2025 INSC 684

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2572 OF 2025

NOBLE RESOURCES AND TRADING INDIA PRIVATE LIMITED (EARLIER KNOWN AS ANDAGRO SERVICES PVT. LTD.) **APPELLANT(S)**

VERSUS

UNION OF INDIA & ORS. **RESPONDENT(S)**

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave has been preferred against the judgment and order dated 05.08.2019 passed by the High Court of Gujarat at Ahmedabad (briefly 'the High Court' hereinafter) in R/Special Civil Application No.8596 of 2007.

2. On 06.12.2019, this Court had condoned the delay in filing the special leave petition and issued notice. An interim order was passed to the effect that the *ad interim* protection which was granted by the High Court shall continue to operate. By order dated 12.02.2025, leave has been granted.

3. Relevant facts may be briefly noted.

4. Appellant is a government recognized two star export house and a trading company engaged in the export of rice, sesame seeds, soyabean meal extracts, etc. Earlier name of the appellant was M/s Andagro Services Private Limited but has since been renamed as Noble Resources and Trading India Private Limited.

5. Under the Export-Import (EXIM) policy of 2002-2007, which provided for exempting goods when imported into India under a duty free credit entitlement (DFCE) certificate, appellant was granted such a certificate for import of goods having a nexus with the products exported by it under the category '67/food products'. Under this duty free credit entitlement certificate (briefly 'the certificate' hereinafter),

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appellant imported crude degummed soyabean oil *vide* two Bills of Entry dated 26.07.2006 and 27.07.2006 claiming duty exemption on the basis of such certificate. The exemption claimed was in terms of para 3.7.2.1(vi) of the EXIM policy.

6. A show-cause notice dated 30.08.2006 was issued to the appellant by the Office of the Commissioner of Customs, Kachchh Commissionerate stating that under the duty free credit entitlement scheme (briefly 'the scheme' hereinafter) *vide* notification No.53/2003-Cus. dated 01.04.2003, appellant was not eligible for benefits on the import of crude degummed soyabean oil as it was an agricultural product. Since goods in the nature of agricultural and dairy products were excluded under the said notification, appellant was liable to discharge the duties as applicable. Revenue was of the further view that the import made by the appellant should have a nexus with the product group exported. One of the goods exported by the appellant was soyabean meal extract while the product imported was crude degummed soyabean oil; there was no

nexus between the two. The notice therefore called upon the appellant to pay all the duties chargeable with interest.

7. Appellant responded to the show-cause notice by filing a reply dated 14.09.2006. Appellant contended that the product imported by it i.e. crude degummed soyabean oil, was not an agricultural and dairy product so as to be excluded from the notification No.53/2003. It was further contended that both the products imported and exported i.e. crude degummed soyabean oil and soyabean meal extract respectively are classified as food products. Therefore, the product imported clearly has a nexus with the product exported by the appellant. Appellant relied upon amended notifications dated 28.01.2004 and 21.04.2004 as well as para 3.2.5 of the Handbook of Procedures. Appellant explained that through a process of manufacture, the agricultural product soyabean loses its identity and becomes another product called crude degummed soyabean oil which is a distinctly marketable commodity. That apart, appellant contended that it was imported through the Metals and Minerals Trading

Corporation (MMTC). Therefore, it was entitled to exemption from duty under the scheme on this score as well.

8. Appellant was granted a personal hearing on 08.12.2006.

9. Thereafter, order-in-original dated 09.01.2007 was passed by the Assistant Commissioner (Gr.-VII), Customs House, Kandla (briefly 'Assistant Commissioner' hereinafter) whereby the demand of duty to the tune of Rs.1,00,38,321.00 raised in the show-cause notice was confirmed. In the process appellant has been denied the benefit of duty free credit entitlement.

10. This came to be assailed by the appellant before the High Court by filing a petition under Article 226 of the Constitution of India which was registered as R/Special Civil Application No.8596 of 2007.

11. A Division Bench of the High Court *vide* judgment and order dated 05.08.2019 (impugned judgment) dismissed the writ petition by upholding the levy of demand. After pronouncement of the judgment, on the prayer made on behalf

of the appellant, the Division Bench of the High Court extended the interim relief which was granted earlier in the writ proceeding for a period of four weeks.

12. As noted above, this Court while issuing notice had granted interim relief extending the interim protection granted by the High Court.

13. Learned senior counsel for the appellant at the outset submits that the benefit given by the statutory notification bearing No. 53/2003-Cus. dated 01.04.2003 could not have been whittled down by the departmental circular No. 10/2004-Cus. dated 30.01.2004. He submits that in terms of the notification, the goods imported into India by importers covered by the duty free credit entitlement certificate were exempted from payment of whole of the customs duty and additional duty. As per definition of the word 'goods' in the said notification, only agricultural and dairy products were excluded. Crude degummed soyabean oil imported by the appellant is not an agricultural product. However, the department relied upon the circular to contend that any

product derived from agriculture or having dairy origin would not be permitted to avail the benefit under the duty free entitlement scheme. High Court committed a manifest error in placing reliance on the circular. The circular could not have narrowed down the scope of the exemption by enlarging the exclusionary clause.

13.1. Learned senior counsel submits that since the expression 'agricultural product' has not been defined in the notification No. 53/2003, its meaning has to be ascribed in terms of commercial parlance. In the said notification, agriculture and dairy products were excluded from the exemption to payment of customs duty and additional duty. However, the circular expanded the exclusion by adding the words 'any product derived from agricultural origin'. Thus, the circular had gone beyond the scope of the statutory notification which is not permissible.

13.2. Learned senior counsel has pointed out that Director General of Foreign Trade (DGFT) subsequently issued public notice No. 42/2004-2009 dated 06.01.2025 permitting

importers to import all types of edible oil classifiable under Chapter Heading No. 15 through the State Trading Corporations (STC) and MMTC.

