(1993) 06 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 2399 of 1982

Ama Engineering Co. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 09-06-1993

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2

Citation : (1993) 43 ECC 95 : (1993) 47 ECR 529 : (1993) 67 ELT 69

Hon'ble Judges : M.L. Pendse, J;A.P. Shah, J

Bench : Division Bench

Advocate : Mr. D.H. Mehta and Mr D.H. Shah, for the Appellant; Mr. H.V. Mehta, for the Respondent

Judgement

Pendse, J.—Petitioner No. 1 is a partnership firm and runs a factory in which work of manufacture of nuts from steel bars is carried out. The petitioners also carry out work of grinding of steel bars received from the customers. The work of grinding is undertaken on job basis and grinding is done only to obtain bright steel bars. As a result manufacture of nuts from steel bars, some scrap falls out of process and that scrap is sold to the scrap dealers. The petitioners are liable to pay excise duty in respect of process of manufacture of nuts.

2. The Government of India published exemption Notification No. 80/80-C. E., dated June 19, 1980 in exercise of powers conferred by sub-rule (1) of Rule 8 of Central Excise Rules, 1944 and, inter alia, provided that certain excisable goods, which are described in the Schedule, Stand exempted from payment of duty. The Notification further provided that exemption shall not be available to manufacture - " if the aggregate value of clearances of all excisable goods by him or on his behalf, for home consumption, from one or more factories, during the preceding financial year, had exceeded Rs. Twenty Lakhs. sub-rule (59) of the Schedule refers to bolts and nuts, which are liable to payment of excise duty under Tariff Items No. 52 of First Schedule to the Central Excise Act.

AS the petitioners'' clearances in respect of all excisable goods during the period commencing from April, 1981 and ending with March 31, 1982 did not exceed the value of Rs. Twenty Lakhs, the petitioners submitted to the Assistant collector, Central Excise, the requisite classification list claiming exemption from the payment of excise duty in respect of nuts manufactured by them. The Assistant Collector, by impugned order dated July 17, 1982, held that the petitioners are not entitled to the advantage of exemption Notification. The Assistant Collector held that the scrap arising during the manufacture of nuts is classified under Tariff Items No. 68 and directed the petitioners to file a separate classification list for the send items The Assistant Collector further held that the bright steel bars being excisable goods and being cleared from the factory of the petitioners, the value of the said goods must be included while computing the aggregate value of the clearance had exceeded Rs. Twenty Lakhs, the petitioners are not entitled to the advantage of exemption Notification. The order of the Assistant collector is under challenge in this petition filed under Article 226 of the constitution.

3. Mr. Mehta, learned Counsel appearing on behalf of the Department, raised a preliminary objection to the maintainability of the petition on the ground that a statutory appeal is provided against the impugned order. It was also contended that the petition was filed in this Court long after the period of limitation to file statutory appeal expire and, therefore, petition should not be entertained. It is not possible to accede to the submission urged on behalf of the Department, though it is undoubtedly turn that normally this Court is reluctant to undertake petition under article 226 of the Constitution when a statutory remedy of appeal is provided for. We are not inclined to deny relief to the petitioners for the reason that the petition is admitted more than ten years before and pending for hearing. Secondly, the order of the Assistant Collector on merits is entirely incorrect and no valid purpose would be served by compelling the petitioners to file a statutory appeal. In these circumstances, the objection is turned down.

4. On behalf of the petitioners, it was contended that the finding of the Assistant Collector that the scrap arising during the manufacture of nuts is classifiable under Tariff Item No. 68 is incorrect. The submission is correct and deserves acceptance. It is now well settled by catena of decisions that the scrap arising under manufacture of related goods cannot be treated as manufacture of separate item. The scrap, in the present case, arises out of process of manufacture of steel nuts and which are manufactured from steel bars. The Assistant Collector was in error in not following the decision of this Court and recording a country finding. Mr. Mehta, learned Counsel appearing on behalf of the department, Submitted that apart from that factory, the order of the Assistant Collector is required to be upheld because the petitioners do not satisfy the requirement of clearances of all excisable goods during the financial year below the limit of Rs. Twenty lakhs. It was urged that the Assistant Collector was right in concluding the value of steel bars, which are received by the petitioners for the purpose of grinding work and which are returned back to the customers, should be included while computing the aggregate value of clearances of all

excisable goods. It was urged that steel bars are liable to payment of excise duty and as such the value of steel bars cleared from the petitioners'' factory should be included while determining the aggregate value of clearances. It is impossible to accede to the submission. The steel bars are received by the petitioners for the purpose of carrying out job work and job work and job work is only for the purpose of making bright steel bars. Therefore, the petitioners are not liable to pay any excise duty in respect of the work of grinding and it is difficult to appreciate as to how the claim that the value of steel bars should be included while determining the aggregate value of clearances of all excisable goods from the factory of the petitioners can be sustained. What exemption Notification provided is that the aggregate value of clearances of all excisable goods in respect of which the petitioners are liable to pay excise duty must be computed to determine whether the clearances are in excess of Rs. Twenty Lakhs. In our judgment, the order of the Assistant Collector is entirely erroneous and is, therefore, required to be set aside.

Accordingly, petition succeeds and impugned order dated July 17, 1982 is set aside and it is declared that the petitioners are entitled to the advantage of exemption Notification No. 80/80 - C. E., dated June 19, 1980 in respect of clearances effected for the period between April 1, 1981 and March 31, 1982. The petitioners may adopt appropriate remedy for consequential reliefs, if so entitled. In the circumstances of the case, there will be no order as to costs.

