(2003) 01 DEL CK 0023

In the Delhi High Court

Case No : C.W. No. 2301 of 1983

Arun Hosiery Mills APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 23-01-2003

Acts Referred:

Citation : (2003) 4 AD 60 : (2003) 104 DLT 503 : (2003) 69 DRJ 540 : (2003) 159 ELT 69

Hon'ble Judges : C.K. Mahajan, J

Bench : Single Bench

Advocate : G.S. Sistani, for the Appellant; Nemo, for the Respondent

Final Decision : Allowed

Judgement

C.K. Mahajan, J.—By way of the present petition the petitioner seeks quashing of the demand show cause notice dated 3rd April, 1973, order of the Assistant Collector dated 25th February, 1973 and the demand notice dated 29th August, 1983.

2. Briefly stated the facts of the case are that petitioner is engaged in the manufacture of electronics equipments for defense. The petitioner was also manufacturing and clearing record players and parts thereof from November, 1970 to December, 1972. The petitioner was holding an excise license under Tariff Item No. 37A of the First Schedule of the Central Excises and Sales Act, 1944. It is stated that the record player and parts thereof were exempted from payment of duty under Notification No. 145 of 1963 dated 31st August, 1983. The said notification provided that gramophones and amplifiers assembled and/ or manufactured out of parts, on all of which appropriate amount of excise or countervailing customs duty is already paid, are exempt from payment of the whole of the duty livable thereon. As the record players were assembled by the petitioner with duty paid components, the same were exempted from all excise duty under the aforesaid notification. It is stated that the petitioner removed the manufactured record players after availing the due procedure provided under the

rules and the departmental instructions. The petitioner was removing the goods against Excise Gate Pass and were entering the particulars thereof in the RG-I Register which was being maintained under the Central Excise Rules. The Range Authorities were duly informed of the receipt of excise/countervailing customs duty paid components in the prescribed form. A copy of the gate pass was sent to the Range Officer along with monthly return. It is stated that the petitioner and excise authorities were under a bona fide belief that the record players manufactured by the petitioner were not subject to excise duty, Therefore, the excise authorities did not object to the clearance of the goods without payment of excise duty.

3. By Memo No. C-1251 dated 3rd April, 1973 a demand show cause notice under Rules 9(2) and 10-A of the Central Excise Rules, 1944 was issued to the petitioner stating that it had cleared 2729 record players (including 40 ampligrams) assessable to Central Excise Duty under Tariff Item 37-A without payment of duty and called upon the petitioner to show cause why an amount of Rs. 87,060.16p. be not demanded from them. It was also stated in the said notice that the demand notice was as a sequel to the clarification received by the Collector, Central Excise, New Delhi Notice No. 90/CE/72 dated 7.11.1972 that record players were not entitled to exemption under Notification No. 145/63 dated 31st August, 1963. The petitioner did not reply to the said show cause notice.

4. Thereafter the Assistant Collector, Central Excise by order dated 25th February, 1974held that the Notification No. 145/63 did not apply to record players and that the demand had been correctly raised. The petitioner vide representation dated 28th April, 1973 informed the respondents that it is a small scale manufacturer of record player covered by Item 37-A of the Central Excise Tariff and submitted that from the heading it was clear that record players, record playing decks and record changer decks are included in the terms "Gramophones" used in Notification No. 145/63-CE and were, Therefore, exempt from payment of duty envisaged in the notification. The petitioner again made representation on 13th September, 1973 reiterating that it is entitled to exemption under Notification No. 145/63. Thereafter the petitioner repeatedly visited and represented to the Central Board of Excise and Customs. The petitioner along with representatives of other manufacturers of record players namely Philips India Ltd. and Gramophone Co. of India Ltd. met the Member, Central Board of Excise & Customs and represented that since subsequent Notifications 24/65 dated 1.3.1965 and 112/66 dated 9.7.1966 made specific references to the kind of gramophones covered both the exemption notification. Notification 145/63 covered all types of gramophones since no specific variety is mentioned. A reference was also made which clearly stated that electrically operated record players and ampligrams are covered under Notification 145/63.