13.3. Assailing the impugned judgment, learned senior counsel submits that High Court fell in error in holding that crude degummed soyabean oil imported by the appellant is an agricultural product since it is derived from soyabean which is admittedly an agricultural product. He has painstakingly explained the process of manufacture of crude degummed soyabean oil from soyabean and submits that by no stretch of imagination, the same can be said to be an agricultural product. Through a manufacturing process, a distinct commodity or product is manufactured i.e. crude degummed soyabean oil which is clearly a distinct commodity. This aspect was overlooked by the High Court. He also adverted to the expression 'agricultural product' and submits that since it has not been defined in the EXIM policy, the common parlance test should be applied and the dictionary definition should be referred to. He submits that agriculture has been defined to

mean the science and art of cultivating the soil, harvesting crop and raising livestock. While soyabean is certainly an agricultural product, crude degummed soyabean oil, even if not refined and not fit for human consumption, cannot be termed as an agricultural product.

13.4. Learned senior counsel asserts that the process of extraction of crude degummed soyabean oil from soyabean amounts to manufacture. In this connection, he has placed reliance on the Central Excise Act, 1944.

13.5. Even otherwise, it is submitted that the Handbook of Procedures (Vol. I) was amended by the DGFT through public notice No. 40/2002-07 dated 28.01.2004 in terms of the powers conferred on him under the EXIM policy of 2002-2007. By the said notice, para 3.2.5 was inserted which clearly stated that agricultural products under Chapters 1-24 of ITC (HS) were not allowed to be taken into consideration for computation of entitlement under the duty free credit entitlement scheme. Thereafter, DGFT further amended para 3.2.5 by way of public notice No. 42/2004-2009 dated

06.01.2005 whereby DGFT allowed import of items to be covered under the scheme except the items specifically excluded. By way of the said public notice, DGFT allowed the import of all types of edible oil classifiable under Chapter Heading 15 of ITC (HS) classification of export and import items but only through STC and MMTC. In the instant case, appellant had imported the crude degummed soyabean oil on 26.07.2006 through the MMTC. Therefore, on this ground also appellant is entitled to the benefit of the scheme.

13.6. Learned senior counsel also submits that the imported good i.e. crude degummed soyabean oil has clear nexus with the product group exported by the appellant. As per the license under the scheme, the import should have nexus with the product exported. Appellant exported food products like non-basmati rice, sesame seeds, white sugar and soyabean milk extract which are clearly food products having been allotted respective numbers under the Standard Input Output Norms (SION). The good imported is crude degummed soyabean oil which is also a food product and clearly has a

nexus with the exported product. This aspect has been dealt with by the Bombay High Court in *Essel Mining and Industries Limited Vs. Union of India*[1]. However, learned senior counsel pointed out that this decision is subject matter of a pending special leave petition before this Court. In fact, this Court *vide* order dated 08.01.2025 declined the request for tagging of the present appeal with the special leave petition assailing the Bombay High Court judgment in *Essel Mining and Industries Limited* (supra) as the High Court has held that the same would have no application.

13.7. In any view of the matter, learned senior counsel submits that the order of the Assistant Commissioner dated 09.01.2007 and the impugned judgment are wholly unsustainable in law. Those are liable to be appropriately interfered with by this Court.

14. *Per contra,* learned Additional Solicitor General appearing for the respondents submits that the precise question involved in the present appeal is whether appellant

[1] (2011) 270 ELT 306

was entitled to exemption from customs duty, additional duty and special additional duty in terms of the notification No. 53/2003-Cus. dated 01.04.2003. He submits that while dealing with this issue, the condition mentioned in the notification would have to be read in terms of the EXIM policy 2002-2007, as amended from time to time. He has referred to a subsequent notification bearing No. 38 dated 21.04.2004 whereby the EXIM policy was amended by insertion of Note 7 which clearly stated that agricultural products falling under item 1-24 of ITC (HS) will not be allowed for import under the scheme.

14.1. It is submitted that import of crude degummed soyabean oil is in the nature of an agricultural product or a product of agricultural origin. It is not eligible for benefits under the scheme in terms of notification No. 53/2003. He asserts that permitting import of such a product which is otherwise an agriculture product would amount to subverting the tariff barrier.

14.2. Controverting the contention of the appellant that the product imported is not agricultural in nature, learned Additional Solicitor General has referred to the impugned judgment of the High Court which held that extraction of oil from soyabean does not strip it of its agricultural identity.

14.3. Referring to the two Bills of Entry, learned Additional Solicitor General submits that appellant itself classified the imported product under Custom Tariff Heading (CTH) 15071000 which falls under Chapter 15 of the Indian Trade Classification (Harmonized System) (already referred to as ITC (HS)). This chapter specially covers animal or vegetable fats and oils, prepared edible fats and animal or vegetable waxes. This clearly shows that the product imported falls under Chapter 15 of ITC (HS) and, therefore, not allowed for import under the scheme.

14.4. Learned Additional Solicitor General submitted that appellant was exporting non-basmati rice (E/38), sesame seeds (E/93), white sugar (E/52/79) and soyabean meal extract (E/42) as food products. Such goods exported by the

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appellant did not have any broad nexus with the imported product i.e. crude degummed soyabean oil. Therefore, the benefit under notification No.53/2003 was rightly denied to the appellant.

14.5. He has also referred to the impugned judgment where the High Court has held that the test report clearly demonstrated that crude degummed soyabean oil was not fit for direct human consumption unless refined. Hence, benefit of public notice No. 42/2004-2009 dated 06.01.2005 through which import of edible oil was expressly permitted would not be available to the appellant.

14.6. Referring to the submissions of the appellant that the circular No. 10/2004-Cus. dated 30.01.2004 could not have exceeded the statutory notification, he submits that notification No. 53/2003 excluded agricultural products. The specific exclusion of all agricultural and dairy products was explained by the circular No. 10/2004-Cus. dated 30.01.2004. The circular did not add anything new but merely clarified and articulated what was implicit in the notification.

