

A M/S. ASIAN PEROXIDES LTD.

v.

COMMNR. OF CENTRAL EXCISE, GUNTUR  
(Civil Appeal Nos.5842-5843 of 2004)

JULY 7, 2008

B [DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB  
ALAM, JJ.]

*Central Excise Act, 1944:*

C s.3 – Exemption claimed for finished product manufactured by an Export Oriented Unit wholly from raw materials produced in India and cleared to Domestic Tariff Area – Dispute regarding some items used for manufacture of finished product whether raw materials or consumables – Held:  
D CESTAT has not considered the materials on record in proper perspective – Matter remitted to it for decision afresh – Notification No.8/97-CE dated 1.3.1997.

E The appellant, as an Export Oriented Unit, claimed exemption under Notification No.8/97-CE dated 1.3.1997 for Hydrogen Peroxide manufactured and cleared by it to the Domestic Tariff Area. The adjudicating authority declined the benefit as it did not accept the case of the assessee that the finished goods were manufactured wholly from raw materials produced in India. The Commissioner  
F (Appeals) accepted the claim of the assessee that the items used in manufacturing the finished products were not raw materials but only consumables. However, the CESTAT allowed the appeals filed by the revenue. Aggrieved, the assessee filed the instant appeals.

G Disposing of the appeals, the Court

HELD: Since the CESTAT has not considered the materials on record in the proper perspective, the im-

pugned judgments are set aside. The matter is remitted to the CESTAT in each case to deal with it afresh in accordance with law. The CESTAT while doing so shall keep in view the decision of this Court in the case of *Vanasthali Textiles Industries Ltd.*\* [Para 8] [136-F & G]

\**Vanasthali Textiles Industries Ltd. v. Commr. Of C. Ex., Jaipur, Rajasthan 2007 (218) ELT 3(SC)*; relied on.

*CCE v. Ballarpur Industries Ltd.(1989) 4 SCC 566 and Commissioner of Central Excise & Customs, Indore v. Century Denim (2001) 129 ELT 657(T)* referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5842-5843 of 2004

From the final Order No. 422 and 423/2004 dated 4/2/2004 of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, Circuit Bench at Hyderabad in Appeal No. E/181-182/2001

WITH

C.A. No. 3644-3645 of 2005

Alok Yadav, Rajesh Kumar and M.P. Devnath for the Appellant.

I. Venkatanarayana, Navin Prakash, Rahul Kaushik and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. In these appeals challenge is to the order by the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (in short the 'CESTAT'). Before the CESTAT the issue related to the eligibility of the appellant for the benefit of exemption under Notification No.8/97-CE dated 1.3.1997 for Hydrogen Peroxide manufactured and cleared by the appellant to the Domestic Tariff Area (in short the 'DTA'). The Notification in question exempts finished products manufactured in a 100% Export Oriented Unit (in short the 'EOU')

A wholly from the raw materials produced or manufactured in India  
and allowed to be sold in India from so much of the duty of excise  
leviable thereon under Section 3 of the Central Excise Act, 1944  
(in short the 'Act') as is in excess of amount equal to the duty of  
excise leviable under Section 3 of the Act on like goods pro-  
duced or manufactured in India other than in a 100% EOU.

B 2. The original authority did not accept the stand of the  
appellant that the finished goods namely Hydrogen Peroxide  
removed by them from their EOU to the DTA was manufactured  
wholly from the raw materials produced in India.

C 3. Aggrieved by the adjudication, assessee appellant filed  
an appeal before the Commissioner of (Appeals) Excise who  
accepted the contention of the appellant that the above men-  
tioned items are not raw materials but only consumable and,  
therefore, assessee cannot be denied the benefit of exemption  
D under Notification no.8/97 in respect of several raw materials  
(11 in number). The revenue preferred appeals before the  
CESTAT. By the impugned order in each case CESTAT ac-  
cepted the stand of the revenue. It was held that the respondent  
was not entitled to the benefit of Notification No. 8/97.

