylene glycol required to produce a certain quantum of polyester fibre is determined by the chemical reaction. It is not possible to use a lesser quan- tum of the ethylene glycol to prevent methanol from arising for producing a certain quantity of polyester fibre. It is not as if the appellants have used excess ethylene glycol wantedly to produce the methanol. It is also clear that the appellants are not engaged in the production of methanol but in the production of polyester fibre. [272H; 273A] (4) The Tribunal, in the instant case, failed to inter- pret the words of the exemption notification No. 201/79 properly and fully. The said notification exempted all excisable goods on which the duty of excise was leviable and in the manufacture of which any goods falling under Tariff Item No. 68 (i.e. inputs) had been used from so much of the duty of excise already paid on the inputs. The excisable goods, namely, polyester fibre, were not wholly exempt from duty nor chargeable to nil rate of duty. It cannot be read in the notification that the notification would not be available in case non-excisable goods arise during he course of manufacture. In fact, the Tribunal seems to have erred in not bearing in mind that exemption notification was pressed in service in respect of polyester fibre which is excisable goods and not in respect of methanol which arises as a by- product as a part and parcel of chemical reaction. It ap- pears further on a comparison of the rule 56-a and the notification No. 201/79 that these deal with identical situations. [272F; 273C-D] Indian Aluminium Co. Ltd. & Anr. v.A.K. Bandyopadhyay & Ors., [1980] ELT 146, referred to.

& CIVIL APPELLATE JURISDICTION: Civil Appeal No. 398890 of 1988.

From Order No. 590-592/1988 dated 18.8.1988 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal Nos. E 375/84-D, S.A. No. 991/88-D & 992/88-D with C.O. No. 283/84-D. V. Lakshmikumaran, Madhava Rao and V. Balachandran for the Appellant.

A.K. Ganguli and P. Parmeshwaran for the Respondent. Judgment of the Court was delivered by SABYASACHI MUKHARJI, J. This is an appeal under section 35L of the Central Excises & Salt Act, 1944 (hereinafter referred to as 'the Act') against the judgment and order dated 18th August, 1988 passed by the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the tribunal').

The appellant was at all relevant times engaged in the manufacture, inter alia, of polyester fibre (man-made) failing under tariff item 18 of the erstwhile Central Excise Tariff. In the manufacture of the aforesaid, the appellant was using, amongst other inputs, ethylene glycol and DMT (Dimethyl Tetraphthalate)--duty paid ethylene glycol falling under tariff item No. 68 of the erstwhile Central Excise Tariff received by the appellant and used in the manufac- ture.

The notification No. 201/79 dated 4.6.79, mentioned hereinafter, exempted, according to the appellant, all excisable goods on which duty of excise was leviable and in the manufacture of which any goods falling under tariff item 68 had been used, from so much of the duty of excise as was equivalent to the duty of excise paid on the inputs. The appellants claimed set off of duty on ethylene glycol used in the manufacture of polyester fibre under notification No. 201/79 dt. 23.6.1979. In response to the appellant's seeking set off the duty paid on ethylene glycol, they received a letter from the Assistant Collector of Central Excise, Ghaziabad, dated 6th August, 1980 by which the Asstt. Col- lector held that no proforma credit was allowable in respect of ethylene glycol for the following:

(a) Methanol which is not excisable and is cleared without pay-

ment of duty; (b) Glycol residual waste which was being destroyed by the appellants by throwing in the field; and

(c) Polyester fibre waste which was used in the recovery of DMT and exempt from payment of duty under Central Excise Notification dt. 19th May, 1976.

The appellants were further directed to furnish the exact percentage of ethylene glycol content used/consumed in the methanol, the ethylene glycol residual waste and polyes- ter fibre waste; and that not to utilise the proforma credit or set off credit till the data was furnished and the same was authenticated by the Chemical Engineer. The classifica- tion list submitted by the appellants was modified in terms of the said letter.