14.7. He, therefore, submits that there is no merit in the appeal which is liable to be dismissed.

15. Submissions made by learned counsel for the parties have received the due consideration of the Court.

16. Since the genesis of the present *lis* is the show-cause notice dated 30.08.2006 issued by the Assistant Commissioner, Kandla, it would be appropriate to initiate the analysis therefrom. The show-cause notice referred to the factum of importation of crude degummed soyabean oil falling under CTH 15071000 chargeable to appropriate tariff duty by the appellant. However, the appellant filed two Bills of Entry dated 26.07.2006 and 27.07.2006 claiming benefit of the notification bearing No.53/2003-Cus. dated 01.04.2003 i.e. exemption from payment of various customs duties on the basis of the license issued by the DGFT for duty free import of goods specified in the license. After referring to the said notification and the amendments carried out thereto, the Assistant Commissioner observed that in view of exclusion of agricultural and dairy products from the ambit of 'goods'

covered by the said notification, the import did not appear to be eligible for the benefits under the scheme since the imported good i.e. crude degummed soyabean oil was in the nature of agricultural product. The Assistant Commissioner further observed that as per the pre-condition sheet attached to the license issued by the DGFT, the imported product must have a nexus with the product group exported. The export group name indicates 67/food products. Included in the said group of export was soyabean meal extract, whereas the product imported was crude degummed soyabean oil which did not appear to have a nexus with the exported product. Therefore, appellant was called upon to show-cause as to why the duties chargeable/leviable for imported goods should not be charged under Section 28 of the Customs Act, 1962 ('the Customs Act' hereinafter) on the goods imported duty free and hit by the exclusion clause of the notification bearing No.53/2003. Appellant was also called upon to show cause as to why interest at appropriate rate on the aforesaid duties should not be charged under Section 28AB of the Customs Act.

17. Appellant responded to the aforesaid show-cause notice by way of reply dated 14.09.2006. Appellant submitted that the product imported by it clearly did not fall within the scope of the term 'agricultural and dairy product' and cannot be excluded from the benefits of the notification bearing No. 53/2003. The exclusion was only with respect to agricultural products falling under Chapter Heading 1 to 24 of ITC (HS). Crude degummed soyabean oil imported by the appellant can by no means be said to be an agricultural product. Thereafter, appellant explained the various stages in the process of manufacturing of crude degummed soyabean oil. It was submitted that crude degummed soyabean oil was a completely different marketable commodity having an identity distinct from soyabean. While soyabean is an agricultural product, crude degummed soyabean oil manufactured therefrom cannot be called an agricultural product. Therefore, the exclusion of agricultural product *vide* the notification bearing No.53/2003 would not apply to crude degummed soyabean oil. The process of extraction of crude degummed

soyabean oil from soyabean amounts to manufacture. Crude degummed soyabean oil is clearly a commodity distinct from soyabean. Hence, crude degummed soyabean oil cannot be classified as an agricultural product and therefore the exclusion of agricultural product would not apply to crude degummed soyabean oil. Appellant also asserted that the imported product i.e. crude degummed soyabean oil is classified as a food product under SION; so also one of the exported products i.e. soyabean meal extract. In view of clarifications issued by the DGFT from time to time, the product imported clearly has a nexus with the product exported by the appellant. In the circumstances, appellant contended that there was no basis whatsoever for demanding any duty from it. Appellant had rightly claimed the benefit of notification bearing No.53/2003. Therefore, the Assistant Commissioner was requested to drop the show-cause notice.

18. After considering the reply of the appellant to the show-cause notice and upon hearing the appellant, order-in-original dated 09.01.2007 was passed by the Assistant

Commissioner. After analyzing the notification No.53/2003, Assistant Commissioner held that in view of exclusion of agricultural and dairy products from the scope of 'goods' covered by the said notification, appellant was not eligible for the benefits under the scheme on the import of crude degummed soyabean oil which is in the nature of agricultural product arising out of a product of agricultural origin. The importer has therefore to discharge the duties as applicable. The Assistant Commissioner referred to para 3.7.5 of the EXIM policy and also observed that goods allowed to be imported under the scheme should have a broad nexus with the product group exported. For the purpose of import entitlement under the scheme 'broad nexus' would mean goods imported with reference to any of the products in the product group exported within the overall value of the entitlement certificate. The name of the export group indicates 67/food products. Goods exported by the appellant included non-basmati rice (E/38), sesame seeds (E/93), white sugar (E/52/79) and soyabean meal extract (E/42) while the product imported was crude

degummed soyabean oil. Hence the imported good did not appear to have any broad nexus with the product group exported. Therefore, the Assistant Commissioner concluded that appellant did not appear to be eligible for the benefits under the scheme on the import of crude degummed soyabean oil. The said good is excluded from the purview of the notification bearing No.53/2003. Therefore, it was declared that appellant would have to discharge the duties as applicable on merit. Consequently, a demand of duty to the tune of Rs.1,00,38,321.00 was raised against the appellant further ordering that interest at the appropriate rates on the aforesaid demand of duty would also be recoverable under Section 28AB of the Customs Act.

19. Though the order-in-original dated 09.01.2007 was an appealable order under Section 128 of the Customs Act, appellant assailed the same before the High Court by filing a petition under Article 226 of the Constitution of India. The challenge made in the writ proceedings was to the order-in-original dated 09.01.2007 as well as to the circular bearing

No.10/2004-Cus. dated 30.01.2004 whereby the exclusionary clause in the notification bearing No.53/2003 was expanded to include all types of products derived from agriculture/dairy origin within the term 'agriculture and dairy products'.

19.1. High Court did not non-suit the appellant on the ground of alternative remedy but proceeded to hear the challenge on merit. By the impugned judgment and order dated 05.08.2019, High Court held that the basic ingredient of crude degummed soyabean oil is soyabean which is admittedly an agricultural product. According to the High Court, the process which is undertaken to convert soyabean into crude degummed soyabean oil though may be termed as a manufacturing process but what is to be seen is that soyabean as an agricultural product is a primary product which undergoes a simple operation so as to make it more usable or saleable. It can in no way be said to acquire a distinct identity. Soyabean on extraction of oil does not lose its identity. According to the test report, unless the crude degummed soyabean oil is refined, it cannot be used for human

consumption. Therefore, the High Court rejected the contention that in view of the process undertaken soyabean acquires a distinct marketable identity is without any merit. Finding of the Assistant Commissioner that crude degummed soyabean oil is an agricultural product cannot be faulted.

