**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI**
**REGIONAL BENCH**

**Customs Appeal No. 85743 of 2013**

(Arising out of Order-in-Appeal No. 918/MCH/DC/SVB/2012 dated 01.11.2012 passed by the Commissioner of Customs (Appeals), Mumbai-I)

**M/s. CTR Manufacturing Industries Ltd.** **Appellant**
E1, MIDC, Chikalthana, Aurangabad 431 206.

Vs.

**Commissioner of Customs (I), Mumbai** **Respondent**
New Custom House, Ballard Estate, Mumbai 400 001.

Appearance:

Shri M.P.S. Sengar, Consultant, for the Appellant
Shri Manoj Das, Assistant Commissioner, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**
**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

Date of Hearing: 08.06.2022
Date of Decision: 08.06.2022

**FINAL ORDER NO. A/85544/2022**

PER: SANJIV SRIVASTAVA

This appeal is directed against order in appeal No 918/MCH/DC/SVB/2012 dated 01.11.2012 of Commissioner of Customs (Appeals), Mumbai – I. By the impugned order, the Commissioner (Appeals) has upheld the order of original authority, denying the benefit of exemption claimed by them in terms of Notification No 11/97-Cus at Sr No 143.

2.1 Appellant had filed Bill of Entry No. 12727 dated 30.04.1998 for importation of following machinery for manufacture of Electronic Plastic Film Capacitor along with other items:

| Description | Number | Classification | Exemption Notfn |
|---|---|---|---|
| Automatic Taping Machine | 1 | 8479.89 | 11/97 |

| | | | |
|---|---|---|---|
| Automatic Silicon Coating Machine | 1 | 8479.89 | 11/97 |
| Automatic Dipping Machine | 2 | 8479.89 | 11/97 |
| Automatic Welding Machine | 1 | Under Merit | |
| Automatic UV Printing Machine | 1 | | |

2.2 The benefit of Notification No. 11/97 is applicable only to machines which are capable of producing a commodity. After perusing the documents revenue was of the view that for production of the Electronic Plastic Film capacitor a lot many machines are required. In the Instant consignment, It was found that some of the key machines were not imported like Coil Winding Machine, Heat Press, Curing Drier therefore the benefit of exemption claimed was denied, vide Order-in-Original No. S/26-717/1998 VA dated 29.05.1998 by relying upon CESTAT decision in the case of M/s. Lakhanpal Industries Ltd. (1997 (90) ELT 307 (Tri.)).

2.3 Appellant preferred an appeal before Commissioner of Customs (Appeals), who vide his Order-in-Appeal No. 532/1999 MCH dated 31.08.1999 upheld the Order-in-Original.

2.4 Appellant preferred Appeal before CESTAT. CESTAT Order No. A/508/WZB/05 - C.IV (CSTB) dated 17.11.2005 in Appeal No. C/41/2000 - Mum remanded the matter to the original authority stating as follows:

*"Heard both sides. The lower authorities have followed the decision in the case of Lakhanpal National Limited V/s Collector of Customs, Bombay - 1997 (90) E.L.T. 307 (Tribunal) while denying exemption to the appellants. The learned counsel for the appellants states that the decision in the case of Collector of Customs, Bombay V/s United Electrical Industries Ltd. – 1999 (108) E.L.T, 609 (S.C.) was not before the lower authorities and it is his claim that in the light of this decision the appellants are entitled to exemption in respect of the impugned machinery.*

*1.2 After perusal of the case records and cited case laws, we set aside the impugned orders passed by the lower authorities and remand the matter to the original authority to re-examine the question of eligibility of the impugned goods to exemption in the light of both the case laws cited above. Appeal is allowed by way of remand."*

2.5 In the remand proceedings matter was adjudicated by the original authority stating as follows:

*"I deny the benefit of Notification No 11/97 (Sr No 143) to Automatic Tapping Machine – 1 No, Automatic Silicon Casting machine – 1 No and Automatic Dipping Machine -2 No."*

2.6 Appellant preferred an appeal before Commissioner (Appeals), which was rejected as per the impugned order referred in para 1, above.

2.7 Hence this appeal.

3.1 We have heard Shri M P S Sengar, Consultant for the Appellant and Shri Manoj Das, Assistant Commissioner, Authorized Representative for the revenue.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of appeal.

