COMMISSIONER OF SALES TAX, BOMBAY ETC.ETC. A

v.

BHARAT PETROLEUM CORPORATION LTD. ETC. ETC.

FEBRUARY 18, 1992

[S. RANGANATHAN, V. RAMASWAMI AND S.C. AGRAWAL, JJ.] B

Bombay Sales Tax Act, 1959/Bombay Sales Tax Rules, 1959:

Section 42/Rules 41 and 41-A—Sales tax—Right to claim set-off—Sales tax paid on purchase of raw material used in manufacture of non-taxable goods and taxable by-products for sale—Whether set-off would be available on the entire amount of tax paid on purchase of raw material—Whether principle of apportionment on basis of turnover of taxable and non-taxable goods could be invoked—Whether raw material purchased by manufacturer-dealer should be used for manufacturing taxable goods only and sale of manufactured goods should be made by manufacturer-dealer himself—By-product yielded in the process of manufacture of main product—Whether manufacturer of main product-manufacturer of by-product also. C D

The assessee-Oil refinery, predecessor-in-interest to the respondent Corporation in one of the appeals had registered itself as a dealer under the Bombay Sales Tax Act, 1959. During the Calendar year 1961, it had purchased sulphuric acid from a chemical company for processing and refining crude oil and manufacturing kerosene for a marketing company. On the sulphuric acid so purchased sales tax was recovered from it by the chemical company. While the refined kerosene which was not taxable upto 31.3.1961 was sold by the marketing company, the acid sludge yielded in the purification process was sold by the refinery. The refinery paid sales tax on the acid sludge sold by it, and claimed a set off (and a refund, if need be) of the sales tax paid by it on its purchase of sulphuric acid, on the ground that all the conditions set out in clause (e) of Rule 41 of the Bombay Sales Tax Rules, 1959 were fulfilled, viz., it was manufacturer within the meaning of Section 2 (17) of the Act, that it was also a registered dealer, that it manufactured taxable goods for sale, that while acid sludge was taxable throughout the year, kerosene was taxable with effect from 1.4.1961 onwards and that tax was recovered on the raw material purchased by it by the chemical company. E F G H

A The Sales Tax Officer allowed the set off only partly. On appeal, the Appellate Assistant Commissioner held that the assessee was entitled to no set off at all under Rule 41 since what was manufactured by the assessee was kerosene and not acid sludge, and the kerosene was sold not by the assessee-manufacturer, but by some other company. The Appellate B Tribunal, however, allowed the assessee's claim in full and on reference this was upheld by the High Court.

The respondent Cotton Mill in the other appeals purchased raw unginned cotton from agriculturists and unregistered dealers during periods 1.7.73 to 30.6.74 and 1.7.74 to 30.6.75 and paid sales tax on the raw C cotton so purchased. The cotton was ginned yielding place to ginned cotton and cotton seed. The respondent manufactured yarn and cloth from the ginned cotton. The cotton waste and yarn waste obtained in the course of manufacture were also sold by the assessee. It paid sales tax on the yarn and cotton waste sold by it and claimed a set off, under 41-A of D the Rules, of the sales tax paid on the purchase value of the entire raw cotton purchased by it.

The Sales Tax Officer allowed a set off of only part of the purchase tax paid on the raw cotton purchased by the assessee proportionate to the extent of yarn sales. On appeal, the Appellate Tribunal allowed a set off E of the entire purchase tax paid on the raw cotton, machinery and other purchases, which had been used in the process of manufacture of cotton waste. It, however, directed that the deductions should be so allowed as not to result in a double deduction of the same amount of purchase tax.

F In the appeals, by Special leave, before this Court, on behalf of the State Government, it was contended that Rules 41 and 41-A were intended to give relief to a dealer in respect of purchase of goods which were used in the manufacture of taxable goods for sale, that the manufactured goods, viz., pure kerosene was neither sold by the respondent so as to attract sales tax in his hands nor, was it liable to sales tax at all for the first three G months, and the cotton purchased on payment of tax was used for the manufacture of cloth which was not liable to sales tax, and that a set off could not be allowed merely because a by-product or waste product, viz., acid sludge and cotton waste was sold for a nominal turn-over, which was subject to tax, and that the set off should be split up proportionately and H allowed only to a proportionate extent, on the basis of the respective

turnover of the taxable and non-taxable goods, and an apportionment of such nature was implicit in a tax law and was also in consonance with the object and purpose of the rules. A