Thereafter, classification list was filed claiming set off of duty on ethylene glycol falling under tariff item 68 under exemption notification No. 201/79 as amended by noti- fication No. 102/81 dt. 13th May, 1981. By this amended notification, a second proviso was added which provided that the credit of the duty allowed in respect of inputs could not be denied or varied on the ground that part of thee

input was contained in any waste, refuge or by-product arising during the manufacture, irrespective of the fact that such waste, refuse or byproduce was exempt from the whole of duty of excise leviable thereon or was chargeable to nil rate of duty.

Hence, it is the case of the appellants that from 11th April, 1981 even though some part of the input may be con- tained in any waste, refuge or by-product which is charge- able to nil rate of duty, the credit of the duty paid on the inputs could not be denied. By this order the set off of duty in respect of duty paid ethylene glycol was allowed from 11th April, 1981 onwards except in the case of ethylene glycol used/ consumed in polyester waste used for recovery of DMT on the ground that this polyester waste was charge- able to nil rate of duty. Similarly, duty paid on ethylene glycol which was used for recovery of DMT was held not to be allowable while paying duty on polyester fibre. Aggrieved thereby, an appeal against the said order to the Collector of Central Excise, Ghaziabad was filed. The main contentions of the appellants were that the ethylene glycon received in the factory after payment of duty was consumed in the manufacture of polyester fibre only. During the course of manufacture of polyester fibre, two basic raw materials DMT and Glycol interact and thereby certain waste comes into existence. This waste is recycled with glycol for the recovery of DMT in DMT recovery plant, within the factory. Hence, the entire set off of duty was to be allowed since no part of DMT produced was diverted for any other use other than production of polyester fibre nor was it taken outside the factory. The appellants contended that in case of proforma credit proce- dure under rule 56-A of the Central Excise Rules, clarifica- tion had been issued by the Collector of Central Excise, under trade notice No. 72-CE/80 dt. 19.7. 1980 to the effect that proforma credit is permissible even where at an in- termediate state of manufacture, a final product which is fully exempt from duty comes into being, provided that the fully exempted product is consumed in the production or manufacture of the finished product. This trade notice categorically states that this clarification would also be applicable to exemption notification No. 201/79. By an order dated 17th November, 1981 the Asstt. Collec- tor held that the appellants were entitled to credit of duty paid on the ethylene glycol only to the extent of the per- centage content as determined by the Chief Chemical Engi- neer, CRCL, New Delhi. The order covered the period from 17.7.1979 to 10.4. 1981.

As mentioned before, the notification was amended from 11th April, 1981 whereby the credit of the duty on any inputs was not to be denied to any waste, refuse or by- product arising during the manufacture of the output irre- spective of whether the waste, refuse or by-product was chargeable to nil rate of duty or not.

By a letter dated 27th November, 1981 the appellants were informed that set off for Rs. 15,41,673.60 was inadmis- sible. By a subsequent letter of the Superintendent of Central Excise, Ghaziabad, dated 17th December, 1981 it was stated to the appellant that they had received Rs. 15,42,740.16 as set off which was inadmissible. The period mentioned was 17.7.1979 to 10.4.1981. The appellants case was that this related only to ethylene glycol content in methanol.

There was a second appeal preferred to the Collector of Central Excise, Delhi, against the order dated 17.11.1981 of the Asstt. Collector disallowing the set off of duty credit paid on ethylene glycol content in methanol and ethylene glycol waste and polyester fibre waste. A third appeal was filed

before the Collector (Appeals) against the duty demand of Rs. 15.42,740.16.

Thereafter, the appellants received a letter dated 23rd April, 1983 from the Superintendent of Central Excise which stated that the stand of the appellants that the ethylene glycol contribute only H positive and not OH negative, has been accepted by the Chief Chemical Engineer, CERL, New Delhi. Consequently, since the ethylene glycol content in the methanoi, wherein the ethylene glycol contribute only H positive and not OH negative ions, the amount of inadmissi- ble set off would stand reduced to Rs.90,749,76. The aforesaid three appeals were decided by the 'Collec- tor of Central Excise (Appeals), by passing a single order dated 15th December, 1983, wherein he observed that the procedure under notification No. 20 1/79 was materially the same as the procedure under rule 56A and in the circum- stances allowed all the appeals and set aside the Asstt. Collector's order and the demands.