19.2. Insofar the challenge to circular No.10/2004-Cus. dated 30.01.2004 is concerned, High Court observed that the EXIM policy stated that agricultural products would not be allowed for imports. When a clarification was sought for by the DGFT, the said circular was issued clarifying that all products derived from agriculture/dairy origin are not permitted to be imported.

19.3. High Court also did not find fault with the view taken by the primary authority that the imported goods i.e. crude degummed soyabean oil had no nexus with the product group exported. What was exported was not soyabean refined oil after undergoing chemical modification but was only soyabean meal extract which had no nexus with the imported product i.e. crude degummed soyabean oil which is again not

a refined oil fit for human consumption. Therefore, even though crude degummed soyabean oil might have been imported through the MMTC, that would not be of any help to the appellant. Therefore, High Court affirmed the order of the Assistant Commissioner dated 09.01.2007 denying the benefit of the scheme to the appellant under notification No. 53/2003-Cus. dated 01.04.2003 in respect of the subject Bills of Entry.

20. Before we examine the correctness or otherwise of the view taken by the High Court, it would be apposite to have an overview of the relevant legal provisions, statutory or otherwise.

21. To provide for the development and regulation of foreign trade by facilitating imports into and augmenting exports from India and for matters connected therewith or incidental thereto, the Foreign Trade (Development and Regulation) Act, 1992 (briefly 'the 1992 Act' hereinafter) came to be enacted. Section 5 provides for framing of foreign trade policy. It says that the central government may, from time to time, formulate and announce by notification in the official

gazette the foreign trade policy and may also, in like manner amend such policy. Under Section 6(1) of the 1992 Act, the central government may appoint any person to be the Director General of Foreign Trade (DGFT) for the purposes of the 1992 Act. It shall be the duty of the DGFT to advise the central government in the formulation of the foreign trade policy and shall be responsible for carrying out that policy.

22. In exercise of the powers conferred by Section 5 of the 1992 Act, the central government notified the export and import (EXIM) policy for the period 2002-2007 coming into force w.e.f. 01.04.2002. Paragraph 1.1 clarified that the central government reserved the right in public interest to carry out any amendment in the EXIM policy, 2002-2007. Such amendment would be made by means of a notification published in the Gazette of India.

22.1. Under paragraph 2.4, DGFT may, in any case or class of cases, specify the procedure to be followed by an exporter or importer or by any licensing or any other competent authority for the purposes of implementing

amongst others the EXIM policy, 2002-2007. Such procedures shall be included in the Handbook of Procedures (Vol.-1) etc. and published by means of a public notice. The Handbook of Procedures (Vol.-1) is a supplement to the EXIM policy and contains relevant procedures and other details including the procedure for availing benefits under various schemes of the EXIM policy.

22.2. In exercise of the powers conferred under paragraph 2.4 of the EXIM policy 2002-2007, DGFT notified the Handbook of Procedures (Vol.–1) *vide* the public notice No. 1/2002-2007 dated 31.03.2002 which came into force from 01.04.2002. Paragraph 3.2 provides for duty free credit entitlement for status holders. Paragraph 3.2.5 reads as under:

> 3.2.5 The status holders having an annual incremental growth of more than 25% in the FOB value of exports (in free foreign exchange) shall be entitled to the facility of duty free credit entitlement subject to achieving a minimum annual export turnover of Rs. 25 crore (in free foreign exchange). Such status holders shall be entitled to duty free credit

entitlement certificate to the extent of 10% of the incremental growth in exports.

Accordingly, status holders who will achieve more than 25% growth in exports in the year 2003-04 (in free foreign exchange) as compared to the exports made in 2002-03 (in free foreign exchange) subject to a minimum export of Rs. 25 crore (in free foreign exchange) shall be entitled for duty free credit entitlement certificate @ 10% of the incremental growth in exports.

The duty free credit entitlement can be used for import of capital goods, office equipment and inputs provided the same is freely importable under ITC(HS). Such goods shall be non-transferable. Goods imported against such entitlement certificate shall be used by status holder or his supporting manufacturer/job worker provided the name and address of the supporting manufacturer/job worker is endorsed on the certificate issued by RLA.

22.3. Chapter 3 of the EXIM policy 2002-2007 deals with promotional measures. Paragraph 3.7.2.1 provides for special strategic package for status holders. In paragraph 3.7.1, it is stated that merchant as well as manufacturer exporters, service providers, export oriented units or units located in special economic zones or agri export zones or electronic

hardware technology parks or software technology parks shall be eligible for such status certificate. Paragraph 3.7.2.1 says that the status holders shall be eligible for the new/special facilities mentioned therein. In this case, we are concerned with clause (vi) which reads thus:

> vi) Duty free import entitlement for status holders having incremental growth of more than 25% in FOB value of exports (in free foreign exchange) subject to a minimum export turnover of Rs. 25 crore (in free foreign exchange). The duty free entitlement shall be 10% of the incremental growth in exports. Such entitlement can be used for import of capital goods, office equipment and inputs for their own factory or the factory of the associate/supporting manufacturer/job worker. The entitlement/goods shall not be transferable.

23. Let us now come to the Customs Act, 1962 (already referred to as 'the Customs Act' hereinabove). Sub-section (1) of Section 25 is relevant and reads thus:

> **25. Power to grant exemption from duty.**-(1) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, by notification in the Official Gazette, exempt generally either absolutely or subject to such conditions (to be fulfilled before or after clearance) as may be specified in the notification goods of

any specified description from the whole or any part of duty of customs leviable thereon.

23.1. Thus what the above provision provides for is that if the central government is satisfied that it is necessary in the public interest it may by notification in the official gazette exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods of any specified description from the whole or any part of the duty of customs leviable thereon.

