

(1991) 03 GUJ CK 0007

In the Gujarat High Court

Case No : Special Civil Application No. 3985 of 1980

Ashok Transformers Pvt. Ltd. and Another	APPELLANT
Vs	
Superintendent of Central Excise and Another	RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Central Excise Rules, 1944 — Rule 174

Citation : (1992) 38 ECC 268

Hon'ble Judges : J.N. Bhatt, J;A.P. Ravani, J

Bench : Division Bench

Judgement

March 7, 1991

A.P. Ravani, J.—Petitioner No. 1 is a private limited company and petitioner No. 2 is a Director thereof. Petitioner No. 1 company is a manufacturer of transformers - a commodity which was falling under Tariff Item No. 68 of First Schedule to the Central Excises and Salt Act, 1944, at the relevant time. For the purpose of manufacturing the aforesaid item, petitioner-company required electrical lamination which was again falling under Tariff Item No. 28 A of the said Schedule. Electrical laminations could be purchased from market or could be manufactured from Cold Rolled Grain Oriented Sheets (hereinafter referred to as "CRGO sheets") imported from foreign countries. Petitioner-company imported CRGO sheets and entered into agreement with different manufacturers. They manufactured laminations and supplied the same to the petitioner-company. Different manufacturers who manufactured laminations were either paying excise duty or were not liable to excise duty as they were covered under the relevant exemption notification.

2. However, the authorities of the Excise Department thought that the petitioner-company was a manufacturer in respect of electrical laminations and, therefore, the petitioner-company was also required to obtain licence in respect of this commodity and the petitioner-company ought to have paid excise duty on the said item. Hence, notice dated August 18, 1980, has been issued to the

petitioner-company calling upon it to show cause as to why penalty under appropriate provisions of the Central Excise Rules, 1944, should not be imposed upon it and why the excise duty to the extent of Rs. 11,07,963.50 at the rate of Rs.16.91 per Kg. of lamination be not recovered. The petitioners, instead of replying to the notice, have filed this petition challenging the equality and validity of the action initiated by the department.

3. In para 2 of the petition, the petitioners have explained the salient features entered into in the manufacturing of electrical laminations. The salient features read as under:

(1) The first petitioner would supply imported cold rolled grained oriented sheets to the said manufacturing concerns.

(2) The said manufacturing concerns would manufacture electrical laminations required by the first petitioner for the manufacture of transformers.

(3) The first petitioner would pay to the manufacturing concerns manufacturing charges at the rate of Rs. 1.50 per Kg.

(4) The manufacturing concerns would supply the said electrical laminations.

(5) The said concerns being only taking job work as aforesaid would be entitled to take such work or manufacture electrical laminations for themselves.

(6) If any scrap material was left after manufacturing the electrical laminations, it would be open to the manufacturing concerns to sell off the scrap on their own account and to retain the amount thus obtained from scrap.

(7) The said manufacturing concerns would obtain necessary excise licence and pay excise duty if and when the same is payable by law on the said manufacturing activity carried on by the said concerns.

In para 3 of the petition, the petitioners have mentioned names of different manufacturers and have also stated about the arrangements elaborately.

4. In paragraph 9 of the affidavit in reply it is stated that the salient features of the arrangement are not admitted because same are not supported by documents. In this connection, it may be noted that the petition is supported by filing affidavits of responsible persons of respective manufacturers. They have also confirmed the arrangements entered into by them with the petitioners. In this view of the matter, the arrangement averred in the petition is required to be held as proved. Moreover, In para 3 of the petition, it is specifically averred that different manufacturers whose names are mentioned were the absolute owners of their respective factory premises and that the petitioners have no control whatsoever over the management and working of the said manufacturers. If the said manufacturers were liable to pay excise duty it was for them to pay. As a matter of fact, as stated in the show cause notice, two of the manufacturers have paid excise duty also.

5. In view of the aforesaid factual position, it is submitted that the petitioners are not manufacturers of electrical laminations. In case the manufacturers mentioned in para 3 of the petition manufactured electrical laminations and they were entitled to claim exemption under the relevant notification, it cannot be said that the petitioners are in any way liable to pay excise duty.

6. In the aforesaid background, the allegation in the show cause that the petitioner supplied the raw material and got the work done on job work basis by paying labour charges only and, therefore, the petitioner-company is a manufacturer, is to be examined. The arrangements entered into between different manufacturers and the petitioner-company, the salient features of which are narrated hereinabove, do not disclose that the petitioner-company is a mere dummy and different small-manufacturers have been set up by the petitioners. In the case of *Prolite Engineering Company v. Union of India*, reported in [1991] 36 ECC 36 (Guj) : XXXI (2) GLR, 1092, Division Bench of this Court held that the supplier of CRGO sheets for whom different manufacturers manufactured laminations cannot be said to be manufacturers of laminations. The case was decided in favour of the petitioner therein. The circumstances relied upon by the department have been narrated by the Division Bench in para 6 of the judgment and they are as follows:

1. The six processors addressed letters to Apex Electricals disclosing their willingness to enter into contracts with it for manufacturing electrical laminations. M/s. Amar Engineering Company, M/s. Mayur Engineering Works and M/s. Sangma Engineering Works had addressed their letters on 6-12-1979. M/s. Prolite Engineering Company had addressed such a letter on 20-12-1979 and M/s. Ashish Stampings and M/s. Kaveen Engineering Company had addressed such letters on 13-2-1980.