On behalf of one of the respondents it was contended that under Rule 41 it was not a requirement that the manufactured goods had to be sold by the manufacturing dealer himself and that the sulphuric acid purchased was wholly used in the manufacture of two items – kerosene and acid sludge – one of which, viz., the sludge, was taxable and also subjected to tax, and the amount of set off was specified in the rule itself as the amount of purchase tax paid on the goods so used, and could not be scaled down proportionately merely because the turnover of the taxable goods was insignificant. The other respondent adopted these contentions. B C

Dismissing the appeals, this Court,

HELD : 1.1 The assessees are entitled to a set off of the entire tax paid by them on the purchases of sulphuric acid and cotton respectively. The only condition under the rule is that the goods purchased on payment of tax should have been used in the manufacture of taxable goods for sale. Their concurrent user for the manufacture of another item of goods which may or may not be taxable is immaterial though kerosene was also taxable for nine months in the year and yarn was also manufactured and it was subject to tax. D E

Commissioner of Sales Tax v. *Burmah Shell Refineries Limited,* (1978) 41 S.T.C. 337, referred to.

1.2. The principle of apportionment on the basis of turnovers of various items of goods manufactured and restriction of the quantum of set off to a proportion based on the turnover of taxable goods to the total turnover cannot be accepted. No doubt under the rules, situations are conceivable where severance of taxable element is implicit, but the type of user in the instant case is a composite one, in which it is not possible to correlate any part of the purchased goods as having gone in for the purpose of manufacture of taxable goods. F G

Anglo-French Textiles v. *C.I.T.,* (1954) 25 I.T.R. 27, S.C.; *Tata Iron & Steel Co.* v. *State* A.I.R. 1963 S.C. 577 and *Best & Co.* v. *C.I.T.* (1966) 60 I.T.R. 11, S.C., distinguished. H

A 1.3 In the instant case the entire sulphuric acid purchased has no doubt been used in the manufacture of kerosene though perhaps not a drop of acid clings to the kerosene manufactured. Equally, the entire sulphuric acid has gone into the composition of the acid sludge. Having regard to the nature of the interactions in the instant case, it is incon-
B trovertible that the entire sulphuric acid purhased has gone into the manufacture of the sludge. The rules do not require that the purchased goods must have been used only for the manufacture of taxable goods for sale. Therefore, it is not possible to cut down the quantum of relief clearly outlined in the rule on the basis of some general principle claimed to underline the provision.

C

1.4 The basis for the relief provided is not very clear cut. Various reliefs have been provided in a group of rules which come in for application in various situations. The relief may be based on the principle that the manufactured product is taxed either in the hands of the same assessee or
D in someone else's hands, or that the manufactured goods are exported which may yield no tax but earn foreign exchange, or even that the purchases are utilised for manufacture of goods in the State thus contributing to the industrial development of the State. It is, therefore, difficult to read into the provision a quantitative correlation of the goods resulting in a taxable turnover and the purchases of raw materials on
E which tax has been paid.

1.5 Rule 41 does not contemplate that the goods purchased by the dealer should be used for manufacture of taxable goods for sale by him. No such restriction can be read into this rule.

F 2.1 Where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, an intention can be attributed to the manufacturer to manufacture and sell the subsidiary product.

G *State of Gujarat* v. *Raipur Manufacturing Co. Ltd.*, (1967) 19 S.T.C. 1, relied on.

2.2 The assessees in the instant case do purchase sulphuric acid and unginned cotton for use in a manufacturing process, which yield not only kerosene and yarn/cloth, but also acid sludge and cotton waste. There
H is also no evidence to suggest that acid sludge is not a commercial

commodity with a market but an item of waste. A

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1031 of 1979 etc. etc.

From the Judgment and Order dated 23/24.11.1977 of the Bombay High Court in Sales Tax Reference No. 92 of 1976. B

S.K. Dholakia, S.M. Jadhav and A.S. Bhasme for the Appellants.

Vinod A. Bobde, Ms. A.K.Verma, U.A. Rana, P.G. Gokhale, Ms. Sangeeta Aggarwal and D.N. Mishra for the Respondents.

