(2004) 09 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Special Appeal No. 439 of 1992

Alcobex Metals Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4
Finance Act, 1982 — Section 50

Citation : (2005) 191 ELT 99 : (2005) 1 RLW 264 : (2005) 1 WLC 110

Hon'ble Judges : Dinesh Maheshwari, J;B. Prasad, J

Bench : Division Bench

Advocate : L.R. Mehta, for the Appellant; Vijay Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

B. Prasad, J.—The petitioner is the manufacturer of pipes and tubes of copper and copper alloyes falling under tariff Hem No. 26-A(3) of the Central Excise & Salt Act, 1954. Upon examination of the gate passes of the petitioner company for the relevant period issued for clearing copper and copper alloys, tubes and pipes, it was noticed that for the purpose of calculating the auxiliary duty, incorrect method of calculation was adopted by the petitioner, which resulted in short levy of auxiliary duty. The petitioner was issued notices to show cause as to why the short levied amount be not recovered. The Assistant Collector, Customs & Central Excise, Jodhpur adjudicated upon the issue and rejecting the contentions of the petitioner, confirmed the demand made in the notices. The Appellate Collector dismissed the appeal, albeit on different reasons. The Central Govt., however, by a detailed speaking and reasoned order dated 30.11.79 dismissed the revision petition submitted by the petitioner.

2. The writ petition submitted by the petitioner against the orders passed by the Departmental Authorities was also dismissed by the learned Single Judge by the impugned order dated 13.1.92. The petitioner has assailed these orders in this appeal.

3. The short and precise question involved in this appeal relates to the interpretation of certain exemption notifications for the purposes of levy of auxiliary duty. The learned counsel for the appellant says that before any auxiliary duty could be charged from his client, it was necessary that effect should have been given to notification No. 213/63 dated 28.12.63. After the exemption as provided in this notification was given, chargeability of the auxiliary duty should have been calculated in terms of notification No. 61/75 dated 1.3.75, which was subsequently replaced by Notification No. 127/75 dated 12.5.75. The relevant notifications are quoted hereinbelow for ready reference:-

"M.F. (D.R.) Notification No. 213/63 C.E., dated 28.12.1963 as amended by Notification No. 29/67 C.E., dated 4.3.1967 and No. 55/68 C.E., dated 23.3.1968.

Pipes and tubes of copper and copper alloys, falling under sub-item (3) of this Item, in the manufacture of which duty paid copper or copper alloys in any crude form or manufactures thereof are used, are exempted from the payment of so much of the excise duty leviable thereon as is equivalent to the duty of excise, or as the case may be, the additional duty leviable u/s 2A of the Indian Tariff Act, 1934 (32 of 1934), already paid on copper or copper alloys in any crude form or manufactures thereof.

Notwithstanding anything contained in the foregoing paragraph, such pipes and tubes of copper and copper alloys manufactured from copper and copper alloys in any crude from purchased from the market on or after the 20th day of August 1966, shall be exempt from so much of the duty of excise leviable thereon as is equivalent to the duty payable on the copper or copper alloys in any crude form, as the case may be."

"(NOTIFICATION No. 61/75-CE DATED 1.3.75)

In exercise of the powers conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, read with Sub-clause (5) of clause 34 of the Finance Bill, 1975, which clause has, by virtue of the declaration made in the said Bill under the Provisional Collection of Taxes Act, 1931 (16 of 1931), the force of law, and the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 60/75- Central Excises, dated the 1st March, 1975, the Central Government hereby exempts the excisable goods falling under such items of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) (hereinafter called the Central Excises Act), as are specified in column (2) of the Table hereto annexed, from so much of the auxiliary duty of excise leviable thereon under sub-clause (1) of clause 34 aforesaid, as is in excess of the duty specified in the corresponding entry in column (3) of the said table.

THE TABLE --- S. Item No. in the First Duty as percentage of duty No. Schedule to the leviable under the Central Central Excise Act. Excises Act, read with any Notification for the time being in force issued under the said act or the rules made thereunder.