2. The offers made by the six processors were accepted by Apex Electricals immediately, that is, either on the same day on which the offers were received by it or on the next day.

3. All the six processors had filed their declarations with the Range Superintendent, Vadodara on the same day i.e. 6-12-1979 claiming exemption under Rule 174 of the Rules for the Financial Year 1979-80.

4. The declarations made by all the six processors contained identical information and did not mention the name of the company whose job work they were to carry out.

5. All the six processors had purchased machinery for doing the cutting work between October, 1979 and January, 1980.

6. All of them were supplied C.R.G.O. sheets by Apex Electricals and none had tried to obtain the same from the Steel Authority of India.

7. All of them were to be paid labour charges at the rate of 0.50 paise per Kg.

After analysing each circumstance in isolation and again cumulatively, this Court held that the petitioner therein cannot be said to be a manufacturer of electrical laminations. For the reasons stated therein, in this case also the petitioner-company cannot be said to be a manufacturer of electrical laminations.

7. Learned Counsel for the respondents submitted that in the case of *Shree Agency v. S.K. Bhattacharjee* AIR 1972 SC 780, the Supreme Court held that Shree Agency had supplied yarn and got the fabric manufactured from power loom owners and, therefore, Shree Agency was a manufacturer. The aforesaid decision of the Supreme Court has been considered by this Court in the case of *Prolite Engineering Company* (supra). In para 17 of the reported judgment the reasons distinguishing the judgment of the Supreme Court have been stated. Para 17 of the judgment reads as under:

17. On the other hand, learned Counsel appearing for the respondents relied upon the decision of the Supreme Court in *Shree Agency v. S.K. Bhattacharjee* AIR 1972 SC 780. In that case the question which had arisen was whether Shree Agency was the real manufacturer of cotton fabrics which were manufactured by 16 weavers to whom Shree Agency used to supply yarn. The facts found in that case were that Shree Agency was issuing yarn to the powerloom weavers on credit and getting the same duly woven by them. The powerloom weavers were paid weekly payments and were supplied yarn worth several thousand rupees on credit. Shree Agency was not in a position to know what amount was recoverable from the powerloom weavers to whom they had supplied yarn on credit and advanced money every week. It was under these circumstances that looking to the nature of the transaction between Shree Agency and those powerloom weavers the authorities had come to the conclusion that Shree Agency was the real manufacturer of the said cotton fabrics. The Supreme Court did not think it fit to interfere with that finding and, therefore, the view taken by the authority was confirmed and the appeal filed by Shree Agency was dismissed. The facts of this case are quite different from the facts of the case of *Shree Agency* and, therefore, this decision does not support the contention raised on behalf of the respondents.

For the same reasons, we are of the opinion that the decision of the Supreme Court in the case of *Shree Agency* (supra) does not help the respondents.

8. In the result, the petition is allowed. The impugned show cause notices dated March 26, 1980, April 7, 1980, May 8, 1980 and August 8, 1980 produced, at Annexure "A" collectively to the petition are quashed and set aside. Rule made absolute with no order as to costs.

5.3.1992.

After the aforesaid judgment was dictated and pronounced in open court, the learned Counsel for the respondent has requested for rehearing of the matter. The court had asked the learned Counsel for the respondent to come with the learned Counsel for the petitioner. Ultimately the learned Counsel for the

respondent filed a note on March 18, 1991 requesting the court to re-hear the matter. It was objected by the learned Counsel for the petitioner. Since the note was filed, we did not sign the judgment. The note could not be heard for a pretty long time for the reason that both of us were sitting in different division benches or were sitting separately, and for the season that it got adjourned from time to time for one or other reason. Today the notice is heard and the same is rejected. Hence this judgment is signed today i.e. on March 5, 1992.

March 5, 1992

Order passed below note:

In this petition judgment has been dictated in open court and pronounced on March 7, 1991. The present note is filed on March 18, 1991 requesting the court to rehear the matter. The note came up for hearing before the court in the month of March 1991 and thereafter also. But since both of us were sitting in different Division Benches or were sitting separately, and since the hearing was adjourned for one reason or other we could not hear the note. Today, we have heard the learned Counsels appearing for the parties. In our opinion, in view of the decision of the Supreme Court in the case of Vinod Kumar Singh Vs. Banaras Hindu University and Others, , once the judgment is pronounced in court immediately after hearing or after reserving the same to be delivered later is ordinarily considered as the final act of the court with reference to the case. In para 9 of the judgment the Supreme Court has observed as follows:

Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the court in regard to the conclusion. Once that stage is reached and the court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced parties present in the court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case. In the instant matter, we find that there is no material at all to show as to what led the Division Bench which had pronounced the judgment in open court not to authenticate the same by signing it. In such a situation the judgment delivered has to be taken as final and the writ petition should not have been placed for fresh hearing. The subsequent order dismissing the writ petition was not available to be made once it is held that the writ petition stood disposed of by the judgment of the Division Bench on 28.7.1986.

In view of the aforesaid position of law laid down by the Supreme Court, we do not think that the rehearing of the matter is called for. Hence the request made in the note is rejected.