C

The Judgement of the Court was delivered by

RANGANATHAN, J. These are appeals by the Revenue arising out of proceedings under the Bombay Sales Tax Act, 1959 (hereinafter called 'the Act'). The respondents, Bharat Petroleum Corporation Ltd. (in CA 1031 of 1979) and Phulgaon Cotton Mills Ltd. (in the four other appeals) D are assessees to sales tax. They claimed a set-off, against the sales tax payable by them for the years in question, of certain sums, invoking the provisions of rules 41 and 41A framed under the Act, as they stood at the relevant time. As the wording of these rules, in so far as it is material for our present purposes, is identical and the basis of the claim was also E common, it will be convenient to dispose of both sets of appeals by a common judgment and we proceed to do so.

The set off claimed by the assessees was in terms of s. 42 and rules 41 and 41A, which may now be referred to :

F

(1) Section 42 reads thus :

"42. *Draw-back, set off, refund etc.* – The State Government may provide by rules that –

(a) in such circumstances and subject to such conditions as may G be specified in the rules a draw-back, set off or refund of the whole or any part of the tax –

(i) xx xx xx

(ii) paid or levied or leviable in respect of any earlier sale or H

A purchase of goods under this Act or any earlier law, be granted to the purchasing dealer ;

(b) xx xx xx

The State Government has notified various rules from time to
B time in exercise of this power which are collected in Chapter VII of the Rules. Of these we are concerned with rules 41 and 41A.

(2) Rule 41 (omitted w.e.f. 24.6.81) was a very long rule con-
C taining several clauses. In so far as is relevant for our present purposes, it was in the following terms:

"41. *Drawback, set-off etc. of tax paid by a manufacturer - In assessing the amount of tax payable in respect of any period by a Registered dealer, who manufactures taxable goods for sale* (hereinafter in this rule referred to as the "Manufacturing
D dealer"), *the Commissioner shall grant to him a draw-back, set-off or* as the case may be *a refund of the aggregate of the following sums,* that is to say :—

(a) xx xx xx

E

(aa) xx xx xx

(b) xx xx xx

(bb) xx xx xx

F

(c) xx xx xx

(cc) xx xx xx

(d) xx xx xx

G

(e) *a sum recovered from the Manufacturing dealer by another registered dealer by way of sales tax* or, general sales tax or both, as the case may be, *on the purchase by him, of goods from such registered dealer,* being goods specified in schedule C to the Act other than in entries 1 to 11 (both inclusive) and 15 therein and
H in Schedule D other than in entries 1 to 4 (both inclusive)

therein and in Schedule E other than in entries 1 and 2 therein, when the purchasing dealer did not hold a recognition or when the dealer held a recognition but effected the purchase otherwise than against a certificate under section 12 of the Act *provided that such goods are used by him in the manufacture of taxable goods for sale* or in the packing of taxable goods manufactured by him for sale.

Explanation : xx xx xx

(Material portions Underlined)

(3) The relevant portion of rule 41A, which has been invoked in the case of Phulgaon Cotton Mills Ltd., reads thus :

"41A. (1) *Drawback, set off etc. of tax paid by a manufacturer in respect of purchases made on or after the 15th July 1962 : In assessing the amount of tax payable in respect of any period by a Registered dealer who manufactures taxable goods for sale* or export* (hereinafter in this rule referred to as the "manufacturing dealer"), *the Commissioner shall, in respect of the purhases made by such dealer* on or after the 15th July, 1962 of any goods specified in Schedule B, C, D or E *and used by him within the State in the manufacture of taxable goods* (**) *which have in fact been sold by him* (and not given away as samples or otherwise) or which have been exported by him or used by him in the packing of goods so manufactured *grant him a draw-back, set off or, as the case may be, a refund of* the aggregate of the following sums, that is to say:

(a) *a sum recovered from the manufacturing dealer by other Registered Dealers by way of sales* tax, or general sales tax, as the case may be, both, *on the purchase by him from such registered dealers,* when the manufacturing dealer did not hold a Recognition or when he held a recognition but effected the

* The words "or export" were inserted by a notification dated 31.8.70.

** The words "which have in fact..... so manufactured" were substituted by a notification dated 15.1.1976 for the words "for sale or export or in the packing of goods so manufactured for sale or export".

A purchase otherwise than against a certificate under section 11 of the Act;

(b) xx xx xx

(c) xx xx xx

B

(d) xx xx xx

(Material portions underlined)

(4) There was also a claim under rule 43AB but we are not C concerned with that in the present appeals.

Now to turn to the facts which give rise to these appeals.