24. In exercise of the powers conferred by sub-section (1) of Section 25 of the Customs Act, the central government being satisfied that it is necessary in the public interest so to do issued notification No. 53/2003-Cus. dated 01.04.2003, exempting goods when imported into India against a duty free entitlement credit certificate issued under paragraph 3.7.2.1(vi) of the EXIM policy from the whole of the duty, additional duty and special additional duty of customs subject to the conditions that the certificate was issued by the licensing authority to a status holder specified in

paragraph 3.7.2 of the EXIM policy and that the said certificate and goods imported against it were not transferred or sold. Paragraph 3 deals with capital goods with which we are not concerned in this appeal. However, the said certificate shall be produced before the proper officer of customs at the time of clearance for debit of the duties leviable on the goods but for the exemption. Further, the imports against the said certificate should be undertaken through the seaports mentioned in paragraph 5 of the said notification. Paragraph 5(ii) is relevant and is extracted hereunder:

> (5) *** *** *** ***
>
> (i) * * * * * *
>
> (ii) goods means –
>
> (a) capital goods;
>
> (b) office equipment (including computer systems, software, fax/machine, telephone); and
>
> (c) raw materials, components, intermediates, consumables and parts **other than agricultural and dairy products;**

25. Thereafter, the Central Board of Excise and Customs issued circular No. 10/2004-Cus. dated 30.01.2004

stating that DGFT had sought clarification from the Department of Revenue whether the restriction regarding agricultural and dairy products would apply to all products derived from agriculture/diary origin. Central Board of Excise and Customs (Board) clarified that restriction regarding agriculture and dairy products as specified under the scheme shall mean that import of all types of products derived from agriculture/diary origin including crude edible oil shall not be permitted. Relevant portion of the circular dated 30.01.2004 reads as under:

> 4. It is, therefore, reiterated that the restriction regarding agriculture and dairy products as specified in DFCEC scheme for status holders and service providers shall mean that import of all types of products derived from agriculture/diary origin including crude edible oil shall not be permitted.

26. Government of India in the Ministry of Commerce and Industry, Department of Commerce, issued public notice No.40 (RE-2003)/2002-2007 dated 28.01.2004 inserting amongst others the following below paragraph 3.2.5 of the Handbook of Procedures (Volume 1):

> 3. In terms of para 3.2.5 of Handbook of Procedures (Volume 1) the following items would not be allowed for imports under duty free credit entitlement certificate for status holders:
>
> a. Agricultural products which fall under Chapters 1-24 of ITC(HS) classification of export and import items.

27. Thereafter, the Department of Commerce issued notification No. 38/(RE-2003)/2002-2007 dated 21.04.2004 inserting Note 7 in paragraph 3.7.2.1 of the EXIM policy 2002-2007 which reads thus:

> **Note 7** – The following items would not be allowed for imports under duty free credit entitlement certificate for status holders:
>
> Agricultural products, which fall under Chapters 1-24 of ITC(HS) classification of export and import items.

28. Finally, DGFT issued public notice No.42/2004-2009 dated 06.01.2005 making the following amendments in the Handbook of Procedures (Vol. I):

> Sub para-3 of public notice No. 40(RE-2003)/2002-2007 dt. 28.01.2004 shall be amended to read as under:
>
> In terms of para 3.2.5 of the Handbook of Procedures (Vol. I), import of agricultural products listed in Chapter 1 to 24 of ITC (HS) classification of export and import items except the following shall be allowed:

(i) Garlic, peas and all other vegetables with a duty of more than 30% under Chapter 7 of ITC (HS) classification of export and import items.

(ii) Coconut, areca nut, oranges, lemon, fresh grapes, apple and pears and all other fruits with a duty of more than 30% under Chapter 8 of ITC (HS) classification of export and import items.

(iii) All spices with a duty of more than 30% under Chapter 9 of ITC (HS) classification of export and import items (except cloves).

(iv) Tea, coffee and pepper as per Chapter 9 of ITC (HS) classification of export and import items.

(v) All oil seeds under Chapter 12 of ITC (HS) classification of export and import items.

Further, natural rubber as per Chapter 40 of ITC (HS) classification of export and import items shall also not be allowed for import under the scheme.

Import of all edible oils classified under Chapter 15 of ITC (HS) classification of export and import items, shall be allowed under the scheme only through STC and MMTC.

29. As we have noted, notification No. 53/2003-Cus. dated 01.04.2003 is a statutory notification issued under sub-section (1) of Section 25 of the Customs Act. By way of the said notification, exemption is granted when certain goods are imported into India against a duty free entitlement

credit certificate issued under paragraph 3.7.2.1(vi) of the EXIM policy. The goods which are exempted from payment of customs duty etc. means capital goods, office equipments (including computer system, software, fax/machine, telephone) and raw materials, components, intermediates, consumables and parts **other than agricultural and dairy products**. From a plain reading of the said notification, it would mean that agricultural and dairy products are excluded from exempted goods. In other words, agricultural and dairy products would not be covered by the notification No.53/2003-Cus. dated 01.04.2003 and would be liable to pay customs duty, etc. on merit. On the other hand, circular No.10/2004-Cus. dated 30.01.2004 was issued by the Board following a clarification sought by DGFT from the Department of Revenue as to whether the restriction regarding agriculture and dairy products would apply to all products derived from agriculture/dairy origin. Board clarified that the restriction regarding agriculture and dairy products as specified in the scheme for status holders and service providers shall mean

that import of all types of products derived from agriculture/dairy origin including crude edible oil shall not be permitted.

30. In contra-distinction to the exclusion of agricultural and dairy products from the goods exempted from paying customs duty etc. on import as stated in the statutory notification No.53/2003, the circular has expanded the meaning of the expression '**other than agricultural and dairy products**' to mean '**all types of products derived from agriculture/dairy origin including crude edible oil'**. What is therefore evident is that by way of the subsequent administrative circular dated 30.01.2004, the excluded goods of agricultural and dairy products as per the statutory notification dated 01.04.2003 has been enlarged to include all types of products derived from agriculture/dairy origin including crude edible oil.