Aggrieved thereby, the revenue went up in appeal before the tribunal. The tribunal after examining the aforesaid contentions noted the contention of the parties. It was the case of the revenue that prior to 1 Ith April, 1981 there was no provision in notification No. 201/79 entitling the manufacturer to obtain credit of the duty of excise already paid on the inputs resulting in waste or by-product or refuge which arose in the manufacture of excisable products which used the inputs. Hence, it was argued that the duty element in the quantity of glycol which was contained in the glycol residual waster, polyester fibre waste and methanoi (by-product) which was non-excisable, did not qualify for credit which could be subsequently used for discharging duty liability on dutiable finished product. The provision con- tained in notification No. 102/81 was not available prior to 11th April, 1981 it was submitted on behalf of revenue. It was further submitted that the trade notice issued by Pune Collectorate pertained to rule 56-A only and not to the notificaion. It was further submitted that the rule and notifications are different enactments and the provisions of one cannot be read into another even after 11th April, 1981 and the exemption was only in respect of duty on inputs in the manufacture of excisable goods and their waste, by- product or refuge. It was submitted that since methanol was not excisable, it was not eligible for set off of duty on the glycol content in its manufature. On behalf of the appellants, however, it was contended that glycol is used totally in the production of polyester fibre. methanol results out of the reaction of DMT and glycol; and that the Government always maintained parity between rule 56-A and notification No. 201/79, hence, the appellants were eligible to full set off. On behalf of the appellants reliance was placed on the decision of the High Court of Bombay in Indian Aluminium Co.

Ltd. & Anr. v. A.K. Bandyopadhyay & Ors., [1980] ELT 146. The question that the tribunal had to decide was whether the set off of duty paid on inputs was admissible only if the finished excisable goods manufactured therefrom, was not exempted from duty.The process of manufacture and the out- come of ethynol are not in dispute. The tribunal was of the view that the judgment of the Bombay High Court had held that dross skimmings thrown off in the process of manufac- ture and aluminium sheets were not end products or finished or by-products merely because such refuge might fetch some price in the market. The High Court had further held that proviso to sub-rule 56-A will have no application and the skimmings cannot be said to be finished excisable goods. These were not exempted from the whole of duty of excise or chargeable to nil rate of duty whereas the sub-rule pre- scribed that the credit is admissible if the material is used in the manufacture of

finished goods which are exempt from duty or are chargeable to nil rate of duty. The Tribu- nal was of the opinion that the factual background'of the case before the Bombay High court was different and there- fore, it was of the opinion that the said decision was not applicable in the instant case.

The Tribunal was of the opinion that the revenue was right that rule 56A and notification No. 201/79 were differ- ent enactments and the amendment to one could not be read into the other. In that view of the matter, the Tribunal was of the view that the Collector's observation that the proce- dure under notification No.201/79 was materially the same as the procedure under rule 56A and consequently the amending notification deemed to have retrospective effect was not, in the absence of any such indication, acceptable. In the premises, the Tribunal allowed the appeals and rejected the cross-objection.

The question involved in these appeals, is whether the Tribunal was right. On behalf of the appellants, Shri V. Lakshmikumaran contended that the Tribunal failed to appre- ciate that the provisions of rule 56A and notification No. 201/79 were para materia. It appears to us that the provi- sions of rule 56A and the notification No. 201/79 are iden- tical. The relevant provisions of Rule 56A are as follows:

> "56A(1) .....
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> 56A(2) The Collector may, on application made in this behalf and subject to the conditions mentioned in sub-rule (3) and such other conditions as may, from time to time, be prescribed by the Central Government, permit a manu-
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> facturer of any excisable goods specified under sub-rule (1) to receive material or component parts of finished product (like Asbestos Cement), on which the duty of excise or the additional duty under section 3 of the Customs Tariff Act, 1975 (51 of 1975) (herein- after referred to as the countervailing duty), has been paid in his factory for the manufac- ture of these goods or the more convenient distribution of finished product and allow a credit of the duty already paid on such mate- rial or component parts or finished product, as the case may be:
>
> Provided that no credit of duty shall be allowed in respect of any material or compo- nent parts used in the manufacture of finished excisable goods--
>
> (i) if such finished excisable goods produced by the manufacturer are exempt from the whole of the duty of excise leviable thereon or are chargeable to 'nil' rate of duty, and
>
> (ii) .....