A. Burmah Shell

D The Bharat Petroleum Corporation Ltd. is before us as the successor-in-interest of the Burmah Shell Refineries Ltd. which is the assessee with which we are concerned. We shall refer to it as the 'refinery' to distinguish it from the Burmah Shell Oil Storage and Distributing Company of India Ltd. which will be briefly referred to hereinafter as the 'Marketing company'.

E We are concerned with the period from 1.1.1961 to 31.12.1961. The refinery registered itself as a 'dealer' under the Act and possessed a recognition certificate under section 25, after having failed in a plea, raised in earlier assessment years, that it was not a 'dealer' and was not required to be registered as such. It had entered into a contract with the marketing F company under which it agreed to process and refine crude oil belonging to the marketing company and manufacture kerosene for it. This contract was in the nature of a bailment by the marketing company to the refinery, the refinery taking the crude oil and returning it after purification, as refined kerosene. For the performance of this task it received payments G from the manufacturing company by way refining charges on the basis of the job-work done from time to time. The refined kerosene was eventually sold by the marketing company and the refinery had nothing to do with the sales. It may be mentioned here that there was no sales tax payable on sales of kerosene till 31.3.1961 but it became liable to sales tax thereafter.

H For the above purification proccess, the refinery needed to use

sulphuric acid. During the calendar year 1961, it purchased 3048.760 MT of acid for Rs. 3,52,742 from Dharmsi Morarji Chemical Co. Ltd. (hereinafter referred to as "Dharmsis") under an agreeement dated 9.6.1955 which was to remain in force for a period of ten years from 1.1.1966 (Sic). On the sulphuric acid it so purchased, a sales tax of Rs. 13,421.15 (Rs. 15,107.72, according to the High Court) was reovered from it by Dharmsis, as the refinery did not purchase it on the strength of the recognition certificate held by it as the certificate could have been utilised only if the goods purchased had been intended to be used by it in the manufacture of goods for sale by itself, whereas the manufactured kerosene was sold by the marketing company. When the sulphuric acid was used in the refining process, the crude oil got refined and purified but the impurities therein precipitated into the acid and yielded "acid sludge". The refinery's contract with Dharmsis provided that the acid sludge should be sold by the refinery to the Dharmsis which, apparently, had its own uses for the sludge. Accordingly, the refinery sold 3541. 985 MT of acid sludge, during the relevant period, for Rs. 68, 108 – the correctness of this figure was unsuccessfully contested before the High Court – and on this amount it paid sales tax. The record does not show the amount of sales tax paid by the refinery on this account, but, having regard to the nature of the commodity and turnover involved, it must, admittedly, have been a very small amount.

Having done this, the refinery claimed that, as against the sales tax paid by it for the period in question (including the tax paid on the acid sludge), it was entitled to a set off (and a refund, if need be) of the amount of Rs. 13, 421.15 paid by it as sales tax on its purchases of sulphuric acid. Its argument is that it is entitled to this refund as all the conditions set out in clause (e) rule 41 were fulfilled this-wise :

> (a) It is a 'manufacturer', as the process of refining carried out by it falls within the wide definition of 'manufacture' contained in s.2(17) of the Act viz. :
>
> "2(17) 'manufacture', with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise treating, or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed".

A It is also a Registered dealer.

(b) It manufactured taxable goods for sale. The acid sludge manufactured by it was taxable throughout the year and the pure kerosene manufactured by it was taxable w.e.f. 1-4-1961 onwards.

B

(c) Tax had been recovered from it on its purchases of sulphuric acid from Dharmsis who are Registered dealers as the purhases had not been effected on the basis of a recognition certificate.

C The Sales Tax Officer allowed the set off only to the extent of Rs.1,101.40 without giving any details as to the manner in which this figure had been arrived at. On appeal, the Appellate Assistant Commissioner held that the assessee was entitled to no set off at all under rule 41 as what was manufactured by the assessee was kerosene and not acid sludge and D the kerosene was sold not by the assessee-manufacturer but by some other company. The Appellate Tribunal, however, allowed the assessee's claim in full and its view was upheld, on reference, by the High Court. Hence the present appeal.

B. Phulgaon Cotton

E

In the case of Phulgaon Cotton Mills, we are concerned with four accounting periods : 1-7-73 to 30-6-74, 1-7-74 to 30-6-75, 1-7-75 to 30- 6-76 and 1-7-76 to 30-6-77. The issue as to the application of rule 41A arises in the following circumstances.