*4.2* Commissioner (Appeals) has in the impugned order while denying the benefit of exemption claimed has recorded as follows:

*"8. The issue in the instant case is regarding the benefit under the said Notification No.11/97 (Sr. No.143). The subject goods are classified under CTH 8479.89 as machines and mechanical appliance having individual function not specified or included anywhere in this chapter and there is no dispute to that extent. Further, it is seen from the flow charts submitted by the appellant that the second process, fourth process and tenth process in the entire process for manufacture of the commodity alone are carried by the machines in question. In other words, these three machines carry out intermediate processes and do not manufacture or bring the final commodity into existence.*

*Various other machines are required for manufacturing the final product. Thus, even by the appellants own contention, these three machines by themselves do not produce the commodity viz. "Capacitors". Hence the denial of the benefit of the said notification by the lower authority is fully justified.*

*9. On the other hand issue before Hon'ble Supreme Court of United Electrical Inductive Ltd. was with respect to claim under Notification No.118/80, Sr. No.58, description of goods which are "Automatic Lead Machine, Lacquering, Testing, Colour watering, sorting and packing machines for resistance" and in that context question before Tribunal and Supreme Court was that whether only a single machine capable on all the functions enumerated in the notification should be granted the benefit or even a set of individual machine doing all the jobs enlisted in the said notification will get benefit. The Supreme Court upheld the Tribunal's view that the said entry could include a set of machines capable of performing the enumerated functions because no single machine could do so. It was found that the description of goods under column 3 of the Notification No.153/86 are "machinery used for the production of a commodity", therefore, Notification No.11/97 and 153/86 have similar words, whereas the wording of Notification No.118/80 is very specific with respect to functioning of machine.*

*10. The tribunal in the case of M/s Lakhanpal National Ltd. denied the benefit of Notification No.153/86 dtd. 01.3.1986 in respect of paste procuring machines, bobbin insertion machine and capping machine holding as under in Para 6 of the order:*

*"As can be seen from the above processes, the second process, fourth process and tenth process alone are carried out by the machines in question. These three machines carry out processes in between, do not bring out a commodity into existence. Various other machines are required for manufacturing the final product. Therefore, even by the appellants own contention, these three machines do not produce the commodity and hence the rejection of the benefit of the notification by the lower authorities is fully justified."*

*11. It is seen from the above discussion that to avail the benefit under Notification No.11/97 (Sr. No.143), the machinery should* *be capable of producing a commodity. In the instant case, viz. Automatic Taping machine and Automatic Silicon machine and Automatic Welding machine are having individual functions but are not capable of producing a commodity individually viz. capacitors, which are being manufactured after going through various process/machines as admitted by the appellant. Therefore, the benefit under the said Notification No. 11/97 cannot be extended to individual machines, which are a part of manufacturing process and not capable of producing a commodity (i.e. final product capacitors) in the instant case."*

4.3 Appellants have in support of their contention that they had imported these machines to augment their existing production process as they were having excess production capacities, produced a Chartered Engineer Certificate (Ref No CTS/CTR/93/98 dated June 10, 1998) stating as follows:

*"This is to certify that, from records maintained and produced for verification by CTR Manufacturing Industries Limited, E-1 MIDC, Chikalthana Aurangabad 431210 are having excess winding capacity of 38.30 Millions coils per annum of average specification 0.1 Micro Farad from coil winding machines already installed in the factory."*

4.4 From the facts as brought out in the impugned order, there is no dispute that these three machines are used in process of production of the finished products namely *"Electronic Plastic Film Capacitor"* and these three machines were imported to augment the existing production capacity of the appellant at various stage to streamline the production process.

4.5 In case of Exide Industries Ltd [2009 (233) E.L.T. 522 (Tri. – Mumbai)] following the earlier order in case Panacea Biotec Ltd [2004 (170) E.L.T. 21 (Tribunal)] tribunal has held as follows:

***"7.*** *We find that the claim of the Revenue is that the machine is used for wrapping of the positive and negative plate, which is further used in manufacture of battery, are not commodity. We find that this proposition would be incorrect, as the said positive and negative plates, of battery are an intermediate product and they are commodity, as they can be used for replacement of the positive or negative plates, as the case may be. If that be so,* *the ratio of the decision of the Tribunal in the case of Panacea Biotec Ltd. (supra) squarely covers the issue in favour of the appellant. We may read the same :-*

