(1972) 03 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 419 of 1970

Aggarwal Bros. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 22-03-1972

Acts Referred:

Central Excise Rules, 1944 — Rule 10A, 178(3), 8(1), 9, 9(2)
Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 — Rule 12

Citation : (1984) 15 ELT 82

Hon'ble Judges : V. Ramaswami, J;Ramanujam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ramanujam, J.—One Messrs Ramakrishna Kulwantrai held a licence L. 4 No. 3 of 1953 for the manufacture of iron and steel products falling under tariff Item 26AA of Schedule I to the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) for their factory located at 4B/4C, North Railway Terminus Road, Royapuram, Madras 13. The petitioners herein purchased this factory and applied for transfer of the licence on 16-10-63 and a fresh licence was issued in terms of the provisions of Rule 178(3) of the Central Excise Rules hereinafter referred to as the Rules. The transferor had the benefit of exemption from excise duty under Notification No. 131/62 , dated 13-6-62. But the petitioners who are transferees of the factory were held not entitled to the exemption under the said notification as they had applied for licence after 13-6-62 and the benefit of exemption under the notification was not available to new licensees. In that view the Excise authorities issued a demand under Rule 10-A of the rules for Rs. 7,485.66 being the excise duty on the clearance made during the period 21-7-53 to 30-11-63. This demand was objected to by the petitioners before the Assistant Collector, who had, however, confirmed the same by his order dated 10-1-68. The petitioners filed an appeal to the Collector of Central Excise but the order of the Assistant Collector was affirmed by him. The matter was taken in revision to the Government of India and there also the petitioners were not successful. The petitioners therefore seek to quash the order of the Government of India confirming the orders of the Excise authorities imposing the said demand.

2. In this writ petition the petitioners have raised substantially two contentions : (1) that the demand issued under Rule 10-A is invalid as Rule 10-A itself is ultra vires the provisions of the Central Excise Act and (2) that the petitioners are entitled to the benefit of the exemption as they cannot be considered to be new licensee since they were manufacturing the goods only on the basis of the licences issued in the name of their transferor Messrs. Ramakrishna Kulwantrai.

3. As regards the first contention the petitioners take support from the decision of this court in W. P. 1053 of 1968 etc. The Citadel Fire Pharmaceuticals, Madras v. Dt. Revenue Officer, Chingleput wherein a similar rule, Rule 12 of the Medicinal and Toilet Preparations (Excise Duties) Rules, 1956 has been held to be ultra vires on the ground that it did not have the required statutory backing. The learned Central Government Standing Counsel does not, in fact, seek to sustain the demand under Rule 10-A of the Rules in view of the above decision. But he wants to sustain the demand under Rule 9(2). According to him the goods manufactured by the petitioners during the relevant period have been cleared without payment of duty and therefore, it will straightway attract Rule 9(2). But we have held in W.P. 265 and 266 of 1967-Murugan and Co. v. Dy. Collector of Central Excise, Tiruchirapalli-W.P. 265 of 1967 : 1977 ELT 193 (Mad), S.P. Tiruvedi and Co. v. Inspector of Central Excise, Cuddalore Range.-W.P. 266 of 1967 that Rule 9(2) cannot be invoked when, as in this case, there has been no earlier levy and the goods manufactured had been cleared with the knowledge of the excise authorities who had, however, not taken steps to levy the excise duty in the manner contemplated by Rule 9. In view of the said decision of ours, we are not in a position to accept the contention advanced on behalf of the department that the demands could be sustained under Rule 9(2). On the facts of this case it is clear that the demand could only be made under Rule 10-A but Rule 10-A could not be invoked in view of the decision in W. P. 1053 of 1968 etc. referred to above. The demand has, therefore, to be held as invalid.

4. The next question is as to whether the petitioners are entitled to the exemption under the notification No. 131 of 1962 dated 13-6-1962 which is set out below :

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 as in force in India, as applied to the State of Pondicherry, the Central Government hereby exempts with effect from 24-4-62 Iron and Steel products falling under Item No. 26-AA of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and made from rerollable scraps of iron and steel which has been already paid to the appropriate amount of duty from the whole of the duty of excise leviable thereon :

1. Provided that the exemption shall not be applicable to the products manufactured by a person who uses more than one metric ton of Billets in any

calendar month or more than ten metric tons of Billats in a year for rerolling.

2. Provided further that any manufacturer of iron and steel products applying for licence on or after 13-6-62 shall not be eligible for this exemption."

It is seen that the licence issued under the rules is personal to the licensee and therefore, the petitioners who are transferees of the factory from the former licensee can only be treated as new licensees after the relevant date that is 13-6-62, mentioned in the second proviso to the notification. It is not in dispute that the petitioners applied for licence only on 16-10-63 long after the crucial date, namely 13-6-62 referred to in that proviso. The petitioner''s case that they have only applied for a renewal of the earlier licence held by their transferors cannot be accepted for the rules make it clear that the licence issued is personal to the grantee and that it is not transferable. In view of the provisions making the licence personal to the grantee, the transferee cannot be said to be a licensee before 13-6-62. In our view the petitioners will not be entitled to the exemption under the said notification in view of the second proviso.

5. In view of the fact that the department itself does not seek to demand under Rule 10-A and that the demand could not be sustained under Rule 9(2), the writ petition is allowed; no costs.