5. In 1975 the Board of Central Excise & Customs rescinded the Notification 145/63 and gave certain departmental instructions that henceforth record

players and ampligrams would not be liable to any concession under Notification 145/63 and would be liable to payment of full duty. The petitioner again made a representation to the Collector on 25th September, 1976 and brought to his notice that the Appellate Collector of Central Excise, Eastern Range, Calcutta had held that the sound reproducers manufactured by Gramophone Co. of India Ltd., Calcutta could avail of the exemption from payment of excise duty under the aforesaid Notification 145/63 dated 31.8.1963 and the above matter had been referred to the Central Government in Review Revision. The petitioner vide letter dated 18th January, 1977 requested the Collector, Central Excise, New Delhi that since the petitioner''s case was identical, the demand against the kept in abeyance pending final decision by the Ministry of Finance. The request of the petitioner was acceded to by the respondents and the demand against the petitioner was directed to be kept in abeyance till the final decision of the Ministry of Finance in the case of Gramophone Co. of India Ltd.

6. The Ministry of Finance, Government of India vide Order No. 565 of 1978 held that "what is gramophone for the purpose of tariff entry itself should be gramophone for the purpose of the exemption notification as well. In case the scope of the word "gramophone" were defined in the exemption notification itself for the purpose of exemption, the position would have been different." The Ministry ruled --"the sound reproducers in question are nothing but electrically operated gramophones with inbuilt system of amplification. Government accordingly held that the sound reproducers in question are excisable as Gramophones under Entry 37-A of the Central Excise Tariff and are also exempt under Notification 145/63 being gramophones or ampligrams either separately or put together. Pursuant to the said decision of the Government of India, the Collector of Central Excise, Calcutta dropped the existing demand on the Gramophone Co. of India and Philips India Ltd.

7. The petitioner by letter dated 11th January, 1982 requested the Collector of Central Excise, New Delhi to drop the demand in its case in the interest of uniformity and practice. Instead of the demand being dropped the petitioner received a notice dated 29th August, 1983 from respondent No. 5 stating that the Board had decided in the case of the petitioner that Section 11-C of the Act cannot be invoked in the case of the petitioner and that the levy of duty exists. The petitioner was called upon to deposit the amount of Rs. 87,00.15p. Hence this petition.

8. It is stated that mere non levy at the time of clearance would not attract Rule 9 (2) and Rule 10-A of the Central Excise Rules. It is well established that to attract Sub-rule (2) of Rule 9, the goods should have been removed clandestinely and in contravention of Sub-rule (1) of Rule 9. It is, Therefore, submitted that provisions of Rule 10-A have no application and could not be invoked in law.

9. The main thrust of arguments of learned Counsel for the petitioner is that the respondents have meted out a discriminatory treatment to the petitioner by not

dropping the demand against it as was done in the case of Philips India Ltd. And M/s. Gramophone Co. of India Ltd.

10. I have heard Counsel for the petitioner and perused the documents. There is no appearance on behalf of the respondents.

11. Counter affidavit was filed by the respondents. None appeared on their behalf today. In their counter affidavit the respondents taken a stand that the petition is filed belatedly and that the petitioner failed to reply or appear in person or through the representative in response to the show cause notice dated 3.4.1973 and the order of the Assistant Collector does not suffer from any infirmity.

12. The demand of excise duty was raised upon the petitioner only on 29th August, 1983 and the petitioner approached the Court soon thereafter. Thus the plea of the respondents that the petition is belated/ is without merit.

13. Vide Order No. 565 of 1978 dated 7th June, 1978, the Government of India, Ministry of Finance in their review of Order-in-appeal has ruled that Record Players fall within the purview of Notification No. 145/63 and can avail of the exemptions contained therein and dropped the proceedings initiated against M/s. Gramophone Co. of India Ltd. The said order is binding on all the subordinate authorities regardless of the time and place of clearance of the goods. Admittedly, various demand notices all over the country were dropped by the respondents on the basis of the aforesaid order. M/s. Philips India Ltd. had also been clearing various varieties of sophisticated record players with or without inbuilt system of amplification and a demand pending against them for these clearances was dropped as a consequence of the aforesaid ruling of the Central Government.

14. In these circumstances, the petitioner cannot be discriminated and is also entitled to the same relief as was given to the said Gramaphone Co. of India Ltd. and M/s, Philips India Ltd. by the respondents.

15. For the foregoing reasons, the petition is allowed. The impugned demand dated 29th August, 1983 is quashed. Rule is made absolute.

No order as to costs.