Explanation.--Credit of the duty allowed in respect of any material or component parts shall not be denied or varied on the ground that part of such material or component parts is contained in any waste, refuse or by-

product arising during the process of manufac- ture of the finished excisable goods irrespec- tive of the fact that such waste, refuse or by-product is exempt from the whole of the duty of excise leviable thereon or is charge- able to nil rate of duty or is not notified under sub-rule (1):

> Provided .....
>
> The notification No. 20 1/79 prior to 1 Ith April, 1981 in so far as relevant for the present purpose was as follows:
>
> "Set off of duty on all exciseable goods on use of duty paid goods falling under Item 68 (Tariff Items I to 68): In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 178/77--Central Excise, dated the 18th June, 1977, the Central Government hereby exempts all excisable goods (hereinaf- ter referred as "the said goods"), on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No. 68 of the first Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred as "the inputs") have been used, from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs: Provided that the procedure set out in the Appendix to this notification is followed: Provided further that nothing contained in this notification shall apply to the said goods which were exempted from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty."

The amending notification No. 102/81 dated 11th April, 1981 is as follows:

> "Provided also that credit of the duty allowed in respect of the inputs shall not be denied or varied on the ground that part of such inputs is contained in any waste, refuse or by-product arising during the process of manufacture of the said goods, irrespective of the fact that such waste, refuse or by-product is exempt from the whole of the duty of excise leviable thereon or is chargeable to nil rate of duty or is not mentioned in the declaration referred to in the Appendix to this notifica- tion."

Central Board of Excise & Customs issued Circular No. 6/81CX. 6, dated 31st January, 1981, which reads as follows:

> "Central Excise--Rule 56A--Proforma Credit of duty paid on material/component parts con- tained in waste, refuse or by-product arising during the process of manufacture-regarding. A doubt has been raised whether proforma credit of duty paid on material/component parts used in manufacture of the finished excisable goods notified under rule 56A of the Central Excise Rules, 1944, is to be denied to the extent such material or component parts are contained in any waste, refuse or by-product arising during the process of manufacture of the notified fin- ished excisable goods on the grounds that such waste, refuse or by-product is either fully

exempt from duty or not notified under sub- rule (1) of rule 56A.

2. Since the Government's intention has been not to deny the benefit of proforma credit in such situation, an Explanation has been added to sub-rule (2) of rule 56A, so as to remove the ambiguity in the rule. Notification No. 8/8 I-CE dated 31.1. 1981 amending rule 56-A is enclosed. It may, however, be noticed that such credit cannot be utilised for payment of duty leviable on such waste, refuse or by product."