F The assessee purchased raw unginned cotton from agriculturists and unregistered dealers. The cotton was ginned, yielding ginned cotton and seeds. One of the issues raised in the assessments was as to whether purchase tax should be paid on the total value of the raw cotton purchased or on the said purchase price less the value of the cotton seeds obtained G therefrom. This question was answered against the assessee and is no more in issue before us.

The assessee manufactured yarn and cloth from the ginned cotton. Besides cotton and yarn, cotton waste and yarn waste were also obtained in the course of the manufacture and these were also sold by the assessee. H Some quantity of the fabrics produced by the assessee were also exported.

During the periods 1-7-73 to 30-6-74 and 1-7-74 to 30--6-75, the assessee had paid sales tax on the purchase value of the entire raw cotton purchased by it. It, therefore, claimed a set off, under rule 41A, of the purchase tax so paid as it had to pay sales tax on the yarn and cotton waste sold by it. It also claimed set off under rule 43AB in respect of the three periods other than between 1-7-74 and 30-6-75 but we are not concerned with this claim. The Sales Tax Officer allowed only partial relief to the assessee under rule 41A. He permitted a set off not of the entire purchase tax paid by the assessee on the raw cotton purchased by it but only of a part thereof proportionate to the extent of yarn sales. The Appellate Tribunal however upheld the contention of the assessee. It allowed a set off of the entire purchase tax paid by the assessee on the raw cotton, machinery and other purchases which had been used in the process of manufacture of cotton-waste. In doing so it followed the principle of the decision of the High Court in the case of *Burmah-Shell Refineries,* (1978) 41 S.T.C.337. It observed :

> "21. .....When the raw-cotton is ginned or ginned cotton is used in the process of manufacturing yarn, there is bound to be cotton waste. In view of these facts, the appellant will also be entitled to full set-off so far as the purchases of cotton are concerned, which have resulted in the production of taxable commodity i.e. cotton waste. Each and every ounce of cotton is used in the manufacture of cotton waste which is a taxable commodity. The question of, therefore, allowing proportionate set-off so far as the purchases of cotton or machinery which are used in manufacturing of cotton waste does not arise. *The appellant is entitled to full set-off so far as purchases of cotton machinery and other purchases, which are used in the manufacture of cotton waste, a taxable commodity.* There is no conflict in the decisions given by the Tribunal in earlier rulings given in the appellant's own cases. No such argument of production of cotton waste by-product simultaneously was canvassed. All that was canvassed was that yarn waste was a taxable bye-product. *Hence, full set-off on purhase of cotton be allowed.* Tribunal negatived this contention by pointing out that there is no simultaneous production of yarn and cloth. First yarn is manufactured and then cloth. Thus question of referring this issue to larger Bench does not arise. The cases will have,

A therefore, to go back to the Assistant Commissioner for deciding the quantum of set-off admissible under Rule 41-A on these basis for all the periods".

The Tribunal, however, directed that the deductions should be so allowed as not to result in a double deduction of the same amount of purchase tax.

Aggrieved by the order of the Tribunal, the Commissioner of Sales Tax filed petitions for special leave to appeal to this Court therefrom as no useful purpose would be served by approaching the High Court on reference in view of the decision of that Court in the *Burmah-Shell Refineries* case on the point at issue having gone against the Revenue. Leave was granted by this Court on 3-9-90 and hence the four civil appeals by the Revenue in the case of *Phulgaon Cotton Mills Limited.*

Before dealing with the issue on the interpretation of rules 41 and 41A which has been debated before us, we wish to point out the difficulties encountered by us as the facts in the case of *Phulgaon Cotton Mills* are not quite clear from the record. From the Tribunal's order, it is seen that, during the periods 1-7-75 to 30-6-76 and 1-7-76 to 30-6-77, the assessee purchased no raw cotton from unregistered dealers and no purchase tax was levied thereon. Nevertheless, some relief under rule 41A was allowed by the Officer in the assessments for these periods as well. The basis on which a claim was made, and partially allowed, under rule 41A in respect of these periods is not known. Also, the Tribunal has allowed full relief on the basis that since cotton was used in the manufacture of cotton waste, the assessee was entitled to relief in respect of purchase tax paid on raw cotton though for these years there was no such tax. But the order of the Tribunal refers also to "set off so far as purchases of machinery and other purchases" indicating that perhaps some purchase tax had been paid in respect of those purchases and set off had been sought in respect thereof. But, even assuming this, the discussion regarding cotton-waste appears to be pointless since, admittedly, the yarn manufactured was liable to sales tax and, on the Tribunal's reasoning, this was sufficient to enable the assessee to claim set off of the purchase tax paid on cotton, machinery and other materials used in the manufacture. But these aspects have not been touched upon before us. The arguments before us, as we shall refer presently, revolved round a very simple issue. We shall discuss this issue

and leave the other aspects touched upon above to be clarified, if need be, when the assessment is finally redone in the light of our judgment. A

