CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH, COURT NO. 1

EXCISE APPEAL NO. 53258 OF 2018

[Arising out of the Order-in-Appeal No. 587-588 (CRM)/CE/JDR/2018 dated 19/06/2018 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Rajasthan).]

M/s Cairn India Limited, ...Appellant
(now merged with Vedanta Limited)
DLF Atria, Phase 2, Jacaranda Marg,
DLF City, Gurgaon.
Haryana – 122 002.

Versus

Assistant Commissioner, ...Respondent
Central Excise Division,
Jodhpur (Rajasthan).

WITH
EXCISE APPEAL NO. 52037 OF 2019

[Arising out of the Order-in-Appeal No. 604 (CRM)/CE/JDR/2019 dated 25/06/2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Rajasthan).]

M/s Cairn India Limited, ...Appellant
(now merged with Vedanta Limited)
DLF Atria, Phase 2, Jacaranda Marg,
DLF City, Gurgaon.
Haryana – 122 002.

Versus

Assistant Commissioner, ...Respondent
Central Excise & Central Goods and Service Tax,
Jodhpur (Rajasthan).

AND
EXCISE APPEAL NO. 52043 OF 2019

[Arising out of the Order-in-Appeal No. 235 (CRM)/CE/JDR/2019 dated 11/03/2019 passed by Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur (Rajasthan).]

M/s Cairn India Limited, ...Appellant
(now merged with Vedanta Limited)
DLF Atria, Phase 2, Jacaranda Marg,
DLF City, Gurgaon.
Haryana – 122 002.

Versus

Assistant Commissioner, ...Respondent
Central Excise & Central Goods and Service Tax,
Jodhpur (Rajasthan).

APPEARANCE:

Shri Kumar Visalaksh and Shri Archit Gupta, Advocate for the Appellant.
Shri Rakesh Agarwal, Authorized Representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50144-50146/2023

DATE OF HEARING : 04.01.2023
DATE OF DECISION: 17.02.2023

P.V. SUBBA RAO

M/s Cairn India Limited[1] filed these appeals to assail the orders-in-appeal as follows :-

Sl. No.	Impugned Order	Appeal
A.	Order-in-Appeal No. 587-588 dated 19.06.2018	E/53258/2018
B.	Order-in-Appeal No. 235 dated 11.03.2019	E/52043/2019
C.	Order-in-Appeal No. 604 dated 25.06.2019	E/52037/2019

2. The appellant claims to produce oil by drilling. In the process of manufacture/production of oil, plastic barrels in which the input chemicals are procured arise as scrap. Further, due to wear and tear, the pipes used in the production of oil have to be replaced at times. At times, residuary portion of tubes or pipes upon cutting and fitting of operation etc., also arises as waste/scrap. It is undisputed that the appellant sells these waste and scrap to third parties.

[1] **appellant**

3. The case of the Revenue is that the appellant is generating this scrap in the process of manufacture of excisable goods namely oil and, therefore, it is chargeable to excise duty. Excise duty totaling Rs. 76,23,366/- was, therefore, demanded in three show cause notices and was confirmed by the original authority and upheld on appeal, by the impugned orders. Penalties amounting to Rs. 47,74,082/- have been imposed upon the appellant.

4. Learned Counsel for the appellant submits that waste and scrap in the form of pipes and barrels only arises in the process of production of oil and this waste and scrap is not manufactured by the appellant. According to the learned Counsel unless the goods are manufactured, no central excise duty can be levied. He relies on several case laws and in particular **Grasim Industries Ltd.** versus **Union of India**[2] to assert that waste and scrap which is not generated as a result of manufacture is not exigible of excise duty.

5. Learned Authorized Representative for the Revenue also relies on the same judgment of the Supreme Court to assert that duty has to be paid on the waste and scrap in these three appeals.

6. There is no dispute that the waste and scrap is generated by the appellant and that it is sold. It is, therefore, marketable. The only question which arises is whether waste and scrap is a

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[2] **2011 (273) E.L.T. 10 (S.C.)**

result of manufacture as defined in section 2 (f) of the Central Excise Act or through some other process. We find that **Grasim Industries** answers this question comprehensively. Paragraphs 7,8,14 and 15 of this judgment are produced below :-