*"We have heard both the sides and in our view the contention raised by the learned Counsel deserves to be accepted. From the record, we find that the appellants had imported machinery known as 'Fermentor' from Germany. The dispute initially arose about the classification of the same, as the appellants sought classification under CTH 8419.89, while the Department wanted to classify the same under CTH 8479.89. The dispute was resolved ultimately by the Tribunal in an appeal filed by the appellants against the order of the adjudicating authority who refused to accept the classification as propounded by them, by holding the classification under sub-heading 8479.89 of the CT vide Final Order dated 8-11-2002. The Tribunal, however, remanded the matter to the adjudicating authority for considering the eligibility of the machine Fermentor, to the benefit of Notification 16/2000-Cus. which provided duty at standard rate of 25% in respect of machinery for production of commodities falling under sub-heading 8479.50 or 8479.89. The adjudicating authority has denied the benefit of this Notification on the ground that the machine Fermentor imported by the appellants did not produce any commodity which could be bought and sold in the market as such as it produced vaccine in a crude form which required further purification and bottling for marketing purposes. But we are unable to subscribe to this view of the adjudicating authority. The bare perusal of the Notification reveals that it covers machinery for production of commodities classifiable under sub-heading 8479.50/8479.89. No such condition regarding the marketability of the commodities as such produced by such machinery, had been prescribed therein. Therefore, any machinery meant for production of commodities and classifiable under the above said sub-headings of the CTH, shall stand covered by this Notification. The machine Fermentor imported by the appellants is for the production of vaccine which is a commodity. Therefore, the fact that the vaccine produced by this machine is in crude form which requires purification and bottling for the purpose of marketing, is immaterial and cannot*

*be made basis for disallowing the benefit of the above said Notification to the appellants for want of any such condition laid down therein to the appellants. Therefore, in our view, the benefit of the Notification has been wrongly denied to the appellants. The machine imported by them is meant for production of vaccine which itself is a commodity. Consequently, the impugned order cannot be sustained and is set aside."*

***8.*** *Accordingly, we find that the issue is squarely covered in favour of the appellant. As such, the impugned order to the extent it denies the benefit of Notification No. 17/2001-Cus. to the goods imported is set aside and the appeal is disposed off accordingly."*

4.5 The phrase *"Machinery used for the production of a commodity."* used in Notification No 153/86-Cus., dated 1-3-1986, was considered by the tribunal in case of Lakhanpal National Ltd [1997 (90) E.L.T. 307 (Tribunal)], holding as follows:

***"8.*** *On going through the above finding of the Tribunal, it is clear that the Tribunal has categorically held that the machine should produce a commodity for considering it as a `machine for production of the commodity'. Therefore, the submissions made by the learned Advocate that all machineries means set of machines working conjointly to produce the commodity does not merit consideration. If such an interpretation is placed then all plants with series of machineries would get exempted. If the interpretation as placed by the learned Advocate is accepted then in circumstances, where a factory carries out a single process alone with a individual single machinery would get exempted. Such interpretation would create chaos and unintended benefit would flow to all factories, when the legislature has not intended to grant the benefit to machines carrying out an individual function alone without production of a commodity.*

*The interpretations laid down by the Tribunal in the above cited judgment supports the view taken by the lower authorities that it is an individual machine, which produces a commodity which should get the benefit."*

However the phrase used in the notification 11/97-Cus at Sr No 143, is *"Machinery for production of commodity".* The phrases used in the two notification are not identical. While interpreting the notification 153/86-Cus, tribunal has restricted the benefit of the notification to the single machine that would be used for producing commodity. However the said finding did not find the approval of the Hon'ble Apex Court in case of United Electrical Industries Ltd. – 1999 (108) E.L.T, 609 (S.C.), wherein Hon'ble Apex Court held as follows:

*"5. For the Revenue reliance is placed on a decision of this Court in Collector of Customs, Bombay v. Perfect Machine Tools Co. Pvt. Ltd. [1997 (96) E.L.T. 214 (S.C.) = 1998 (9) SCC 418]. This Court in para 4 relied on an earlier decision of this Court in the case of Novopan India Ltd. v. Collector of Central Excise and Customs [1994 (73) E.L.T. 769 (S.C.) = 1994 Supp (3) SCC 606], in which this Court recorded as under :*

*"The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee - assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision; they have to be construed strictly; A person invoking an exception or an exempting provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt of ambiguity, benefit of it must go to the State."*

