Supreme Court of India
Prestige Engineering(India) Ltd vs C.C.E on 1 September, 1994
Equivalent citations: 1994 SCC (6) 465, JT 1994 (5) 514
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
PRESTIGE ENGINEERING(INDIA) LTD.

Vs.

RESPONDENT:
C.C.E

DATE OF JUDGMENT01/09/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
SEN, S.C. (J)

CITATION:
1994 SCC (6) 465 JT 1994 (5) 514
1994 SCALE (3)957

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.-

Civil Appeal No. 3197 of 1986

1. This appeal preferred under Section 35-L of the Central Excises and Salt Act, 1944 raises a question as to the true meaning and purport of Notification No. 119/75-C.E. dated 30-4-1975 issued by the Central Government under Rule 8(1) of the Central Excise Rules, 1944. The notification reads as follows :

> " NOTIFICATION Exemption to goods produced on the job work basis : 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 falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), manufactured in a

> factory as a job work from so much of the duty of excise leviable thereon as is excess of the duty calculated on the basis of the amount charged for the job work.
>
> Explanation.- For the purposes of this notification, the expression 'job work' shall mean such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process, on charging only for the job work done by him."

2. Since there is no dispute as to the facts found by the Tribunal, we shall state the relevant facts from the order under appeal. As a matter of fact, a number of questions were raised before the Tribunal, of which we are concerned only with one, viz., the one pertaining to the Notification No. 119/75. We shall, therefore, state the facts insofar as they are relevant to the said question.

3.The appellant had entered into an agreement with M/s Modipon Limited, Modi Nagar whereunder Modipon was to supply steel pipes from which the appellant was to manufacture cops (falling under Tariff Item No. 68 of the Central Excise Tariff Schedule in force at the relevant time). The process of manufacture of new cops is stated by the Tribunal - it is in fact drawn from the memorandum of appeal filed by the appellant before the Tribunal - in the following words :

> "Fabrication of new cops is carried out by first fitting the guide rings and strengthening rings in the steel pipes which are obtained from the customer. The centre guide rings and the strengthening rings are purchased. This was being done without the aid of power, i.e., by hand. After the rings were fitted, the adopters were also fitted on the sides of a cop in the same manner as it is done for repairs. The plastic sleeves are then fitted on cylinders of the cop. All this process is carried out without the aid of power in the factory."

4.From the above process, it is clear that Modipon supplied steel pipes only. The appellant purchased centre guide rings and the strengthening rings which were fitted inside the steel pipes to lend them strength. After the rings were so fitted, adopters were fitted on the sides of the cops and thereafter plastic sleeves fitted on the cylinders of the cops. Though in the above extract, it was asserted by the appellant that all the said process was carried out without the aid of power, it was admitted before the Tribunal (paragraph 11 of the order under appeal) that the process of fitting the 'Inner rings, strengthening rings and guide rings was got done by the appellant through another unit with the aid of power. Be that as it may, the question is whether the benefit of Notification No. 119/75 can be claimed by the appellant? If the appellant is not able to claim the benefit of the notification, the value of cops manufactured by it would be its full value including the value of steel pipes supplied by Modipon. But in case the notification enures to his benefit, he would be liable to pay duty only on the value of the job work undertaken by him. In short, the question is whether the manufacturing process undertaken by him was in the nature of 'job work' within the meaning of the notification?

5. The crucial words employed in the notification are "goods failing under Item No. 68 ... manufactured in a factory as a job work..... The expression 'manufacture' is defined by clause

(f) of Section 2 whereas the expression 'factory' is :--defined in clause (e). The definitions read as follows "(f) 'manufacture' includes any process;-

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

(ii)which is specified in relation to any goods in the Section or Chapter Notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture, and the word 'manufacturer' shall be construed 'accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account;

(e) 'factory' means any premises, including the precincts thereof, wherein or in any part of which excisable goods other than salt are manufactured or wherein or in any part of which any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on;"

6.So far as the expression "job work" is concerned, it is not defined in the Act but in the notification itself. The Explanation appended to the notification defines it for the purposes of the said notification. It says that job work shall mean "such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process, on charging only for the job work done by him".

