

(1982) 01 BOM CK 0037

In the Bombay High Court

Case No : Miscellaneous Petition No. 1303 of 1978

American Spring and Pressing Works Ltd.

APPELLANT

Vs

S.L. Wadkar

RESPONDENT

Date of Decision : 13-01-1982

Acts Referred:

Citation : (1990) 47 ELT 247

Hon'ble Judges : A.A. Desai, J

Bench : Single Bench

Judgement

1. The petitioners before this Court are a public limited company duly incorporated under the Companies Act, 1956 having their registered office at Adarsh Housing Society Road, Post Box. No. 7602, Malad, Bombay 64. The respondents 1 and 2 are various authorities under the Central Excises and Salt Act, 1944. Respondent 3 to the petition is the Union of India.

2. The petitioners manufacture various sprayers and dusters for spraying pesticides and chemicals on crops. They also manufactured other agricultural implements like threshers, weeders, wheel hoes, seed drills etc. The implements manufactured by the petitioners are power operated as well as non-power operated.

3. In this petition we are concerned with the question whether under the residuary Item 68 of the First Schedule to the Excise Act the petitioners are liable to pay the rate of duty prescribed in the said Item on parts of agricultural implements manufactured by them which are not operated by power. The petitioners have set out the provisions of Item 68 in paragraph 3 of the petition. The operative words read as under :-

"All other goods, not elsewhere specified, manufactured in a factory but excluding -"

4. On 30th April, 1975 notification No. 144/75-C.E. was issued for insertion in

the Schedule annexed to an earlier notification certain items of which Item 11 is material. The said Item 11 reads as follows :-

"Agricultural implements but excluding -

(i) power operated agricultural implements; and

(ii) implements designed for use as attachments with tractors or power tillers."

5. Broadly speaking, after this notification, agricultural implements but subject to the two exceptions specified were excluded from the purview of Tariff Item No. 68. The exclusions were power operated agricultural implements and implements designed for use as attachments with tractors or power tillers. The latter two types of agricultural implements would thus still remain within the purview of Item 68 being excluded from the exclusion.

6. We are concerned with parts of agricultural implements which are not parts of power operated agricultural implements.

7. Excise duty is leviable when the items manufactured are removed outside the factory. If after 30th April, 1975 an agricultural implement was being manufactured and sought to be removed it would be outside the purview of Item 68 if it was not power operated. The question, however, is whether the same benefit of exclusion from duty would be available to a part of such an implement.

8. As a matter of interest it may be stated that on 3rd February, 1978 notification No. 23/78 was issued by which the said Item 11 was substituted as follows :-

"11 Agricultural implements and parts thereof but excluding -

(i) Power operated agricultural implements and parts thereof, and

(ii) implements designed for the use as attachments with tractors or power tillers and parts thereof."

The position after 3rd February, 1978 was thus clear. Agricultural implements as well as parts thereof subject to the two exclusions were taken out of the purview of Item 68. The question is what was the position concerning parts of non-power operated agricultural implements for the period 30-4-75 upto 3-2-78. It is the period for which we are concerned in the present petition.

9. In other words, does the whole by necessary implication include a part ?

10. Mr. Gumaste appearing for the petitioners drew my attention to various items in the First Schedule where there is specific provision for levying excise duty on certain items as well as parts. For example, Item 33A of the First Schedule provides for excise duty on wireless receiving sets of all sorts whereas Item 33AA provides for excise duty on parts of wireless receiving sets. Under 33A ad valorem duty is leviable whereas under 33AA there was a fixed excise duty of Rs. 5/- on each part. Similarly, we have Items 34 and 34A which provide for rates of excise duty leviable on motor vehicles (Item 34) and parts and accessories of

motor vehicles (Item 34A). As far as these two items are concerned, the rates are both ad valorem but were not identical.

11. Thus it is clear that parts of items have not been considered to be automatically within the purview of the item itself. What must apply to levy must equally apply to an exclusion or exemption. If this be the correct approach then in 1975 agricultural implements (non-power operated) were taken out of the purview of the residuary Item 68 but parts of such agricultural implements would remain within the purview since they were not specifically provided for. Indeed, if Item 10 introduced by notification 114/75 is perused it is clear that the notifying authority was aware of the difference between an item and parts thereof.

12. It is only when the fresh notification of 3rd February, 1978 was issued and became effective that parts of agricultural implements would be taken out of the purview of Item 68 provided they were not power operated or implements designed for use as attachments with tractors or power tillers. Such parts then would be within the purview and impact of Item 68 and attract the rate of excise duty specified from time to time for this item till the 3rd February, 1978 notification was issued and brought into effect.

13. Mr. Gumaste very faintly urged that the parts of an item cannot be considered to be within Item 68 itself. It is difficult to accept any such submission. If these parts can be designated as manufactured goods then unless they were provided for elsewhere specifically in the Schedule or in the Act they would fall within the ambit of this Item.

14. The orders of respondents Nos. 1 and 2 which are impugned in the writ petition have proceeded on the footing that till the second notification of 3rd February, 1978 parts of agricultural implements were chargeable to the rates of excise duty specified by Item 68. In my view, taken by these authorities is in accordance with the provisions of the Act and the Schedules thereof as amended from time to time. If that be so, the challenge to these orders must fail and the Rule granted ought to be ordered to stand discharged.

15. In the result, the Rule granted will stand discharged. Stay to stand vacated subject to what is hereinafter provided. The petitioners will pay costs to the respondents in a single set at the usual rate.

16. At the time of admitting this petition stay was granted on condition that a bank guarantee is furnished by the petitioners in the amount of Rs. 61,836.76. I presume that the said bank guarantee has remained in force till today. I direct the petitioners to pay the amount covered by the guarantee to the excise authorities on or before 19th February, 1982. If payment is effected and the solicitors to the respondents, confirm such payment then the bank guarantee is to be returned to the petitioners for being cancelled. This, however, to be done only on necessary letter being written on that behalf by the respondent's solicitors. If no such letter is received by the Prothonotary by 19th February, 1982, the Prothonotary to call upon the bank to make payment of the amount

under the guarantee and on receipt of such amount the same is ordered to be paid over to respondent No. 3 toward the claim of the excise authorities against the petitioners. In case there is any difficulty realising the amount under the bank guarantee then from and after 31st March, 1982 the respondents will be at liberty to take all available and permissible steps against the petitioners for recovery of the amount in respect of which stay was granted. On such recovery the Prothonotary to have the bank guarantee cancelled. Prothonotary to act on the minutes.