

A M/S. STP LIMITED
v.
CONTROLLER OF CENTRAL EXCISE, PATNA AND ORS.
DECEMBER 2, 1997

B [S.P. BHARUCHA AND SUHAS C. SEN, JJ.]

Central Excise Tariff, T.I. 11 (5)—‘Tar’—Whether includes partially distilled tar and blends of pitch—Held, yes—Central Excise Rules 1944, Rule 8(1).

C *Interpretation of Statutes—Taxing Statute—Doubt in construction of provision of a taxing statute—Held, must be resolved in favour of assessee.*

D The appellant, which produced PCM, claimed exemption from payment of excise duty under a notification which, *inter alia*, wholly exempted tar products falling under Tariff Item (T.I.) 11 (5) of the Central Excise Tariff. The respondent contended that the appellant manufactured various types of pitch which did not come within the ambit of T.I. 11(5).

E Although the Tribunal accepted the appellant’s contention in relation to some of the products, it denied relief in relation to certain others by relying on its earlier decision where it was held that the products were classifiable under serial Nos. 3 to 8 of T.I. 68.

Allowing the appeal, this Court

F HELD : 1.1. "Tar" in clause (5) of T.I. 11 had been given an expanded definition. Tar distilled from coal or lignite or any other mineral would come within the ambit of this definition. The inclusive clause, thereafter, extended the definition to partially distilled tars and blends of pitch with creosote oils or with other tar distillation products. Pitch was brought about by distillation of tar. [61-A-B]

G *Indian Aluminum Co. Ltd. v. Collector of Customs, Cochin, (1988) 38 ELT 69 (Tribunal); Steel Authority of India Limited v. Collector of Excise, Bolpur, West Bengal, (1997) 91 ELT 529 S.C., referred to.*

1.2. By distillation of coal tar a type of pitch was obtained. That had to come within the phrase ‘tar distillation product’. [61-D]

H *Webster Comprehensive Dictionary, International Edition, referred to.*

2. If there was any doubt in the construction of any provisions of a taxing statute, that doubt to be resolved in favour of the assessee. [61-D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3234 of 1991.

From the Judgment and Order dated 21.6.90 of the Customs, Excise and Gold (Control), Appellate Tribunal, New Delhi in A. No. E/A. No. 424 of 86-C (Order No. 653/90-C). B

S.C. Birla, Subrat Birla and Ms. Vipin Gupta for the Appellant. C

K.N. Bhat, Additional Solicitor General, K.N. Bajpai, R.N. Verma and V.K. Verma for the Respondents.

The Judgment of the Court was delivered by

SEN, J. The appellant is a Company engaged in manufacture of coal tar products. An exemption notification was issued by the Central Government exempting tar falling under Tariff Item 11 of Central Excise Tariff from the whole of excise duty leviable thereon. Tariff Item No. 11 is : D

Item No.	Description of Goods	Rate of duty
11.	COAL (EXCLUDING LIGNITE) AND COKE ALL SORTS, INCLUDING CALCINED PETROLEUM COKE : ASPHALT, BITUMEN AND TAR -	
	(1) Coal and coke not else - where specified	Ten rupees per metric tonne.
	(2) Petroleum coke, other than calcined petroleum coke.	Twenty per cent <i>ad valorem</i> plus two thousand rupees per metric tonne.
	(3) Calcined petroleum coke.	Twenty per cent <i>ad valorem</i>

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A	(4)	Asphalt and bitumen (including cutback bitumen and asphalt) natural or produced from petroleum or shale.	Two hundred rupees per metric tonne.
B	(5)	Tar distilled from coal or lignite and other mineral tars, including partially distilled tars and blends of pitch with creosote oils or with other tar distillation products.	One hundred rupees per metric tonne.
C			

The Exemption notification is as follows :

"Tar is exempt from duty

D

TAR

121/62-CE. dt.13.6.62

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In exercise of the powers conferred by Rule 8 (1) of the Central Excise Rules, 1944, the Central Government hereby exempts Tar falling under Item 11 with effect from the 24th April 1962, from the whole of the excise duty leviable thereon."

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The appellant's case before the excise authority was that its products were fully exempt from excise duty by virtue of the above notification. The case of the Department on the other hand, is that the goods manufactured by the appellant did not come within the ambit of Tariff Item 11. Therefore, there is no question of granting any exemption from excise duty to these products. The dispute ultimately went to the Tribunal. The Tribunal, after hearing the parties and taking into consideration, the report of the Chemical Examiner, came to the conclusion that some of the goods manufactured by the appellant came within the ambit of clause (5) of Tariff Item 11 and, therefore, were exempt from excise duty. The Tribunal, however, held that no relief could be given to the assessee in respect of some of the products in view of an earlier decision in the case of *Indian Aluminium Co. Ltd. v. Collector of Customs, Cochin*, (1988) 38 ELT 69 (Tribunal). The relevant

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part of the order of the Tribunal is as under :

"We do not see any reason to deviate from the above- referred to decision. Respectfully following the same we uphold the classification of items of serial nos. 3 to 8 under Item 68, CET. Notification No. 121/62 applies only to tar falling under Item No. 11(5), Therefore, it does not apply to the subject pitches."