31. In *Tata Teleservices Ltd. Vs. Commissioner of Customs*[2] this Court observed that the concerned circular

[2] (2006) 1 SCC 746

sought to impose a limitation on the exemption notification which the exemption notification itself did not provide. This Court held that it was not open to the Board to whittle down the exemption notification in such a manner.

32. Therefore, the first question which arises for consideration is, whether by way of the circular dated 30.01.2004 the benefits granted under the statutory notification dated 01.04.2003 could have been curtailed by expanding the exclusionary clause.

33. A two-Judge Bench of this Court in *Union of India Vs. Inter Continental*[3] was considering the question as to whether the end-use verification of the products is necessary for availing the benefit of concessional rate of duty. In that case, the statutory notification bearing No.17/2001-Cus. dated 01.03.2001 provided for concessional rate of duty on crude palmolin oil. However, as per Board's circular No.40/2001-Cus. dated 13.07.2001, end-use certificate was required to be produced for allowing such benefit. This came

[3] 2008 SCC OnLine SC 22

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to be challenged by the assessee by filing a writ petition in the High Court questioning the direction to produce the end-use certificate which was stated to be a new condition to the statutory notification by way of a circular. Contention of the petitioner was that the circular sought to impose a limitation on the exemption notification or tried to whittle it down by adding a new condition beyond the notification. High Court accepted the writ petition by holding that the Board by issuing a circular subsequent to the notification could not have added a new condition thereby restricting the scope of the exemption notification. Imposing such a condition would tantamount to re-writing the notification or in other words legislating by circular, which is not permissible in law. High Court held that the circular being contrary to the notification could not be sustained as it could not override the notification. This Court agreed with the view of the High Court and held thus:

> **6.** We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification,

> add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down.

34. This view was reiterated in *Sandur Micro Circuits Limited Vs. Commissioner of Central Excise, Belgaum*[4]. Though the controversy was of a different nature in *Sandur Micro Circuits Limited* (supra), nonetheless it is relevant to note the principle laid down in the said decision. This Court held that the principle that a circular cannot take away the effect of a notification statutorily issued would be applicable to the facts of that case as well. This Court held thus:

> 6. The issue relating to effectiveness of a circular contrary to a notification statutorily issued has been examined by this Court in several cases. A circular cannot take away the effect of notifications statutorily issued. In fact in certain cases it has been held that the circular cannot whittle down the exemption notification and restrict the scope of the exemption notification or hit (sic) it down. In other words, it was held that by issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down cannot be imposed. The principle is applicable to

[4](2008) 14 SCC 336

the instant cases also, though the controversy is of different nature.

35. Following the clear principle of law enunciated by this Court, it is evident that the Board could not have expanded the scope of the expression '**other than agricultural and dairy products**' as stipulated in the statutory notification dated 01.04.2003 to mean and include all types of products derived from agriculture/dairy origin including crude edible oil by way of the administrative circular dated 30.01.2004. If this is accepted, it would amount to rewriting the conditions of exclusion from exempted goods statutorily provided in the notification dated 01.04.2003. This is impermissible. To that extent, circular No.10/2004-Cus. dated 30.01.2004 would be of no legal consequence.

36. Therefore, our answer to the question framed above would be that by way of the circular dated 30.01.2004, Board could not have curtailed the benefits granted to the appellant under the statutory notification dated 01.04.2003 by

expanding the scope of the exclusionary clause **'other than agricultural and dairy products'.**

37. This brings us to the crucial question as to whether crude degummed soyabean oil imported by the appellant is an agricultural product. The related question is, what is an agricultural product or what do we mean by an agricultural product?

38. Before we analyze the above issue, let us examine the reasonings given by the High Court in this regard. The reasonings are at paragraphs 9 and 9.1 of the impugned judgment. On an analysis of the diagram describing the manufacturing process of the appellant, High Court observed that the basic ingredient/root of the product is soyabean. It is not disputed even by the appellant that soyabean is an agricultural product. After referring to the contention of the appellant that after undergoing the process of manufacture, the crude degummed soyabean oil becomes a distinct commodity, High Court observed that though the process undertaken by the appellant may be termed as a

manufacturing process but what is to be seen is that soyabean as an agricultural product is a primary product which undergoes a simple operation so as to make it more usable or saleable; it can in no way be said to acquire a distinct identity. Unlike eucalyptus oil, soyabean on extraction of oil does not lose its identity. High Court relied on the test report placed on record to hold that unless the crude degummed soyabean oil is refined, it cannot be used for human consumption. High Court, therefore, rejected the contention of the appellant that after going through the process as explained, soyabean acquires a distinct marketable identity is without any merit and upheld the finding of the assessing authority that crude degummed soyabean oil is an agricultural product.

39. We will advert to the concept of agriculture and agricultural product a little later. First, let us deal with the contention of the appellant *vis-à-vis* the process of conversion of soyabean into crude degummed soyabean oil; whether it amounts to manufacture? Appellant has mentioned the four

steps taken for undergoing the aforesaid process. At this stage we need to make a note that while the High Court admitted that the process undertaken by the appellant may be a manufacturing process but the end product does not acquire a distinct identity. View of the High Court is that on extraction of oil soyabean does not lose its identity. Unless crude degummed soyabean oil is refined, it cannot be used for human consumption. Therefore, crude degummed soyabean oil is an agricultural product.