> "**7**. We have heard the learned counsel for the parties. In the present case, the assessee had undertook repair and maintenance work of his worn out old machinery or parts of the cement manufacturing plant for the period between 1995 to 1999. The assessee repaired machinery or capital goods such as damaged roller, shafts and coupling by using welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc. In this process of repair and maintenance, M.S. Scrap and Iron Scrap were generated in the workshop. It is not in dispute that these M.S. Scrap and Iron Scrap are excisable goods under Section 2(d) of the Act falling under the Chapter Heading 72.04 in the Schedule to the Tariff Act read with Note 8(a) to Section XV of the Tariff Act as 'metal scrap and waste'. We are of the opinion that Section Note has very limited purpose of extending coverage to the particular items to the relevant tariff entry in the Schedule for determining the applicable rate of duty and it cannot be readily construed to have any deeming effect in relation to the process of manufacture as contemplated by Section 2(f) of the Act, unless expressly mentioned in the said Section Note. In *Shyam Oil Cake Ltd.* v*. CCE*, (2005) 1 SCC 264 = 2004 (174) E.L.T. 145 (S.C.), this Court has held:
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> > "16. Thus, the amended definition enlarges the scope of manufacture by roping in processes which may or may not strictly amount to manufacture provided those processes are specified in the section or chapter notes of the tariff schedule as amounting to manufacture. It is clear that the legislature realised that it was not possible to put in an exhaustive list of various processes but that some methodology was required for declaring that a particular process amounted to manufacture. The language of the amended Section 2(f) indicates that what is required is not just specification of the goods but a specification of the process and a declaration that the same amounts to manufacture. Of course, the specification must be in relation to any goods.
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> > …….
> >
> > 23. We are in agreement with the submission that under the amended definition, which is an inclusive definition, it is not necessary that only in the section or chapter note it must be specified that a particular process amounts to manufacture. It may be open to so specify even in the tariff item. However, either in the section or chapter note or in the tariff entry it must be specified that the process amounts to manufacture. Merely setting out a process in the tariff entry would not be sufficient. If the process is indicated in the tariff entry, without specifying that the same amounts to manufacture, then the indication of the process is merely for the purposes of identifying the product and the rate which is applicable to that product. In other words,

> for a deeming provision to come into play it must be specifically stated that a particular process amounts to manufacture. In the absence of it being so specified the commodity would not become excisable merely because a separate tariff item exists in respect of that commodity.
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> 24. In this case, neither in the section note nor in the chapter note nor in the tariff item do we find any indication that the process indicated is to amount to manufacture. To start with, the product was edible vegetable oil. Even after refining, it remains edible vegetable oil. As actual manufacture has not taken place, the deeming provision cannot be brought into play in the absence of it being specifically stated that the process amounts to manufacture."

8. The goods have to satisfy the test of being produced or manufactured in India. It is settled law that excise duty is a duty levied on manufacture of goods. Unless goods are manufactured in India, they cannot be subjected to payment of excise duty. Simply because a particular item is mentioned in the First Schedule, it cannot become exigible to excise duty. [See *Hyderabad Industries Ltd.* v*. Union of India*, (1995) 5 SC 338 = 1995 (78) E.L.T. 641 (S.C.), *Moti Laminates (P) Ltd* v*. CCE*, (1995) 3 SCC 23 = 1995 (76) E.L.T. 241 (S.C.), *CCE* v*. Wimco Ltd*, (2007) 8 SCC 412 = 2007 (217) E.L.T. 3 (S.C.)]. Therefore, both on authority and on principle, for being excisable to excise duty, goods must satisfy the test of being produced or manufactured in India. In our opinion, the charging Section 3 of the Act comes into play only when the goods are excisable goods under Section 2(d) of the Act falling under any of the tariff entry in the Schedule to the Tariff Act and are manufactured goods in the terms of Section 2(f) of the Act. Therefore, the conditions contemplated under Section 2(d) and Section 2(f) has to be satisfied conjunctively in order to entail imposition of excise duty under Section 3 of the Act. The manufacture in terms of Section 2(f) includes any process incidental or ancillary to the completion of the manufactured product. This 'any process' can be a process in manufacture or process in relation to manufacture of the end product, which involves bringing some kind of change to the raw material at various stages by different operations. The process in manufacture must have the effect of bringing change or transformation in the raw material and this should also lead to creation of any new or distinct and excisable product. **The process in relation to manufacture means a process which is so integrally connected to the manufacturing of the end product without which, the manufacture of the end product would be impossible or commercially inexpedient**. This Court has in several decisions starting from *Tungabhadra Industries* v*. CTO,* AIR 1961 SC 412, *Union of India* v*. Delhi Cloth & General Mills Co. Ltd.*, AIR 1963 SC 791 = 1977 (1) E.L.T. J199 (S.C.), *South Bihar Sugar Mills Ltd.* v. *Union of India*, AIR 1968 SC 922 = 1978 (2) E.L.T. J336 (S.C.) *and in line of other decisions* has explained the meaning of the word 'manufacture' thus :

> "14. The Act charges duty on manufacture of goods. The word 'manufacture' implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinctive name, character or use."

……..