*6. Thus submission is that construction of exempting provision has to be construed strictly and the burden is on the assessee invoking the exemption clause to establish that he is covered by the said provision. This was a case where the question was, whether accessory could be included within the notification of exemption which qualifies machine only. It was held that before exemption could be claimed, it is to be proved that the accessory is included within the notification and the burden is on the assessee to prove it to be included within the word `machine'. This case would render no help to the revenue to the question raised in the present case. In the present case, the question for consideration is, whether the entry 58 of the notification using word `Machine' in singular not plural viz. `Machines', could it include other machines referred in the same notification for* *granting exemption or it qualifies only one composite machine for resistor to give benefit under it?*

*7. We find the Tribunal gave good reasons for rejecting the interpretation given by the department. Having considered the submissions for the parties we find in case interpretation given by the department is to be accepted, no assessee could get exemption unless all the machines are imported as one composite machine reference of each separate machines with (') would have no meaning. This will make this notification unworkable, hence Tribunal rightly rejected Revenue interpretation. The notification has to be interpreted to give true import and meaning, not to make it purposeless and nugatory. It is well settled which is also provided in Section 13 of the General Clauses Act, 1897 of the Central Acts that unless there is anything repugnant to the subject or context the word singular shall include plural and vice versa. The Tribunal interpreted the word `machine' to be `machines' and, in our opinion, rightly so. It seems by this restrictive interpretation the very purpose of this notification since completely diluted which led into clarification/ modification by the Government through the aforesaid letter."*

In the remand proceeding both the lower authorities have failed to consider these decisions in the right earnest and have proceeded to decide the matter by just following the decision of Lakhanpal.

4.6 During the course of argument lot of emphasis was placed by the authorized representative on the phrase "production of commodity". In his view the machines as imported are not used in production of commodity, as the commodity is something which is marketable whereas the output of these machines is not a marketable. Explaining the phrase "production of commodity" tribunal has in case of Graver and & Weil (I) Ltd. [2004 (174) E.L.T. 487 (Tri. – Mumbai)]

*(c) It is trite law to say that production implies change in the article on account of treatment to an article, yet every such manipulation may or may not result in 'manufacture', as understood by the Central Excise law (see catena of decision following Union of India v. M/s. Delhi Cloth Mills, 1977 (1) E.L.T.*

*(J 199) (S.C.). The word 'production' is to be understood in that context, that there may be production of an intermediate or final commodity yet such production of a commodity will not amount to manufacture. The use is of a term 'production of a commodity' and not 'manufacture' of a commodity or manufacture of goods has been used by legislature in the notification that would keep the coverage of 'any change' brought in an article, by manipulation. The results may be emergence of a commodity which would be sufficient, such emergent commodity may be or may not be mentioned as goods in the Central Excise Tariff. The coverage under the term used in the notification is therefore, wide enough to cover the entities herein.*

*(d) The word 'commodity' would encompass any tangible thing produced of advantage to mankind as per the dictionary meaning and cannot be restricted to only 'Excisable Goods' under Central Excise Act, 1944.*

*(e) Appellants have supplied their goods to M/s. Bajaj Auto Ltd. for carrying on Nickel, Chrome and Iron plating of various components. The Tribunal in the case of M/s. Bajaj Auto Ltd., 1995 (80) E.L.T. 644 had held the process so employed by Bajaj Auto Ltd. to be a process of manufacture. That view has been upheld by the S.C. 1994 (70) E.L.T. A156 (S.C.). The differentiation arrived and canvassed that the process in case of Bajaj Auto Ltd. were initiated and ancillary, cannot be upheld. That does not enthuses us to deny the benefit to the exemption in the present case. Following Gujarat High Court decision in the case of Industrial Machinery Manufacture (P) Ltd. - (1965) 165 TC 380 wherein the Division Bench had rejected the contention that machinery must be something that are meant for the actual process of manufacturing of goods and also Modison Metal Refiners - 1996 (88) E.L.T. 292 (Tri) wherein electroplating process was considered to be manufacture, would lead to granting of the eligibility, the entities herein to Notification 56/95 keeping in mind the use.*

*(f) The appellants have relied upon the finding of this Tribunal in the case of CC v. Escorts - 1991 (54) E.L.T. 144 (Tri.) upheld by Apex Court [1997 (96) E.L.T. 504 (S.C.)] wherein a machine for cleaning of parts/components by ultrasound waves*

*and thereby improving their function was held to be a machine designed for production of a commodity. Similarly in case of CC v. McDowell Co. - 1997 (94) E.L.T. 215 an Agitator machine which merely was to agitate/mix and keep partially polymerised hydro carbon was held to be a 'machinery used for production of a commodity'. Following these decisions, we have no hesitation to consider the entities impugned herein to be covered by the term 'machine for the production of a commodity' as used in Notification 56/95 at Sr. No. 39 of the Table there to. Since the use is definitely to improve the function or and perform at an intermediate stage on import function for the manufacture of the final products.*