The goods mentioned in Serial Nos. 3 to 8 of the Chemical Examiners Report were as under :

Sl. No. in the Classification list.	Description of the product	Gist of the results of chemical test.
1.	xxx	xxx
2.	xxx	xxx
3.	Soft Pitch	The sample is coal tar pitch
4.	Soft medium Pitch	-do-
5.	Hard Pitch	-do-
6.	Hard Medium Pitch	-do-
7.	Special Hard Pitch	The sample is coal tar pitch
8.	Electrode Pitch	The sample has the characteristics of coal tar pitch.

The Tribunal did not give any separate reasons of its own for coming to its decision but merely followed the judgment of another Bench of the Tribunal in the case of *Indian Aluminium Co. Ltd. v. Collector of Customs, Cochin*, 1988 (38) E.L.T. 69 (Tribunal). In that case, it was held that coal tar and coal tar pitch were two separate commodities. Technical literature showed that pitch was obtained from distillation of coal tar. No evidence had been produced to show that from the pitch, which was the residuary product of distillation of tar, any further distillation product could be obtained. The coal tar comprised of many constituent and if any part of these constituents were removed by distillation, than some constituents would remain in it. This tar could be considered as partially distilled tar

A and remaining identifiable constituents could be distilled out of it. So far as the pitch was concerned, no further identifiable products were obtained from the same on distillation for it to be considered as partially distilled tar.

B It was further held that the term "partially distilled tar" as used in Item 11(2) of the Central Excise Tariff had not been defined in any technical book. Therefore, it had to be understood in the context of distillation process and coal tar as stated above. There was no reason for considering coal tar pitch as partially distilled tar. It was an item distinct from coal tar or partially distilled tar.

C On behalf of the respondents, strong reliance was placed on this judgment and it was contended that what the appellants had manufactured was various types of pitch which did not come within the ambit of Tariff Item 11(5) and, therefore, did not qualify for exemption.

D On behalf of the appellant, our attention was drawn to a judgment of this Court in the case of *Steel Authority of India Limited v. Collector of Excise, Bolpur, West Bengal*, [1997] 91 E.L.T. 529 (S.C.) where it was held that the exemption notification exempted 'tar' falling under Item 11 of the First Schedule to the Central Excises and Salt Act, 1944. The meaning of 'tar' had to be gathered from the Tariff description given in clause 5 of Tariff Item No. 11. An inclusive definition had been given to 'tar' which included "partially distilled tars and blends of pitch with creosote oils or with other tar distillation products". Therefore, 'tar' would include everything which has been included in the extended definition. Having regard to the wording of the Notification and also the wording of the Tariff Item F No. 11, the product of the assessee (PCM) qualified for the benefit of the Exemption Notification.

G On behalf of the respondent, a distinction was sought to be drawn between tar and products made out of pitch. The contention is that what the appellants had manufactured were not tar distilled from coal. These products also could not be regarded as blends of pitch with creosote oil. Therefore, these products could not be given the benefit of the exemption notification.

H We are unable to uphold this contention. The Tariff heading speaks of "Asphalt, Bitumen and Tar". "Tar" has been given an expanded definition

in clause (5). Tar distilled from coal or lignite or any other mineral will come within the ambit of this definition. The inclusive clause, thereafter, extends the definition to partially distilled tars and blends of pitch with creosote oils or with other tar distillation products. It is not in dispute that pitch is obtained by distillation of tar. It has been argued on behalf of the respondents that the residue of distillation of tar is pitch. We fail to see this fine distinction. Pitch is brought about by distillation of tar. If the contention of the respondent is to be upheld, it will have to be held that even though pitch is brought forth by distillation of tar, it is not "tar distillation product".

We are unable to uphold this distinction for another reason. According to "Webster Comprehensive Dictionary International Edition" coal tar means "the black viscid pitch distilled from bituminous coal, and yielding a large variety of organic compounds used in the making of dye stuffs explosives flavouring extracts, drugs, plastics etc." Therefore, in a sense, coal tar itself is a variety of pitch. By distillation of coal tar a type of pitch is obtained. That must come within the phrase 'tar distillation product'. Moreover, if there is any doubt in the construction of any provision of a taxing statute, that doubt must be resolved in favour of the assessee.

In the premises, we are of the view that the appeal must succeed.

The judgment under appeal is set aside on the point in dispute. The appeal is allowed. There will be no order as to costs.

S.M.

Appeal allowed.