14. In the present case, it is clear that the process of repair and maintenance of the machinery of the cement manufacturing plant, in which M.S. scrap and Iron scrap arise, has no contribution or effect on the process of manufacturing of the cement, which is the excisable end product, as since welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc. which are used in the process of repair and maintenance are not raw material used in the process of manufacturing of the cement, which is the end product. The issue of getting a new identity as M.S. Scrap and Iron Scrap as an end product due to manufacturing process does not arise for our consideration. The repairing activity in any possible manner cannot be called as a part of manufacturing activity in relation to production of end product. Therefore, the M.S. scrap and Iron scrap cannot be said to be a by-product of the final product. At the best, it is the by-product of the repairing process which uses welding electrodes, mild steel, cutting tools, M.S. Angles, M.S. Channels, M.S. Beams etc.

15. Learned ASG has placed reliance on the decision of this Court in *CST* v*. Bharat Petroleum Corpn. Ltd.* (supra). In that case, the assessee purchased sulphuric acid and cotton for the manufacturing of kerosene and yarn/cloth. In the manufacturing process, the acid sludge and cotton waste emerged as a distinct product having commercial identity. The issue before this Court was that whether the assessee can be said to manufacture acid sludge and cotton waste. This Court observed that 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 not merely the main item manufactured but also the subsidiary products. We are afraid, the decision does not help the Revenue because the metal scrap and waste arising out of the repair and maintenance work of the machinery used in manufacturing of cement, by no stretch of imagination, can be treated as a subsidiary product to the cement which is the main product. The metal scrap and waste arise only when the assessee undertakes repairing and maintenance work of the capital goods and, therefore, do not arise regularly and continuously in the course of a manufacturing business of cement".

7. As laid down in **Grasim Industries**, the test to be applied, therefore, with respect to waste and scrap is whether the waste and scrap has come out of the process of manufacture including any process incidental or ancillary to manufacture or it has arisen out of some other processes, such as, maintenance and repair of capital goods. To qualify as "incidental or ancillary to manufacture", the process has to be a process which is so integrally connected to the manufacturing of the end product,

that without it, the manufacture of the end product would be impossible or commercially inexpedient.

8. In this case, the scrap which has been generated is mainly in the form of pipes. According to learned Authorized Representative, the pipes in this case have a significance because the entire oil is produced with the help of pipes, therefore, these are in the form of an input to the manufacturing process itself as opposed to other companies where they may be simply capital goods. The pipes do get broken or suffer from wear and tear and need to be replaced. The generation of these pipes as scrap is inextricably linked to the production of the excisable product namely, the oil itself. Therefore, the pipes in this case must be treated as having been generated in the process of manufacture of the final product.

9. Per-contra, according to the learned Counsel of the appellant, the pipes are in the nature of capital goods and are not inputs although the use of such capital goods is absolutely essential for production of excisable product namely oil. According to the learned Counsel, no goods can be manufactured on a large scale without using some capital goods which by itself, does not make such capital goods inputs. Therefore, old pipes which have been replaced should be treated as waste generated in the course of maintenance of capital goods.

10. We have considered the submissions of both sides.

11. It is true that in case of production of oil, the use of pipes is absolutely essential and without using such pipes the final product namely oil cannot be produced at all. It is for this reason that the pipes suffer considerable wear and tear and require replacing. What needs to be decided in this case is whether the used/broken pipes which are generated as waste in this case arise out of the process of manufacture or out of the process of maintenance of the capital goods. The distinction is subtle but clear. When some waste is generated in the process of manufacture of the goods it comes out of the inputs directly or the inputs transform into some form. Input is that substance or material which, after transformation, becomes the output. By contrast, capital goods are those goods which are used in the manufacture or production of the goods without they themselves getting transformed. A block of iron, for instance, is an input to manufacture a machine part. In the process of manufacture the turnings and other forms of steel scrap arise. However, the lathe machine, the forging equipment, etc. which participate in converting the block of iron into the final part are capital goods. Although their use is inevitable for manufacture of the final product, the lathe and the forging machines by themselves do not get transformed into the final product. If the lathe or forging machines require some maintenance and in the process some waste is generated it will be waste generated out of the maintenance of capital goods and not out of the manufacture of the final product.

12. In this case, the pipes do not get consumed and do not get transformed into oil. They are used to manufacture/production of oil. Regardless of the fact that the use of pipes is essential for production of oil, the pipes by themselves are capital goods and are not inputs. When such pipes need repair or replacing and waste is generated in the process, it is a waste generated during the repair or maintenance of capital goods and not during the process of production of oil or any process incidental or ancillary to it. For this reason, no excise duty can be charged on the scrap of pipes produced in this manner. Similarly, the empty barrels are only packing material in which the inputs are received and these barrels are not generated during the process of manufacture. Therefore, no excise duty can be charged even on that scrap.

13. In view of above, we find that the impugned orders cannot be sustained and need to be set aside and we do so.

14. The appeals are allowed and the impugned orders are set aside, with consequential relief to the appellant.

(Order pronounced in open court on 17/02/2023.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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