*(g) Since the duty exemption is found to be eligible, the duty demands as made and penalty as arrived at cannot be upheld.*

4.7 In case of Jindal Photo Films [1998 (97) E.L.T. 445 (Tribunal)] following was held:

*5. Shri L.P. Asthana, learned Advocate, appearing for the respondent submitted that `production' did not necessarily mean a single process, but a series of processes and activities which transform the raw material into a commercially useful commodity. He referred to the Supreme Court decision in Empire Industries Ltd. v. Union of India reported in 1985 (20) E.L.T. 179 (S.C.) in which the Apex Court had elaborately discussed the concept of production/ manufacture. The Apex Court had clearly held that production can involve various stages and processes and use of various machines for performing different kinds of functions in bringing about the transformation of final goods from the state of raw material to the final product. Learned Advocate explained the processes involved in the production of the films by the respondents. Respondents import Jumbo Rolls of raw stock film which is put through the slitting machine which slits the 135 mm film into the required width. The slitted film is then passed through another machine for perforation on both sides. After perforation, the film passes through another machine, namely, the Signing Machine, for imprinting the serial counter number and identification mark of the manufacturer, etc. After this, the film is sent to the spooling machine to cap the second end cap on to the cassette after inserting the spooled* *film into the cassette. Thereafter, the film, i.e., the roll of film, becomes ready for being sent to the market. As the film will be marketable only when it is capped into cassettes and packed for ready use in a camera, all the processes carried out on the film from the stage of Jumbo Roll Film till it reaches the stage where it is marketable and made acceptable to the consumer, the process of production continues in a series of processes. Since Signing Machine performs a very important part of the production of the film, namely, DX coding, which is required for identifying the speed of the film and for making it more user friendly and marketable, there cannot be any doubt about Signing Machine not being a machine used in the production of films and, therefore, eligible for the concessional rate of duty under Notification No. 59/87-Cus.*

*6. We have considered the submissions and have gone through the records and have also perused the case law. There is no dispute on the question that benefit of Notification No. 59/87-Cus. is a conditional one, i.e., the machine being used for the "production" of a commodity. From a perusal of the Apex Court judgment in Empire Industries Ltd. (supra), we find that the respondent's contention that the process of production is not necessarily confined to the transformation of the raw materials by using a single machine or a single process has force. Production can, in many instances, spread over a number of processes for which various machines are used. It would not therefore be possible to say in such cases that a particular machine or machines is not being used for the production of the final product. In the present case, it is not in dispute that the final product, namely, film rolls used in cameras, undergo a series of charges from the stage of imported Jumbo films to the stage of 35 mm film rolls packed in spools ready for use in camera. The use of the machine presently under consideration is at the stage of putting DX coding, numbering and imprinting the manufacturers' name in the film before they are rolled in spools and sent to the market. We find merit in the learned Counsel's contention that without the process of DX coding the product will not be marketable. Having regard to these factors, we are of the view that Signing Machine would be eligible to be considered a* *machinery used for the production of film rolls. It would therefore, in our opinion, qualify for the benefit of the exemption under Notification No. 59/87-Cus.*

4.8 In case of Escorts Ltd [1991 (54) E.L.T. 144 (Tribunal)] following was held:

*"7. The submissions made are considered. The machine imported is an 'Ultrasonic Cleaning Machine'. The functions of the machine have already been highlighted in the appeal, and that its purpose is for cleaning and washing the components. The catalogue has not been produced, but the original order has outlined the functioning as :-*

*"Components are first put into a dipping tank where alkali solution is circulated at a temperature of about 50° - 600 C. After this, components are put to second tank viz. Ultrasonic Cleaning Tank. Here again alkali solution is circulated but in addition ultrasonic generator sends ultrasonic waves. These waves in turn create vibrating sensation in the liquid. The alkali solution attacks the component at ultrasonic frequency and in the process cleans the surface of the component. Thereafter, these components are cleaned in a water tank at normal temperature etc."*

*The classification under Chapter Heading 84.59 is not in dispute. The dispute is only whether it should go under 84.59(1) or 84.59(2). The CCN Compendium of Classification opinions clearly classifies the machine under 84.59, opinion is extracted :-*