7. Now, the contention of the learned counsel for the appellant is this:The definition of the expression 'manufacture' in the Act is only an inclusive definition. The actual connotation and meaning of the word ,manufacture' has been explained by this Court to mean "bringing into existence a new substance". If the article given to the job worker is merely subjected to some process and returned to the supplier, it cannot be said that the article has undergone the process of manufacture. Unless new goods emerge, it cannot be said that the process of manufacture has been gone through. If so, the insistence of the Revenue, based upon the Explanation appended to the notification that the same article which was given to the job worker must be returned to the supplier and in case the article supplied by the job worker to the supplier is different from the article supplied by the supplier to him, it is not a job work, has the effect of nullifying the words used in the main limb of the notification, namely, "manufactured in a factory". The notification does contemplate manufacture of articles, undertaken, no doubt, as a job work. The appellant was supplied steel pipes by Modipon. He purchased the required rings from the market and fitted (or get them fitted) inside those pipes with a view to strengthen them. Thereafter, the appellant fitted the adopters and plastic sleeves whereupon they became marketable cops, which he supplied back to Modipon. This was a case of manufacture in a factory as a job work.

8.On the other hand, the contention of the learned counsel for the Union of India runs thus : It is true that the main limb of the notification uses the words "manufacture in a factory" but those words are qualified by the immediately following words "as a job work". The expression "job work" is defined in the Explanation contained in the notification itself. According to the Explanation, "job work" means such items of works where an article intended to undergo manufacturing process is supplied to the job worker and that very article is returned by the job worker to the supplier after the article has undergone the intended manufacturing process. The word 'manufactured' in the main limb of the notification has to be read along with and harmonised with the Explanation. The definition of 'manufacture' shows that "any process incidental or ancillary to the completion of a manufactured product" is also manufacture. The manufacturing contemplated by the notification is this kind of manufacture alone and not manufacturing in its ordinary sense. This is the only way of reconciling the word 'manufactured' with the Explanation contained in the notification. Only where the manufactured product is subjected to an incidental or an ancillary process with a view to make it a marketable product is the notification attracted but not where a totally new article is manufactured. If the extended meaning, contended for by the appellant, is placed upon the said notification, it would tend to defeat and nullify the main charging section contained in Section 3 which levies duty upon all excisable goods produced or manufactured in India. The notification did not and could not have intended to exempt the manufactured goods from the excise duty but only those processes undertaken as job works, which but for the said notification would have obliged the appellant to pay duty upon the entire value of the manufactured product including the value of the steel pipes supplied by Modipon.

9. It is brought to our notice that there has been a cleavage of opinion among the High Courts and various Benches of CEGAT on the meaning and purportof the said notification. We may briefly examine those decisions.

10. In Madura Coats Ltd. v. Collector of Central Excise1, G.N. Ray, J. (as he then was) of the Calcutta High Court considered the case where the assessee-company used to arrange in a particular manner nylon or rayon yam supplied to it by its customers. The said arrangement was known as "tyre chord warp sheet". The excise authorities took the stand that the said process amounted to manufacture inasmuch as it brings it into existence new goods. The learned Judge, however, took the view that no manufacture was involved in the said process and, therefore, the duty under Tariff Item 68 was not attracted. Alternatively, it was held by the learned Judge that even if the tyre chord warps were new commodities, the petitioner, having manufactured the same as job work, was entitled to the benefit of Notification No. 119/75. This was so held notwithstanding the fact that the assessee supplied cotton wefts to hold the nylon or rayon yarn supplied by the customers for performing the job work in question. This view of the learned Judge was affirmed by the Division Bench comprising of M.M. Dutt and R.K. Sharma, JJ. in Collector of Central Excise v. Madura Coats Ltd.2 The Division Bench held that a work does not cease to be a job work simply because the job worker supplies some additional articles which do not constitute a substantial part of the manufacturing process. These decisions were followed by another learned Single Judge, Chittatosh Mookerji, J. in Associated Pigments Ltd. v. Collector of Central Excise3. In this case, the petitioner-

1 1980 ELT 582 (Cal)
2 (1982) 10 ELT 129 (Cal)

3 (1983) 10 ELT 876 (Cal)

assessee used to receive pig lead or lead ingots from its customers for conversion into lead suboxide and lead monoxide. After subjecting the said lead to a process (the process undertaken by the petitioner is not clear from the report) the petitioner returned the finished product to its customer and charged the agreed price for the said process. The petitioner did not supply any material for manufacturing lead suboxide and lead monoxide. He claimed the benefit of the notification. The Revenue's contention was that by virtue of the manufacturing process undertaken by the petitioner pure lead got converted into and emerged as totally new articles/goods called lead suboxide and lead monoxide. In such a situation, the Revenue submitted, the notification is not attracted. The learned Judge quoted with approval the earlier decisions of the Calcutta High Court aforesaid as well as the decision of the Gujarat High Court in Anup Engineering Ltd. v. Union of India4 and upheld the petitioner's claim. The learned Judge also referred to the meaning of the word 'manufacture' as stated by this Court in Union of India v. Delhi Cloth and General Mills Co. Ltd.5 and held that merely because a new commodity emerges as a result of manufacturing process undertaken as a job work, the benefit of the notification cannot be denied.