40. The steps mentioned by the appellant for carrying out the manufacturing process to convert soyabean into crude degummed soyabean oil are as follows:

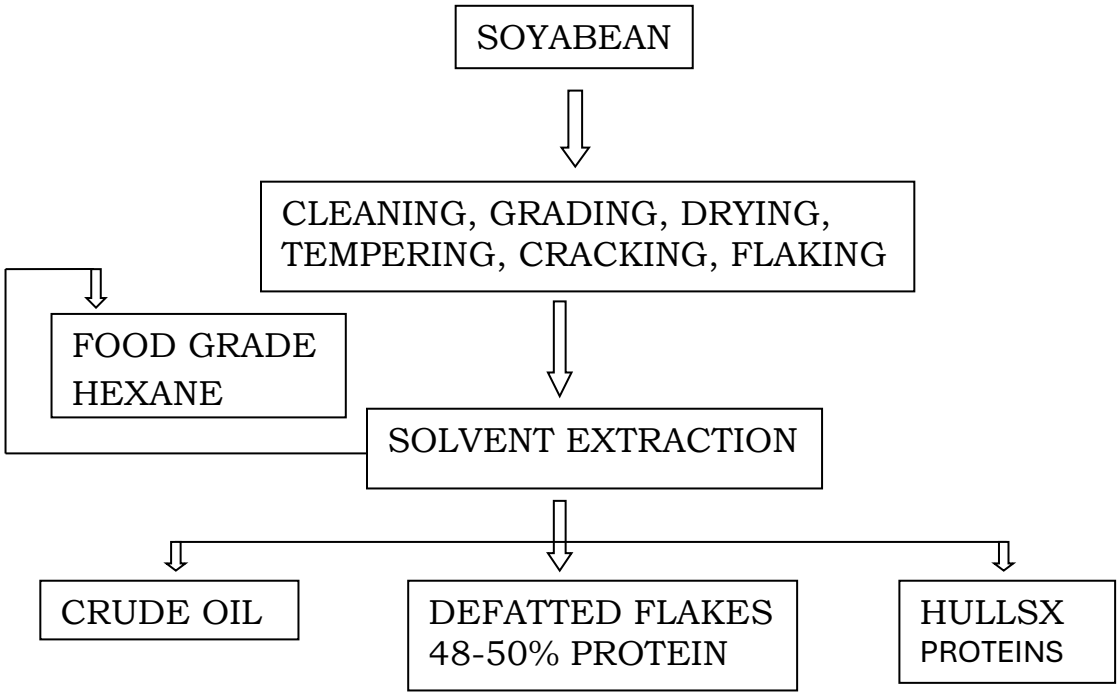
> Step 1 - Soyabean procured from mandis (markets) are stored in cylos where proper storage, free from moisture and heat is ensured;
>
> Step 2 - From cylos, these beans are taken to cleaning machine through conveyor where all dust, stones and foreign material are removed. After screening, it goes to the cooker. After cooking, the mass goes to flaker where

flaking is done and these flakes are then fed to the extractor.

Step 3 - The flakes are fed from one side and fresh solvent - hexane is fed from the other side, both move continuously in opposite direction. The speed of belt of extractor and feeding rate of flakes and hexane is so adjusted that complete oil gets extracted from flakes by the time flakes exit the extractor.

Step 4 - Solvent containing oil called miscella is then taken to distillation unit where solvent is recovered back by distillation and condensation. Thereafter, the oil is sent to separate tank. Cake exiting from second end of extractor is cooled and then taken to toaster to remove traces of solvent. Toasted DOC (soymeal) is sent to DOC godown for storing, packing and dispatching. This extracted oil is sent to storage tank and subsequently dispatched for taken to refinery to manufacture refined oil.

41. This then is the process of conversion of soyabean into crude degummed soyabean oil. On the basis of the aforesaid process, appellant contends that a distinct commodity is manufactured. The above process has been explained by way of a diagram which we extract hereunder:



42. On the above basis it is the contention of the appellant that crude degummed soyabean oil is a commodity clearly distinct from soyabean. Through a series of process, the original agricultural product soyabean completely loses its identity. The natural identity of soyabean is completely lost and a new product is manufactured which is distinct from soyabean.

Therefore, crude degummed soyabean oil cannot by any stretch of imagination be treated as an agricultural product.

43. Having examined the process undertaken by the appellant and even though the High Court acknowledges such process to be a process of manufacture, it will be useful to make a reference to the judicial precedents *qua* manufacture or manufacturing process.

44. In *Union of India Vs. Delhi Cloth and General Mills Co. Ltd.*[5], a Constitution Bench of this Court held that the verb 'manufacture' used as a word is generally understood to mean as 'bringing into existence a new substance', howsoever minor in consequence the change may be. 'Manufacture' implies a change but every change is not manufacture. Every change of an article is the result of treatment, labour and manipulation. But something more is necessary to make it 'manufacture'. There must be transformation; a new and different article must emerge having a distinctive name, character or use.

[5] AIR 1963 SC 791

45. The meaning of the expression 'manufacture' was considered by this Court in *Deputy CST Vs. Pio Food Packers*[6]. In the said decision, a three-Judge Bench held that the test evolved for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognized in the trade as a new and distinct commodity. This Court laid down the following test to determine as to whether manufacture has taken place:

> 5. xxx xxx xxx xxx
>
> Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the

[6] 1980 Supp. SCC 174

> original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place.

46. This view was endorsed by this Court in *Commissioner of Income Tax, Orissa Vs. M/s N.C. Budharaja And Company*[7]. In that case this Court was considering the limited question as to whether the construction of a dam to store water (reservoir) can be characterized as amounting to manufacturing or producing an article or articles, as the case may be. The aforesaid question arose in the context of the claim of the assessee to deduction under Section 80-HH of the Income Tax Act, 1961. This Court explained that the word 'production' has a wider connotation than the word 'manufacture'; while every manufacture can be characterized as production, every production need not amount to manufacture and thereafter endorsed the meaning ascribed by this Court to the expression 'manufacture' in *Pio Food Packers* (supra).

[7] 1994 Supp (1) SCC 280

47. In *Commissioner of Income Tax Vs. Stanes Amalgamated Estates Ltd.* [8] , Madras High Court was examining the question on a reference made to it under Section 256(2) of the Income Tax Act, 1961: whether the Income Tax Appellate Tribunal was right in holding that the sale proceeds of eucalyptus oil extracted by the assessee from the leaves of eucalyptus trees grown by it was in the nature of agricultural income and hence not assessable to income tax? The reference was at the instance of the revenue. Finding of the Income Tax Appellate Tribunal (for short 'the Tribunal') was that eucalyptus oil was agricultural produce. It was in that backdrop the High Court considered the question as to whether eucalyptus oil extracted from eucalyptus leaves could be considered as an agricultural produce. Division Bench of the High Court held that the oil extracted from the eucalyptus leaves is a distinct product. In the process undertaken, eucalyptus leaves loses their original identity. Therefore, the High Court held that view taken by the

[8] (1998) 232 ITR 443

Tribunal that eucalyptus oil extracted from eucalyptus leaves is also an agricultural produce is not correct.