On an analysis and comparison of aforesaid, it is clear that the clarification in the form of trade notice issued by the Pune Collectorate in respect of rule 56A was as much applicable to that rule as to notification No. 20 1/79. In the premises, it is clear that the Tribunal should have held that even though a part of the ethylene glycol was contained in the by-product methanoi, yet the credit of duty could not be reduced to the extent of the ethylene gIycol contained in the mathanoi as ineligible. It is true that when in a fiscal provision, if benefit of exemption is to be considered, this should be strictly considered. But the strictness of the construction of exemption notification does not mean that the full effect to the exemption notification should not be given by any circuitous process of interpretation. After all, exemption notifications are meant to be implemented and trade notices in these matters clarify the stand of the Government for the trade. It is clear, therefore, that the Tribunal failed to interpret the words of the exemption notification No. 201/79 properly and fully. The said notifi- cation exempted all excisable goods on which the duty of excise was leviable and in the manufacture of which any goods falling under Tariff Item 68 (i.e. inputs) had been used from so much of the duty of excise leviable thereon as was equivalent to the duty of excise already paid on the inputs. It is clear, however, that ethylene glycol was used in the manufacture of polyester fibre. It appears that methanoi arises as a part and parcel of the chemical reac- tion during the process of manufacture when ethylene glycol interacts with DMT to produce polyester fibre. It is not possible to use a lesser quantum of the ethylene glycol to prevent methanoi from arising for producing a certain quan- tity of polyester fibre. Thus, the quantity of ethylene glycol required to produce a certain quantum of polyester fibre is determined by the chemical reaction. It may be mentioned herein that it is not as if the appellants have used excess ethylene glycol wantonly to produce the-methanol. It is clear that the appellants are not engaged in the production of methanol but in the production of polyester fibre. That position is undisputed. Therefore, it appears that the Tribunal erred when it held that the appellants were not entitled to a part of the credit of duty since ethylene glycol when it inter- acts with DMT also gives rise to methanoi. This construction would frustrate the object of exemption if something which evidently arises out of the interaction is denied Credit. Even prior to amendment to notification No. 201/79 with effect from 1 Ith April, 1987, the only situation where the credit of the duty paid on the inputs could be denied was only where the final products were wholely exempt from the duty of excise or chargeable to nil rate of duty. In the present case, the excisable goods, namely, polyester fibre were not wholely exempt from duty nor chargeable to nil rate of duty. It cannot be read in the notification that the notification would not be available in case non-excisable goods arise during the course of manufacture. In fact, the Tribunal seems to have erred in not bearing in mind that exemption notification was pressed in service in respect of polyester fibre which is excisable goods and not in respect of methanoi which arises as a by-product as a part and parcel of chemical reaction. It appears further on a com- parison of the rule 56A and the notification No. 20 1/79 that these deal with the identical situation. In this connection,

reference may be made to the deci- sion of the Bombay High Court in Indian Alurninium Co. and Anr. 's case (supra). In that case, the High Court came to the conclusion that dross and skimmings were merely the refuge, scum or rubbish thrown out in the process of manu- facture of aluminium sheets and could not be said to be the result of treatment, labour or manipulation whereby a new and different article emerged with a distinctive name, character or use which can ordinarily come to the market to be bought and sold. The High Court further held in that case that merely because such refuse or scum may fetch some price in the market does not justify it being called a by-product, much less an end product or a finished product. In the light of that fact, the High Court was of the view that in that case the end-product was aluminium sheets manufactured from aluminium ingots and dross or skimmings. Therefore, the High Court was of the view that these were neither 'goods' nor 'end products' nor 'finished products' liable to duty under item 27 of Central Excise Tariff. The High Court was of the view that under proviso to section 56 A (2) proforma credit was not admissible if the material is used in the manufac- ture of finished excisable goods which are exempt from duty or chargeable to nil rate of duty. Since dross and skimmings are mere 'ashes', these could not be said to be finished excisable goods, nor they were exempt from the whole of duty of excise or chargeable to 'nil' rate of duty. Therefore, proviso to sub-rule (2) of rule 56A would not have any application. The High Court was of the view that refuse or skum thrown off during the process of manufacture could not by any stretch of imagination be considered as a by-product and merely because such refuse or scum may fetch some price in the market they could not be said to be 'finished excisa- ble goods'. Under rule 56A, the High Court was of the view, if the material is used in the manufacture of any finished excisable goods, and during the course of manufacture any non-excisable by-product emerged, then it could not be said that the raw material was not used in the manufacture of the finished excisable goods.

In our opinion, the same analogy and reasoning would apply when the methanoi arises as a result of chemical reaction and not as a result of any by-product. In the instant case, the methanoi was nonexcisable. Just because methanoi arises as a part and parcel of the chemical reac- tion during the process of manufacture, it cannot be said that methanoi was not used in the manufacture of polyester fibre. The intention of the Government is evident further- more, from the trade notice of Pune Collectorate No. 31/81. The Tribunal, therefore, should have taken into considera- tion the trade notice for interpretation of exemption noti- fication No. 201/79, which was para materia with rule 56A. In the aforesaid view of the matter, we are of the opinion that the Tribunal was in error in coming to the conclusion it did. The appeals are, therefore, allowed and the order and the judgment of the Tribunal are set aside and the combined orders of the Collector (Appeals) Nos. 284-286/CE/MT/83 dated 15th December, 1983 are restored. In the facts and the circumstances of the case, there will be no order as to costs.

R.S.S. Appeals allowed.