11.In Anup Engineering Ltd. v. Union of India4 (which is the subjectmatter of Civil Appeal Nos. 1922 of 1980 before us), a Division Bench of the Gujarat High Court dealt with a case where the customers supplied to the petitioner-company materials such as tin plates, sheets, tubes, pipes etc. which were duty-paid excisable goods. From these materials, the petitioner manufactured the desired equipment and components. (The decision does not mention the exact products manufactured by the, petitioner.) The excise authorities determined the value of the articles manufactured by the petitioner taking the total value of the company materials supplied to the petitioner and the value of the work done by him. The Division Bench noted in the first instance that job work in the context of the notification means "such items of work where the article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier after the article has undergone the intended manufacturing process, charging only for the job work done by him". The Bench added "It is clear, therefore, that the article supplied by the customer has to undergo manufacturing process as intended. It is obvious, in the context of the excise law, that, unless a new article known to trade emerges after the manufacturing process is completed, excise duty cannot be levied at all. That is the very basis of taxation under the excise law. In order to exempt job workers from payment of duty except to the extent of duty on the job work charges, this Explanation to the notification makes it clear that the article which undergoes manufacturing process at the hands of the job worker, must be supplied by the customer and the only thing 4 (1978) 2 ELT 533 (Guj) 5 AIR 1963 SC 791: 1977 ELT 199 which the job worker has to do is to subject that article supplied by the customer to the intended manufacturing process. The final result after the manufacturing process is completed has to be returned to the customer and the job worker only charges for the work done by him."

The Division Bench gave two illustrations to explain their point. One is where a sheet of brass is supplied by a customer to a factory which does the job work and the factory gets brass pots made from the sheets so supplied. Though the brass pot is a new article, it cannot be denied that the work done by the factory is job work. The second illustration given is where the customer takes a piece of

suit length to a factory which undertakes the job work of making suits according to the specification of the customer. The suit stitched is certainly a different article from the cloth supplied but all the same the work done by the factory is a job work. In support of this view, the Division Bench relied upon the Trade Notice issued by the Deputy Collector, Central Excise, Bombay on 30-4-1975 wherein it was stated that it was not necessary for attracting the notification that the article received by the job worker and the processed article returned by him should have the same trade description. The Division Bench further observed that accepting the Revenue's contention would render the notification totally otiose and redundant. If a new article does not emerge after the manufacturing process is completed, the Bench observed, there would be no occasion to levy excise duty at all.

12.A learned Single Judge of the Madras High Court, Padmanabhan, J. also held in Bapalal & Co. v. Govt. of' India6 that where the petitioner merely applies its labour and converts the rough diamonds into diamond jewellery for which act of conversion, it receives labour charges, it amounts to a job work as contemplated by the notification.

13.A Division Bench of the Karnataka High Court has also taken the same view in Precision Telecon Products v. Superintendent of Central Excise7. In this case, the Indian Telephone Industries Limited which manufactures telephones entrusted the manufacture of certain components to the petitioner. The ITI supplied the raw materials used in the manufacture of transmitters and components and the petitioner, after manufacturing transmitters and components out of the material so supplied, returned those goods to the ITI, collecting only the job charges. The High Court held that the manufacturing process undertaken by the petitioner falls within the expression "job work" and the petitioner is entitled to the benefit of the notification. This decision Is the subject-matter of Civil Appeal 1384-85 of 1987 now before LIS.

14.A different view has been expressed by a learned Single Judge of the Madras High Court, Sathiadev, J. in Madura Coats Ltd. v. Superintendent of Central Excise8. In this case, the petitioner was supplied duty-paid filament 6 1981 ELT 587 (Mad) 7 (1986) 24 ELT 235 (Kant) 8 (1982) 10 ELT 370 (Mad) and spun yam material which he twisted into different types producing "fenoplast yam". The question was whether such a process amounted to manufacture and if it did, whether Notification No. 119/75 was attracted? The learned Judge proceeded on the assumption that the process involved amounts to manufacturing process but held that the petitioner was entitled to the benefit of the said notification inasmuch as he did not add any materials on its own while carrying out the process of twisting. The learned Judge observed that whatever quantity had been handed over by the supplier to the petitioner was fully returned by the petitioner. The only process carried out by the petitioner was to twist the materials and that in spite of change in the physical form, the goods were still identifiable and bore the same character in which they were supplied by the supplier. Having so held, the learned Judge proceeded to observe :

> "If during the manufacturing process, the materials supplied by third respondent lose their identity and the product that is handed over to the supplier is entirely different, in which the articles supplied cannot be identified, the concession contemplated in the notification would not be available."