Shri Dholakia, learned counsel for the State of Maharashtra, submits that the issue in these appeals is a very simple one. Rules 41 and 41A are intended to give relief to a dealer in respect of purchase of goods which are used in the manufacture of taxable goods for sale, the clear idea being that where the manufactured goods will also be liable to sales tax in the hands of the manufacturer there should be a relief of the taxes paid by him on the goods purchased by him for use in such manufacture, so as to avoid double taxation. In the *Bharat Petroleum* case, the manufactured goods viz. pure kerosene were neither sold by the respondent so as to attract sales tax in his hands nor, indeed, liable to sales tax at all for the first three months. So also, in the case of *Phulgaon Cotton Mills,* the cotton purchased on payment of tax was used for the manufacture of cloth which was not liable to sales tax. A set off cannot be allowed merely because a bye-product or waste product (viz. the acid sludge in the one case and the cotton waste in the other) was sold for a nominal turnover which was subject to tax. Even assuming that the sulphuric acid or cotton purchased can be said to have been used for the manufacture of two commodities (viz. kerosene and acid sludge in the one case and cloth and cotton waste in the other), the set off under the rules relied upon should be split up proportionately and allowed only to a proportionate extent, the proportion being decided on the basis of the respective turnovers of the taxable and non-taxable goods. He submits that though the rules do not specifically provide for such a bifurcation, an apportionment of such nature is almost invariably implicit in a tax law and is also consonant with the object and purpose of the rules. He, therefore, submits that the High Court and Tribunal ought to have restricted the relief only to a proportionate extent as done by the sales tax officer. He points out that the basis on which the apportionment was made by the officer had not been specifically challenged before the appellate authorities and is not in issue before us. B C D E F

On the other hand, Sri Bobde, learned counsel appearing for *Bharat Petroleum* laid stress on two aspects of the rule. First, he points out that, under the rule, it is not a requirement that the manufactured goods have to be sold by the manufacturing dealer himself. The fact is that the kerosene constituted taxable goods after 1.4.61 and was sold by the marketing company. The second aspect of the rule is that, admittedly, the G H

A sulphuric acid purchased was wholly used in the manufacture of two items – kerosene and acid sludge – one of which viz. the sludge was taxable and also subjected to tax. Once this condition is fulfilled, the amount of set off is specified in the rule itself as the amount of purchase tax paid on the goods so used and cannot be scaled down proportionately merely because, according to the department, the turnover of the taxable goods is B insignificant. Sri Rana, learned counsel appearing for the *Phulgaon Cotton Mills,* adopts this argument *mutatis mutandis.*

We have given deep thought to these contentions and we have come to the conclusion that, plausible and attractive as the argument urged on C behalf of the State is, the conclusion arrived at by the High Court and the Appellate Tribunal has to be upheld. But before dealing with this aspect, we may dispose of two minor questions. The first which arises in the *Bharat Petroleum* case is whether rule 41 contemplates that the goods purchased by the dealer should be used for manufacture of taxable goods D for sale by him. The High Court has given good reasons, with which we are inclined to agree, for holding that no such restrictions can be read into this rule but this contention is of no significance in view of our conlusion that the assessee would be entitled to the set off claimed even on the basis of the taxable sales of acid sludge effected by it. The other point is whether the assessees can be said to manufacture "acid sludge" and "cotton waste" E respectively. It is suggested for the State that the assessees are purchasing acid and cotton for the manufacture of kerosene and yarn/cloth respectively and it is ludicrous to suggest that the assessees are purchasing sulphuric acid and cotton for manufacturing acid sludge and cotton waste. Put like that the assessee's contention seems a little artificial. But the contention F is not really absurd. For, the assessees do purchase sulphuric acid and cotton for use in a manufacturing process which yields not only kerosene and yarn/cloth but also acid sludge and cotton waste. As pointed out in *State of Gujarat* v. *Raipur Manufacturing Co. Ltd.,* (1967) 19 S.T.C. 1, where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, G an intention can be attributed to the manufacturer to manufacture and sell not merely the main item manufactured but also the subsidiary products. There is also no evidence on record to suggest, at least so far as acid sludge is concerned, that it is not a commercial commodity with a market but an item of waste. The contract with Dharmsis speaks to the contrary and H moreover, as pointed out by the High Court, the assessee had been