*"Ultrasonic apparatus: for cleaning metal parts and miscellaneous other articles; consisting when complete (whether mounted in a common housing or as separate units) of a high frequency generator, one or several transducers and a tank for the articles to be cleaned, imported either complete without the tank."*

*The Heading 84.59(1) is a residuary item and 84.59(2) is for machines and mechanical appliances designed for the production of a commodity, machinery for treating metals etc. The various examples of machinery used in various industries as given in the CCCN Explanatory Notes under Heading 84.59 indicates that such machines like purifying oil, washing, scouring and removing* *dust in the perspective fields are stated as for use in the production of commodities. The process of cleaning and washing of the parts to remove the dirt and foreign material for smooth functioning of the parts and components, by the Ultrasonic Machine should be regarded as being in the production line. The citations referred to by the ld. Consultant are found to be adopting the same line of thinking. In effect, therefore, the machine can be considered as designed for production of a commodity as it improves the functioning of the parts/components by cleaning, which is found to be an essential requirement for fitment of the components/parts to the motorcycle engines manufactured by them and its classification under Heading 84.59(2) is appropriate."*

This decision was upheld by the Hon'ble Apex Court as reported at [1997 (96) ELT 504 (SC)].

4.9 In case of Karuna Aqua Farms [1999 (112) E.L.T. 175 (Tribunal)] tribunal has held as follows:

*"3. The learned Consultant for the respondents has pleaded that the term "production of commodities" should be given a proper meaning. His plea is that fish including prawns are a taxable item both under the Customs Tariff and the Central Excise Tariff. He has pleaded that while the seedlings are purchased by the respondents from outside these seedlings cannot be considered as prawns as such as a commodity for sale and these become prawns as a commodity only after they are grown into full size in the Aquafarm. His plea is that prawns being an edible commodity which is bought and sold for its value as edible product, the machinery used for the purpose should be treated as for production of a commodity.*

*4. We have considered the pleas made by both the sides. The question that fails for consideration is as to what should be the meaning attached to the term for production of commodities. The Notification does not amplify as to the scope of the term "production of commodity" as such. This term therefore has to be understood as used ordinarily in the common parlance. The term produce as set out in the Webster's New Collegiate Dictionary is as under"* *to give being, form or shape to;*

*manufacture...*

*The term "commodity" is defined in the OXFORD*

*Illustrated Dictionary as under :*

*Article of trade as opp. service;*

*useful thing.*

*In the context of Prawn culture, and breeding, the question that has to be answered is whether the operations which are carried out in the Acquafarm can be taken to be one relating to production of a commodity. Prawn as an entity in the animal kingdom is already produced in the form of seedlings which have been purchased by the assesses and these are the ones which are introduced by them in their Acquafarm. What gets grown in the Acquafarm are these seedlings. These seedlings get nourished to their full size and thereafter these are harvested. While these seedlings can also be called prawns in the form these are obtained, these on growing to the full size are still known as prawns. From the trading point of view, these are two different things. Seedlings are not edible item; which is bought and sold for its nourishment value in the normal course of trade and it is the full grown prawns which are brought as prawns and which is accepted as an edible item. Prawns acquire value in the trade only by reason of these being in grown size which can be brought to the market for edible purposes. Seedlings in that sense therefore cannot be taken to be an edible commodity. We observe that the term "commodity" as defined above can cover items like full grown prawns because there emerges as an article of trade. In this background it can be said that a commodity has been produced in the Acquafarm. We observe that prawn farming is a recent development and this farming is only done for the purpose of bringing into existence tradeable item and the tariff has to be therefore, understood in the background, of this technological advancement made and the new production process which have emerged. Taxation authorities have to take note of this realities as are emerging and have to interpret the tariff in a dynamic method to ensure that the benefits as are made available are not denied by reason of any narrow* *interpretation. The Hon'ble Supreme Court in the case of CCE v. Lekhraj & Sons reported in 1996 (82) E.L.T. 162 has clearly laid down that while classifying the goods under a particular Tariff heading or for Modvat purposes, the scientific advancement made should be borne in mind. Therefore, following the ratio of the decision of the Hon'ble Supreme Court and in view of what we have held above, we are of the view that the learned CCE(A) has rightly allowed the benefit of the Notifications to the appellants. The appeal of the Revenue is therefore, dismissed."*

4.9 In view of the above decisions we are not in position to uphold the impugned order.

5.0 The appeal is allowed.

(Order pronounced in the open court)

**(Sanjiv Srivastava)**
**Member (Technical)**

**(Dr. Suvendu Kumar Pati)**
**Member (Judicial)**

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