The learned Judge emphasised that in the process undertaken by the petitioner in that case, not even incidental material was added while doing the job work.

15.In view of the conflict of opinion on the question, a Special Bench of five members of CEGAT was constituted to consider the issue. The decision of the Special Bench is reported in National Organic Chemical Industries Ltd. v. Collector of Central Excise9. The facts considered by the Special Bench are : The appellants were manufacturing ethylene. They bought chlorine for that purpose. M/s Calico Chemicals, who may be called a customer, also used to make available chlorine to the appellants. The appellants got chlorine reacted with ethylene for conversion into vinyl chloride. A part of vinyl chloride so manufactured by the appellants was delivered to Calico Chemicals, calculated with reference to an agreed formula. The balance vinyl chloride was utilised by the appellants for further conversion into polyvinyl chloride. The question was whether the vinyl chloride that was delivered to Calico Chemicals by the appellants attracted excise duty on the value of the said vinyl chloride or whether the appellants were liable to pay duty only on the amount charged by them as conversion charges. From the facts aforestated, it Is clear that only a part of the material required for manufacturing vinyl chloride was supplied by Calico Chemicals and part of the material, namely, ethylene utilised for the said manufacture belonged to the appellants itself. Upon those facts and after considering the several decisions of the High Courts and also the earlier decisions of the various Benches of CEGAT, the Special Bench took the view that the benefit of the said notification is confined only to those processes which are incidental or ancillary to the completion of the manufactured product 9 1985 21 ELT 252 (Tribunal) reference is to the definition of the expression 'manufacture' in Section 2(f) of the Act - and not to the usual activities that are normally understood as comprised in the activity of manufacture. The Special Bench held that to enable a person to claim the benefit of the said notification, he will have to receive an article from the customer, subject the same to the manufacturing process in the nature of a process incidental or ancillary to the completion of the manufactured product and then return the said article to the customer, recovering from the customer charges for such activity only. The Special Bench laid emphasis on the Explanation which says that the article which is supplied by the customer to the job worker, that very article must come back to the supplier, after undertaking the manufacturing process. The manufacturing process contemplated by the said notification, the Special Bench held, is only that process which is incidental or ancillary to the completion of the manufacturing product. The Special Bench disagreed with the Calcutta and Gujarat High Courts insofar as they held that since manufacture necessarily involves emergence of new goods, such emergence of new goods cannot be a ground for denying the benefit of the notification. The Special Bench laid emphasis on the definition of the expression ,manufacture' in Section 2(f) of the Act and pointed out that the said expression is not confined to its ordinary connotation pointed out by this Court in Union of India v. Delhi Cloth and General Mills Ltd.5

16.In our opinion, while the Calcutta and Gujarat High Courts have by and large understood the notification correctly, their reasoning is vitiated by their omission to understand the expression 'manufacture' in the sense it is defined in the Act. Both the High Courts have understood the expression ,manufacture' in its ordinary/normal sense (as pointed out by this Court in Delhi Cloth and General Mills Ltd.5). Indeed, they have not even referred to the definition in Section 2(f) of the Act. Once an expression is defined in the Act, that expression wherever it occurs in the Act, rules or

notifications issued thereunder, should be understood in the same sense. Indubitably, the definition of 'manufacture' in Section 2(f) endows a wider content to the expression; several processes which would not ordinarily be understood as amounting to manufacturing are specifically included within its ambit. Clauses (i) and (ii) of the definition make this aspect clear beyond any doubt. In this connection, it must be remembered that even the unamended definition of 'manufacture' included within the ambit of the definition several processes and activities which would not otherwise have amounted to manufacture. The unamended definition contained as many as eight Subclauses. Sub-clause (iv), for example, stated that in relation to goods comprised in Item No. 18-A of the First Schedule, the expression ,manufacture' includes sizing, beaming, warping, wrapping, winding and reeling or any one or more or these processes or the conversion of any form of the said goods into another form of such goods. (Item 18-A of the First Schedule pertained to "cotton yarn - all sorts".)

