(1987) 07 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1654 of 1982

Amruthsheele APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 22-07-1987

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

Citation : (1995) 80 ELT 13

Hon'ble Judges : M.B. Sharma, J;Farooq Hasan, J

Bench : Division Bench

Advocate : S.B. Mehta and R.S. Mehta, for the Appellant; Jagdeep Dhankar, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner-firm (M/s. Amruthsheele) has its factory at Makrana (Rajasthan) for sawing rough marble blocks into rough marble slabs on job basis. It was set up during the year 1981 and started its operation since January, 1982. According to the petitioner-firm, sawing rough marble blocks into rough marble slabs does not amount to process of manufacture and does not involve any manufacturing process as defined in Section 2(f) of the Central Excises & Salt Act, 1944, (for short, "the Act"). According to the petitioner-firm, it was under a mistaken impression that it is liable to pay excise duty on its job work. The petitioner-firm applied to the respondent No. 2 vide a registered A.D. letter No. AMSL/77/82, dated the 20th March, 1982 that it has installed and commissioned one Gang Saw Clycor-60 machine, and the total expenses in fixing the assets in the plant and machinery is within the limit of Rs. 20 lacs.

2. It was also intimated to the petitioner-firm to show as to what was the costs of the machines. But, the respondent No. 4 found that the value of the plant and machinery installed is well over Rs. 20 lacs and as such, notification No. 105/80 for exemption is not applicable to the petitioner-firm. Thereafter, the respondent No. 3 under its letter dated the 4th September, 1982 (Annexure 3) intimated the

petitioner-firm that the costs of plant and machinery has been mis-declared as Rs. 4,94,300/- by not including the cost of the items as given in para 8 of the writ petition.

3. The petitioner-firm also set up a case that it is sawing rough marble blocks into rough marble slabs of irregular sizes with the help of gang saw machines mostly on job work basis and the same process is not a process as defined u/s 2(f) of the Act. Anyhow, the respondent No. 4 did not agree with the petitioner-firm and under letter dated the 20th September, 1982 (Annexure 5) informed the petitioner-firm that the contention made by it is not acceptable and, the process of converting marble blocks into marble slabs on the diamond gang saw machine which costs more than Rs. 20 lacs is considered as excisable item. As the respondents No. 3 & 4 threatened the petitioner-firm with the seizure of marble blocks and slabs so also the closure of the factory, the petitioner-firm filed the writ petition before this Court.

4. This Court while admitting the writ petition ordered issue of show cause notice to the respondents in S.B. Civil Second Stay Application No. 743/83, and ordered on April 19,1983 that, in the meantime, the respondents are restrained from taking any further proceedings in pursuance to Annexure 7 dated 15-3-1983.

5. We may state that the question as to whether cutting of rough marble blocks into rough marble slabs on job work basis is a manufacturing process within the meaning of Section 2(f) of the Act, is no longer res Integra. The Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi, in Appeal No. ED (SB) A. No. 1464/83-B, by an order dated the 11th May, 1984, examined the aforesaid question and has held that sawing rough marble blocks into rough marble slabs on job basis even by diamond saw machine of the value of more than Rs. 20 lacs, does not involve any manufacturing process within the meaning of Section 2(f) of the Act. It was held that as a result of cutting of the marble into slabs, there is no major transformation and the commodity assumes the same name in the commercial market. The aforesaid decision of the Tribunal was upheld by their Lordships of the Supreme Court.

6. Basing its decision on the aforesaid case reported in 1984 ECR 1493 (Tri.) (Order No. 341/84-B, dated 11-5-1984 in Appeal No. ED(SB) A. No. 1464/83-B), the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in the case of Sangmermer India Pvt. Ltd. v. Collector of Central Excise, Jaipur reported in 1989 (42) ELT 725 (Tri.) (Appeal No. ED/SB/A. No. 1346/85-D, decided vide Order No. 20/87-D, dated 9-1-1987) took a similar view. A Single Bench of this Court under its order dated 21-5-1986 (per M.C. Jain, J.) in S.B. Civil Writ Petition No. 1052/84, Diamond Marbles Pvt. Ltd. v. Union of India and Ors. placing reliance upon the decision of the Supreme Court in Civil Appeal No. 2811 /85 - Collector of Central Excise v. Fine Marble and Minerals Pvt. Ltd. decided on 12-2-1986, took a similar view and allowed the writ petition filed before him.

7. Consequently we hereby allow the writ petition; and declare that no manufacturing process is involved in cutting marble blocks into slabs and, excise duty is not payable under the Act. The impugned notices dated 20-9-1982 (Annexure 5), 15-6-1982 (Annexure 6) and 15-3-1983 (Annexure 7) are hereby quashed. No order as to costs.