1. ID Fifty 2. 41 Ten x XX XX XX XX XX XX XX XX 19. 26 One hundred 20. 26A Seventy five 21. 26B Seventy five 22. 27 Thirty-three and one third 23. 28 Seventy. ---

Provided that the duty calculated at the percentages specified in column (3) of the said Table shall not in any case exceed twenty percent of the value of such goods as determined in accordance with the provisions of Section 4 of the Central Excises Act."

4. The learned counsel has supported his contention by urging that auxiliary duty is leviable under the Central Excise Act read with any notification for the time being in force. The chargeability as delineated in the table appended to notification No. 61/75 clearly demonstrates that before any charging or computing against the appellants, due weightage was required to be given to the notifications issued which were in force at the relevant time. According to the learned counsel the amount on which auxiliary duty is required to be paid is to be derived only after the exemption as delineated in notification No. 213/63 is given effect to. To support his contention, the learned counsel has placed reliance on a decision of Delhi High Court in Goodyear India Ltd. v. Union of India 1990 (49) E.L.T. 39 (Delhi). Relevant extracts from this case on which emphasis has been made by the learned counsel for the petitioner are reproduced hereunder :-

"Section 50 of the Finance Act, 1982, reads as under:

"50. Special duties of excise:- (1) In the case of goods chargeable with a duty of excise under the Central Excise Act, as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, there shall be levied and collected a special duty of excise equal to ten per cent of the amount so chargeable on such goods.

(2) Sub-section (1) shall cease to have effect after the 31st day of March, 1983, except as respect things done or omitted to be done before such cesser and Section 6 of the General Clauses Act, 1897, shall apply upon such cesser as if the said Sub-section had then been repealed by a Central Act.

(3) The special duties of excise referred to in Sub-section (1) shall be in addition to any duties of excise chargeable on such goods under the Central Excises Act or any other law for the time being in force.

(4) The provisions of the Central Excises Act and the rules made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the special duties of excise leviable under this Section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be."

"The Central Government, has issued several notifications, as mentioned above, thereby granting exemption by way of set off, on the final products, to the extent of duty paid on inputs. These notifications, granting exemption by set off, have been issued under Rule 8 of the Central Excise Rules, 1944 hereinafter referred to as Rules. Section 50(1) of the Finance Act, 1982, provides that in case of goods, chargeable with a duty of excise, under the Act, as amended from time to time, read with any notification, for the time being in force, issued by the Central Government, in relation to the duty, so chargeable, there shall be levied and collected, a special duty of excise. Thus, the Section provides that in a case, where the goods are chargeable with a basic duty of excise under the Act, then, in relation to the duty, so chargeable there shall be levied and collected a special duty of excise."

"Under Section 50(1) of the Finance Act, 1982, special duty of excise, is to be levied and collected, equal to ten per cent of the amount, so chargeable on such goods. The Legislature, has expressed its intention clearly, by inserting the words "read with any notification for the time being in force, issued by the Central Government, in relation to the duty so chargeable." It means that in order to calculate the special excise duty, the exemption by set off has to be claimed before the special duty of excise is levied."

"In other words, the liability of the assessee, is to pay such amount of basic excise duty, after giving effect to the exemption notifications, for the time being in force. So, this is the amount "so chargeable".

5. The learned counsel canvassed that in order to calculate the auxiliary duty exemption by the set off has to be first granted and then only the auxiliary duty should be calculated. He has also placed reliance on a Supreme Court decision Premier Tyres Ltd. Vs. Collector of Central Excise, Cochin, The learned counsel streneously urged that unless the set off from the basic duty is computed and allowed, determination of auxiliary duty as has been held by the authorities below and as affirmed by the learned Single Judge was not correct.

6. Per contra, the learned counsel for the Union of India urged that the premises on which the learned counsel for the appellant has urged is not correctly based. The expression used in the notification No. 61/75 is that auxiliary duty is to be calculated as per the duty leviable in the Central Excise Act read with any notification for the time being in force. This is chargeable duty, which is to be calculated in relation to the words used in the body of this notification "from so much of auxiliary duty of the excise leviable thereon in Sub-clause (2) of clause 34" of the Finance Bill, 1975. (Later on Section 34 of the Finance Act, 1975). Clause 34 of the Finance Bill is reproduced herein for ready reference :-

"34. Auxiliary duties of excise.--(1) In the case of goods mentioned in the First Schedule to the Central Excises Act, or in that Schedule as amended from time to time, there shall be levied and collected as an auxiliary duty of excise an amount equal to twenty per cent of the value of the goods as determined in accordance with the provisions of Section 4 of the Central Excises Act.