17.Shri Vellapally, learned counsel for the Revenue - and the Special Bench of the CEGAT - is, therefore, right in pointing out the said defect in the reasoning of the Calcutta and Gujarat High Courts and In saying that the expression 'manufactured' in the notification should be understood as defined in the Act. At the same time, we find it difficult to agree with the learned counsel that the expression 'manufacture' contemplated by the notification is confined to those processes alone which are "incidental or ancillary to the completion of manufactured product" - processes contemplated by clause (i) of Section 2(f). We do not see any warrant for restricting the meaning of the expression 'manufactured' occurring in the notification only to the aforesaid processes. In our opinion, the stress in the notification is rather upon the word "job work". Now, what does the expression "job work" mean? On this question, the Explanation is not of much assistance. The Concise Oxford Dictionary assigns several meanings to the expression 'job' but the relevant meaning having regard to the present context is "a piece of work especially one done for hire or profit". The expression "job work" is assigned the following meaning : "Work done and paid for the job." The notification, it is evident, was conceived in the interest of small manufacturers undertaking job works. The idea behind the notification was to help the job workers - persons who contributed mainly their labour and skill, though done with the help of tools, gadgets or machinery, as the case may be. The notification was not intended to benefit those who contributed their own material to the articles supplied by the customer and manufactured different goods. We must hasten to add that addition or application of minor items by the job worker would not detract from the nature and character of his work. For example, a tailor entrusted with a cloth piece and asked to stitch a shirt, a pant or a suit piece may add his own thread, buttons and lining cloth. Similarly, a factory may be supplied the shoe uppers, soles etc. by the customer and the factory applies its own thread or bonding material and manufactures shoes therefrom and supplies them back to the customer, charging only for its work; the nature of its work does not cease to be job work. Indeed, this aspect has been stressed in all the decisions of High Courts referred to hereinbefore.

18.The interpretation placed by us does not render the explanation in the notification redundant in any manner, while at the same time it advances the object of the notification, viz., helping factories undertaking manufacturing processes in the nature of job work. The restricted interpretation contended for by the Revenue unduly curtails the operating field of the notification. True it is that processes incidental or ancillary to the completion of the manufactured product are within the purview of the notification, but it may not be correct to say that the notification refers only to those

processes and to nothing else. In the two illustrations given in Anup Engineering4, viz., where the brass sheet is moulded into a brass pot and where the cloth piece is stitched into a suit, or in the illustration given by us., viz., where shoe uppers and soles etc. are supplied by the customer and the factory prepares shoes out of them, it cannot be said that the article that is entrusted to the factory (undertaking job work) and the article that is supplied back to the customer are totally different. They are the same articles though in a different form.

Insisting upon the same article being returned to the customer after undergoing the manufacturing process at the hands of the job worker may rob the notification of any substance whatsoever. The Special Bench evidently laid more emphasis upon the Explanation which led it to confine the operation of the notification only to those processes which are incidental or ancillary to the completion of the manufactured product. That in our view amounts to undue curtailment of the ambit of the notification. If that were the intention of the Central Government in issuing the notification, it would have said so clearly. It must be remembered that the notification was issued simultaneously with the introduction of Tariff Item 68 in Schedule I to the Act and was intended to help those factories job works, who were charging their customers only for the work done by them. In their hands, the value of the article would be the value of the job work done by them - and not the total value of the article which would have been the case but for the notification. According to the restricted view contended for by the Revenue, a tailoring factory stitching clothes out of the cloth supplied or a factory preparing shoes out of material supplied by the customer, in the illustrations given hereinabove, would not qualify for the benefit of the notification. (We are not concerned herein how such articles would be valued 'In the hands of the supplier.)

19. Now, let us look at the process involved in this appeal. All that Modipon does is to supply steel pipes. The appellant purchases guide rings and strengthening rings from the market. It fits these rings into those steel pipes by itself or gets them fitted in another unit. Thereafter, adopters are fitted on the sides of the cops and then the plastic sleeves are fitted on the cylinders of the cops. This is not a case where the rings and the adopters and sleeves are supplied by Modipon. It is not suggested that the value of rings, adopters and sleeves is very small vis-a-vis the value of steel pipes. The additions made by the appellant are not minor additions; they are of a substantial nature and of considerable value. Except the pipes, all other items which go into the manufacture of cops are either purchased or procured by the appellant itself and it manufactures the cops out of them. The work done by him cannot be characterised as a job work. If all the requisite rings, adopters and sleeves had also been supplied by Modipon, it could probably have been said that the appellant's work is in the nature of job work. But that is not the case here. The Tribunal was, therefore, right in holding that the appellant cannot avail of the benefit of the notification. The appeal accordingly fails and is dismissed. No costs.