E 4. It held that in *Commissioner of Central Excise & Cus-*  
*toms, Indore v. Century Denim* (2001) 129 ELT 657 (T) the Tri-  
bunal applied the tests enunciated by this Court namely, whether  
it is an ingredient which goes into the making of the end product  
in the sense that without its presence the end product, as such is  
rendered impossible and took the view that indigo pure dye, lycra  
F and other important fixing agents utilized in the manufacture of  
denim fabrics are raw materials and not consumables.

G 5. According to the learned counsel for the appellant the  
materials in question are not raw materials but consumable as  
per definition in para 3.13 of the EXIM Policy. According to the  
definition of 'consumable' it means any item which participates  
in or is required for manufacturing process but does not form  
part of the end-product. Items which are substantially or totally  
consumed during manufacturing process will be deemed to be  
consumable. According to para 3.41 of the policy, raw material  
H

means basic materials which are needed for the manufacture of goods but which are still in a raw nature, unrefined or un-manufactured stage. Reliance was placed on the Board's Circular No. 389/22/98-CX, dated 5.5.1998 wherein it has been clarified that the benefit of the Notification would also be available even if imported consumables are used in the manufacture by 100% EOU.

6. Learned counsel for the revenue supported the judgment of the CESTAT.

7. The expression "raw material" is not a defined term. The meaning has to be given in the ordinary well accepted connotation in the common parlance of those who deal with the matter. In *CCE v. Ballarpur Industries Ltd.* (1989) 4 SCC 566 it was, inter alia, observed as follows:

"14. The ingredients used in the chemical technology of manufacture of any end product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end product; those which, as a result of interaction with other chemicals or ingredients might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end products and those, as here, which might be burnt up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "raw material" for the end product. One of the valid tests, in our opinion, could be that the ingredient should be so essential from the chemical processes culminating in the emergence of the desired end product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning up is its quality and value as raw material. In such a case, the relevant test is not its absence in the end product, but the dependence

A of the end product for its essential presence at the delivery  
end of the process. The ingredient goes into the making  
of the end product in the sense that without its absence  
the presence of the end product, as such, is rendered  
impossible. This quality should coalesce with the  
B requirement that its utilization is in the manufacturing  
process as distinct from the manufacturing apparatus."

20. Dealing with a case under a Sales Tax statues, i.e.  
Andhra Pradesh General Sales Tax Act, 1957, this Court  
held that the word "consumable" takes colour from and  
must be read in the light of the words that are its neighbours  
C "raw material", "component part", "sub-assembly part" and  
"intermediate part". So read, it is clear that the word  
"consumables" therein refers only to material which is  
utilized as an input in the manufacturing process but is not  
D identifiable in the final-product by reason of the fact that it  
has got consumed therein. It is for this reason, a departure  
was made from the concept that "consumable" fall within  
the broader scope of the words "raw materials". Reference  
in this connection can be made to the view expressed in  
*Deputy Commissioner of Sales Tax (Law), Board of*  
E *Revenue (Taxes), Ernakulam v. M/s Thomas Stephen &*  
*Co. Ltd., Quilon* (1988 (2) SCC 264) and *Coastal*  
*Chemicals Ltd. V. Commercial Tax Officer, A.P. and Ors.*  
(1999 (8) SCC 465). In the cases at hand "consumable"  
are treated differently from "raw materials".

F 8. Since the CESTAT has not considered the materials  
on record in the above perspective, the impugned judgments  
are set aside. The matter is remitted to the CESTAT in each  
case for dealing with the matter afresh in accordance with law.  
The CESTAT while doing so shall keep in view the decision of  
G this Court in *Vanasthali Textiles Industries Ltd. v. Commr. of*  
*C.Ex., Jaipur, Rajasthan* [2007(218) ELT 3(SC)].

9. The appeals are disposed of accordingly. No order as  
to costs.

H R.P.

Appeals disposed of.