
(1994) 07 MP CK 0013

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2805 of 1985

5-S Limited

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-07-1994

Acts Referred:

Central Excise Rules, 1944 — Rule 173
Central Excises and Salt Act, 1944 — Section 35A

Citation : (1995) 80 ELT 52

Hon'ble Judges : U.L. Bhatt, C.J;M.V. Tamasker, J

Bench : Division Bench

Advocate : A.G. Dhande, for the Appellant; I. Nair, for the Respondent

Judgement

U.L. Bhat, C.J.—First petitioner is a Company having a factory for the manufacture of vegetable products falling under tariff item 13 of the First Schedule of the Central Excises and Salt Act, 1944. The petitioners state that the tariff rate on vegetable products is 10% ad valorem and the effective rate is 5% ad valorem under notification dated 28-2-1965. The petition refers to the notification of 1971 granting some concession in the matter of excise duty for vegetable products made from indigenous rice bran oil to the extent of Rs. 10/- per quintal subject to certain conditions. Petition also refers to Annexure-1 notification dated 15-10-1983 granting concession up to the extent of Rs. 30/- per quintal on certain conditions. The petitioners gave Annexure-1-A undertaking as required by Annexure-1 notification. The petitioners submitted return under Rule 173-C of the Central Excise Rules, 1944 on the basis of the tariff rate of 5%. The petitioners complain that the concession under Annexure-1 notification has been withdrawn by Annexure-2 dated 30-4-1984. The Assistant Collector, Central Excise issued Annexures-5, 7, 9, 11 and 12 show-cause notices. The petitioners, therefore, filed this writ petition seeking to quash Annexure-2 notification dated 30-4-1984, declaration that they are entitled to exemption up to 31-12-1984 and to quash show-cause notices. The respondents have filed return raising preliminary objection to the maintainability of the petition. They have not filed

detailed return.

2. We have experienced considerable difficulty in understanding the exact scope of Annexure-1 and 2 notifications as also the exact scope of dispute in this case. This difficulty has been heightened in the absence of a proper return. Annexure-1 grants concession to manufacturers of vegetable products in two contingencies. We are concerned only with the first contingency relating to vegetable products made solely from indigenous rice bran oil which, according to the petitioners, applies in the instant case. Vegetable products fall under Item 13 of the First Schedule of the Act. By Annexure-1, the Government exempted such vegetable products from duty of excise leviable thereon under the First Schedule to the extent of Rs. 30/- per quintal subject to certain conditions. The manufacturer, to avail the benefit of exemption, was required, in the beginning of every financial year, to give notice to the Assistant Collector in writing. For the year 1983-84, the intending beneficiary was expected to give notice of extension within one month of publication of the notification. Annexure-1A show such notification of intention.

2A. Learned counsel for the parties are not in a position to indicate the tariff rate in Item 13 of the First Schedule prevailing for the year in question. Ann.1 notification was declared to remain in force up to 31-12-1984. Notification dated 30-4-1984 is a notification issued in supersession of Annexure-1 notification. By this notification also, Government exempted vegetable products made solely from indigenous rice bran oil of edible grade covered by Item 13 of the First Schedule of the Act from so much duty of excise leviable as is equivalent to the amount calculated at the rate of Rs. 30/- per quintal on the quantity of indigenous rice bran oil of edible grade used in the manufacture of the said vegetable product, subject to certain conditions. This notification also is declared to be in force till 31-12-1984. Learned counsel appearing for both the parties have not been able to explain the purpose of Annexure-2 notification or the difference between the two notifications. So far as the rate of exemption is concerned, it is the same in both the notifications. Therefore, the petitioners have not satisfied the Court about the justification for quashing Annexure-2.

3. The petitioners were served certain show-cause notices. Annex-7 states that the petitioners have availed concession during the period in question without exercising the option referred to in Annex-2 and without filing any fresh classification list. Therefore, it was suggested that the petitioners' action in availing the exemption was wrongful. The petitioners have referred to Annex-2A at page 23 of the paper book which is an order dated 25-1-1985 passed by the Assistant Collector, Central Excise. This order projects not the controversy attempted to be highlighted by the learned counsel for the petitioners before us but a totally different controversy as to whether excise duty is to be reckoned as 10% ad valorem or 5% ad valorem. The Assistant Collector of Excise concluded that show-cause notices are justified and the payment of excise duty at the rate of 5% ad valorem by the petitioners was unlawful. In Annexure-2A, the

petitioners were informed that if they are aggrieved, they are free to file an appeal to the Collector of Appeals, Central Excise, New Delhi u/s 35A of the Act in the prescribed form within three months. The petitioners did not file an appeal.

4. The petitioners were served notices to show-cause why the amounts specified in the notices should not be recovered from them and why penalty should not be imposed on them under Rule 173-Q. These are annexures 5, 7, 9, 11, and 12. Instead of submitting reply to the show-cause notices, they have filed this writ petition.

5. We do not think the facts and circumstances of the case justify any consideration of the grievance of the petitioners by this Court at this stage. The petitioners should have submitted reply to the show-cause notices and presented their case before the authority concerned. Though they have not filed reply we are inclined to grant them further opportunity to show-cause.

6. The writ petition is disposed of with the direction that if the petitioners submit reply to show-cause notices Annexures-4, 7, 9, 11 and 12 within two months from today, the Assistant Collector shall consider the same and after giving an opportunity to the petitioners of hearing pass appropriate orders. There shall be no directions as to cost. Refund security, if any, deposited.