Civil Appeal Nos. 1384-85 of 1987

20. These appeals are preferred against the judgment of the Karnataka High Court in Precision Telecon Products v. Supdt. of Central Excise7 with which decision we have already dealt with. Since it does not appear that the respondent adds any of his own material while manufacturing the transmitters and components as job work, the High Court was right in extending the benefit of the

notification to the respondent. It appears from the record that all the material required for manufacturing the transmitters and components, namely, aluminium alloy, nickel, silver, graphite rods, carbon granules are supplied by the Indian Telephone Industries free of cost to the respondent. In the circumstances, there are no grounds for interference with the judgment of the High Court. The appeals are accordingly dismissed. No costs.

Civil Appeal No. 3464 of 1988

21.In this appeal directed against the decision of the CEGAT, New Delhi, the Tribunal has not clearly dealt with the process of manufacture undertaken by the appellant. It appears that the customer entrusts lead ingots to the appellant who manufactures lead suboxide and litharge from them. Whether the appellant adds any of his own material or whether the said manufactured products are made wholly or substantially from the material supplied by the customer is not clear from the judgment of the Tribunal. In the circumstances, the proper course is to remit the matter to the Tribunal for decision afresh according to law after verifying the necessary facts and in the light of the ratio of this judgment. The appeal is allowed and the matter remitted to the Tribunal accordingly. No costs. Civil Appeal Nos. 19-22 of 1980

22.In these appeals directed against the judgment of the Gujarat High Court too the process employed by the respondent is not clearly set out. In the circumstances, the appeals are allowed and the matters remitted to the High Court for ascertaining the relevant facts and to decide the appeal according to law in the light of the ratio of this judgment. The appeals are allowed and the matter remitted accordingly. No costs.

Civil Appeal No. 3331 of 1984

23.The appellant, M/s Sirsilk Ltd. inter alia converts acetic acid into acetic anhydride as part of its manufacturing activities. To utilise 'its surplus/spare capacity, it also undertakes the said work on behalf of customers. It claimed the benefit of the Notification No. 1119/75 insofar as it undertook the work on behalf of the customers. The judgment of the Tribunal states inter alia "It is admitted by the learned counsel for the appellant that customer's acetic acid does get mixed at some stage or other with other acetic acid and that there is no certainty that the acetic anhydride that is returned is the product of that customer's very own acetic acid. ... It is a full-fledged manufacture of a new commodity, and must, therefore, pass through all the rigours that such commodities must pass under the Central Excise Law. If Notification No. 119/75-CE cannot be applied, then so be it. The notification cannot be forced to operate in conditions it is not qualified to operate. In the case before us now, we have the added factor that acetic anhydride (sic) by Sirsilk is not known to be the product of the acetic acid brought by the particular customer, because Sirsilk uses this process for its own production programmes as well. The acetic acid first gets mixed with other acetic acid or the finished anhydride gets mixed with anhydride obtained from other acetic acid.

There is no segregation and therefore no one can tell that the acetic anhydride was the result of this or that acetic acid."

Though the Tribunal purported to follow the principle of Anup Engineering4, it yet denied the benefit of the notification to the appellant in the above facts and circumstances. We see no flaw in the reasoning of the Tribunal. The appeal accordingly falls and is dismissed. No costs.

Civil Appeal No. 3963 of 1990

24.This appeal is preferred against the judgment and order of a learned Single Judge allowing the writ petition following Anup Engineering4. The judgment of the High Court does not set out the relevant facts nor the manufacturing process undertaken by the respondent writ petitioner. In the circumstances, the appeal is allowed and the matter remitted to the High Court for looking into the relevant facts and to dispose of the writ petition according to law in the light of the ratio of this judgment. No costs. Civil Appeal No. 2867 of 1991

25.In this case, the respondent receives high density Polythene fabric from its customers and prepares bags out of it. He also prints a logo or some other matter on the said bags as per the specification of the customer. The High Court of Bombay at Nagpur held that, in the above circumstances, the work done by the respondent writ petitioner was in the nature of job work. We see no error in the reasoning of the High Court. It is clear that the respondent manufacture bags wholly out of the material supplied by the customer and the mere probable addition of thread and/or other bonding material would not make a difference to the application of the notification, as pointed out hereinabove. The appeal accordingly fails and is dismissed. No costs.