48. This Court in *Commissioner of Income Tax Vs. Cynamid India Limited*[9] considered an interesting question as to whether rice husk was a product of agriculture or not. Assessee claimed deduction under Section 35-C of the Income Tax Act, 1961 contending that it manufactures an animal feed wherein rice husk was mainly used as raw material. Tribunal disallowed the deduction on the ground that rice husk was not a product of agriculture because it was not a direct outcome of agricultural endeavor. What was produced by the cultivator was paddy which alone could be considered as an agricultural product. The husk was the result of a process of dehusking which was not agriculture. High Court answered the question in favour of the assessee holding that operation of dehusking paddy is not an industrial or manufacturing operation as commonly understood. It is essentially an agricultural operation. Both

[9] (1999) 3 SCC 727

rice and husk remain in their natural form as a result of dehusking and are covered by the term 'agricultural product'. It was in that context this Court observed that the term 'agricultural product' or 'product of agriculture' is required to be construed liberally so as to include not merely the primary product as it actually grows but also a product which undergoes a simple operation so as to make it more saleable or more usable. The rice and the husk though separated remain as they were produced and hence continue to be 'agricultural product' or 'product of agriculture'.

49. In *Jai Bhagwan Oil and Flour Mills Vs. Union of India*[10], this Court held that the true test to ascertain whether a process is a manufacturing process producing a new and distinct article is, whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture.

[10] (2009) 14 SCC 63

50. Again, in the case of *Collector of Central Excise, Kanpur Vs. Mineral Oil Corporation*[11], a three-Judge Bench of this Court endorsed the view taken in *Delhi Cloth and General Mills Co. Ltd.* (supra) and held that to amount to manufacture, a new commodity having distinct name, character or use should emerge as a result of the process of manufacture. The true test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity but is recognized in trade as a new and distinct commodity.

50.1. In the facts of that case, this Court observed that appellants used to bring transformer oil and by removing impurities, it was again made useable as transformer oil. Before and after the process, the product was only transformer oil. That being so, this Court held that it could not be said that a new and distinct commodity had come into

[11] (2015) 14 SCC 64

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existence consequent to the process undertaken by the appellant.

51. Thus, to constitute manufacture, the following are the essential features:

i. There must be a process or series of process.

ii. The original commodity or raw material undergoes a transformation through the process or series of process.

iii. At the end of the process or series of process, a new commodity emerges.

iv. The new commodity should have a distinct name, character or use and can no longer be regarded as the original commodity.

v. It should be regarded as distinct from the original commodity and recognized as so in the trade.

52. The test is not whether the end product is a consumable product or not. Therefore, the High Court clearly missed the point by holding that because crude degummed soyabean oil was not further refined and therefore was not a consumable item; it did not have a distinct identity. This is

not the test of manufacture. While there is no dispute that soyabean is an agricultural product, the High Court while endorsing the view of the Assistant Commissioner held that crude degummed soyabean oil is also an agricultural product. Certainly, crude degummed soyabean oil is distinct from soyabean; it is not the same thing as soyabean.

53. The expression 'agricultural product' is not defined in the EXIM policy. Therefore, to understand the expression 'agricultural product', reference would have to be made to the dictionary meaning and also what is understood as an 'agricultural product' by applying the common parlance test.

54. In Black's Law Dictionary, Ninth Edition, 'agriculture' has been defined as the science or art of cultivating soil, harvesting crops and raising livestock.

54.1. Supreme Court *Words and Phrases*, Fourth Edition, defines 'agriculture' to mean in its root sense *ager*, a field, and *cultura,* cultivation; which means cultivation of field.

55. In P. Ramanatha Aiyar's *Advanced Law Lexicon*, Seventh Edition, the expression 'agricultural purpose' has

been ascribed the meaning of use of land for the purpose of growing crops. It is the science and art of cultivating the soil, harvesting crops and raising livestock and also as the science or art of the production of plants and animals useful to man and in varying degrees the preparation of such products for man's use and their disposal.

55.1 The expression 'agricultural purposes' refer to tilling and cultivation for the purposes of raising crops. In their widest sense, the words may include grazing as well.

56. Kerala High Court in *P. Narayanan Nair Vs. Dr. Lokeshan Nair*[12] referred to the dictionary meaning of the expression 'agricultural product' as under:

> **14. Agricultural product.** Things which have a *situs* of their production upon the farm and which are brought into condition for uses of society by labour of those engaged in agricultural pursuits as contra-distinguished from manufacturing or other industrial pursuits. That which is the direct result of husbandry and the cultivation of the soil. The product is in its natural unmanufactured condition.

[12] AIR 2014 Ker 141

57. Therefore, applying the above test, we are unable to concur with the view expressed by the High Court that crude degummed soyabean oil is an agricultural product.

58. Thus, having regard to the discussions made above, we record our conclusions as under:

i. The circular bearing No.10/2004 dated 30.01.2004 insofar it expands the exclusionary clause in the statutory notification No.53/2003 dated 01.04.2003 would have no legal consequence.

ii. Crude degummed soyabean oil is a product different and distinct in character and identity from soyabean.

iii. The process carried out by the appellant using soyabean as raw material and ending in the product crude degummed soyabean oil is manufacturing.

iv. Crude degummed soyabean oil is not an agricultural product.

v. Therefore, appellant would be entitled to the benefits under notification No.53/2003 dated 01.04.2003.

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59. In view of the aforesaid discussions and conclusions reached, this Court is of the considered opinion that further deliberation on the remaining issues is not warranted.

60. Consequently, the appeal is allowed. Impugned judgment and order of the High Court dated 05.08.2019 and the order passed by the Assistant Commissioner dated 09.01.2007 are hereby set aside.

61. However, there shall be no order as to costs.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
MAY 14, 2025.

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