practically compelled by the Department to apply for and obtain a recognition certificate for the manufacture of sludge and it had also paid tax as dealers in acid sludge. These two contentions have, therefore, to be rejected. A

Turning now to the main question, we are inclined to agree with respondents' counsel that they are entitled to a set off of the entire tax paid by them on the purchases of sulphuric acid and cotton respectively. The only condition under the rule is that the goods purchased on payment of tax should have been used in the manufacture of taxable goods for sale. Their concurrent user for the manufacture of another item of goods which may or may not be taxable is immaterial though we may point out that in the *Bharat Petroleum* case, the kerosene was also taxable for nine months in the year and in the case of *Phulgaon Cotton Mills,* yarn was also manufactured and it was subject to tax. Sri Dholakia contends for an implicit principle of apportionment on the basis of turnovers of various items of goods manufactured and restriction of the quantum of set off to a proportion based on the turnover of taxable goods to the total turnover. He cited certain decisions under the Income-tax and Sales Tax Acts in support of this contention : *Anglo-French Textiles* v. *C.I.T.,* (1954) 25 I.T.R. 27, S.C.; *Tata Iron & Steel Co.* v. *State,* A.I.R. 1963 S.C. 577 and *Best & Co.* v. *C.I.T.,* (1966) 60 I.T.R. 11, S.C. We do not think these cases are of assistance. The first two cases dealt with the question as to when profits and gains can be said to accrue or arise in a manufacturing business and the third held that when a receipt is a composite one of capital and revenue nature, it is open to the Revenue to apportion the same and bring the latter to tax. These are situation in which the taxable element is severable. Under the rules presently under consideration also, situations are conceivable where such severance is implicit. For instance, suppose the cotton purchased is utilised partly for manufacture of cloth that is taxable and part for manufacture of cloth that is not taxable or partly for the manufacture of yarn which is taxable and is sold and partly for manufacture of cloth which is not taxable. In these instances, it is clear that only some of the cotton is utilised for the first purpose and some for the second purpose and so only the purchase tax paid in respect of the quantity utilised for the first purpose will be eligible for set off. But the type of user with which we are concerned is a composite one in which it is not possible to correlate any part of the purhased goods as having gone in for the purpose of manufacture of taxable goods. The position is picturesquely brought out in B C D E F G H

A the case of *Bharat Petroleum*. The entire sulphuric acid purchased has no doubt been used in the manufacture of kerosene though perhaps not a drop of acid clings to the kerosene manufactured. Equally, the entire sulphuric acid has gone into the composition of the acid sludge. The 3048.760 M.T. of acid have dissolved the impurities in the crude oil and conglomerated with them to constitute 3541.485 M.T. of acid sludge. Having regard to the nature of the interactions here, it is incontrovertible that the entire sulphuric acid purchased has gone into the manufacture of the sludge. The rules do not require that the purchased goods must have been used only for the manufacture of taxable goods for sale. In this situation, it is not possible to cut down the quantum of relief clearly outlined in the rule on the basis of some general principle claimed to underlie the provision. As Sri Bobde rightly pointed out, the basis for the relief provided is not very clear cut. Various reliefs have been provided in a group of rules which come in for application in various situations. The relief may be based on the principle that the manufactured product is taxed either in the hands of the same assessee or in someone else's hands, or that the manufactured goods are exported which may yield no tax but earn foreign exchange, or even that the purchases are utilised for manufacture of goods in the State thus contributing to the industrial development of the State. It is, therefore difficult to read into the provision a quantitative correlation of the goods resulting in a taxable turnover and the purchases of raw materials on which tax has been paid. In this background, the straight forward answer to the question raised lies in the literal interpretation of the language of the rules without straining to discover some doubtful principle for denying relief.

For the above reasons, we agree with the view taken by the High Court and followed by the Tribunal and dismiss these appeals. We, however, make no order regarding costs.

N.P.V. Appeals dismissed.