(2) Sub-section (1) shall cease to have effect after the 30th day of June, 1976, except as respects things done or omitted to be done before such cesser; and

Section 6 of the General Clauses Act, 1897, shall apply upon such cesser as if the said Sub-section had then been repealed by a Central Act.

(3) The auxiliary duties of excise referred to in Sub- Section (1) shall be in addition to any duties of excise chargeable on such goods under the Central Excises Act, or any other law for the time being in force.

(4) The auxiliary duties of excise leviable under Sub- section (1) in the financial year 1975-76 shall be for the purposes of the Union and the proceeds thereof shall not be distributed among the States and the auxiliary duties of excise leviable under Sub-section (1) in the financial year 1976-77 shall, for the purposes of Section 2 of the Union Duties of Excise (Distribution) Act, 1962, be deemed to be auxiliary duties of excise levied and collected under the accordingly.

(5) The provisions of the Central Excises Act and the rules made thereunder, including those relating to refunds and exemptions from duties shall, as far as may be, apply in relation to the levy and collection of the auxiliary duties of excise leviable under this Section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be."

7. The learned counsel submitted that the expression used in clause 34 is "shall be levied". The levy is different than the chargeable amount as calculated after refunds and exemptions are allowed. In terms of Sub-clause (5) of clause 34, it has been provided that what provisions of the Central Excises Act and the rules made thereunder in relation to refunds and exemptions from duty so far as they apply in relation to levy and calculation of auxiliary duties will apply. Thus, clause 34 nowhere speaks of the provision of the amount which was charged. It only speaks of levy. Notification No. 61 also makes reference of so much of the auxiliary duty of excise leviable. Thus, the leviable with excise is being different than the charging of excise and this cannot be meant that the exemption is to be given after the charged amount is calculated in terms of notification No. 213/63. He has supported the findings of the three departmental authorities and the learned Single Judge.

8. We have given our thoughtful consideration to the arguments raised and we are of the considered opinion that so far as the law laid down in Goodyear India Ltd.''s case (supra), is concerned, that was in the context of Section 50 of the Finance Act of 1982. In Section 50 of the Finance Act of 1982 what has been provided for is that special duty of excise shall be levied and collected equal to ten per cent of the amount so chargeable. Thus, the special duty of excise in Section 50 was delineated as to be 10 per cent of the amount so chargeable. This has been explained by the Court in para 23, which has been quoted by us for ready reference wherein the Court has said that "so chargeable" is the amount which is calculated after giving effect to the exemption notification.

9. When we look at clause 34(1) of the Finance Bill, 1975, "chargeable" is not the expression used. The expression used in that Section are "twenty per cent of

the value of the goods as determined in accordance with the provisions of Section 4 of the Central Excises Act". Sub-clause (3) of this clause specifies that auxiliary duties shall be in addition to any duties of excise chargeable on such goods and Sub-clause (5) which requires the consideration of the notifications speaks of levy and collection. The expression "levy" has been used in Sub-clauses (1) & (5) of clause 34 of the Finance Act, 1975 and in that light of the matter the learned Single Judge has rightly distinguished the law laid down in Goodyear India Ltd.''s case (supra), to be not applicable in the facts of this case.

10. As notification No. 213/75 goes, the exemption provided in this notification is duty leviable and from this extent of leviable duty amount already paid has to be deducted. The notification which is relevant for the exemption of auxiliary duty is provided in notification No. 61/75, which speaks of exemption from so much of auxiliary duty of excise leviable. The expression used is not "so much of auxiliary duty of excise chargeable". The difference of leviable and chargeable has been maintained in the statutes and notifications and understood by the courts very distinctly. Thus, the findings of the learned Single Judge that the set off which can be claimed by the appellant is relevant to the auxiliary duty has to be calculated on the basic duty which is leviable and not chargeable or payable. We do not see that any illegality has been committed by the learned Single Judge in this context.

11. The appeal, therefore, fails and is dismissed with costs.