(1975) 01 GAU CK 0003

In the Gauhati High Court

Case No : Civil Rule No. 464/73

Assam Hard Boards Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 10-01-1975

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Constitution of India, 1950 — Article 226

Citation : (1979) 4 ELT 606

Hon'ble Judges : D.M. Sen, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D. M. Sen, J.—In this application under Article 226 of the Constitution of India, the petitioner has prayed for a writ in the nature of Certiorari or Mandamus to direct that he be not required to pay duty on the water content of the synthetic resins that is being manufactured, by him and also for a declaration that the Notification No. 156/65 dated 23rd September, 1965 (Annexure-A, P. 25) issued under Rule 8 of the Central Excise Rules is ultra vires of said rules and the Central Excises and Salt Act.

2. The article, on which duty has been sought to be levied, is Phenol Formaldehyde Resins. As shown against item No. 15A in the First Schedule to the Central Excise and Salt Act (hereinafter referred to as "the said Act"), thirty per cent ad valorem duty is liable to be paid on the synthetic resins in any form, whether solid, liquid, or pasty or as powder, granules or flakes or in the form of moulding powders. However, by virtue of powers conferred under Rule 8 of the Act, the Central Government had exempted from excise duty any sum that may exceed 80 paise per kg. of such phenol, i. e. Resin, as per its order dated, 23 September, 1965.

3. Mr. S. K. Sen, the learned counsel appearing for the petitioner, submits that, after the petitioner has opted for the concessional rates, as granted under the

aforesaid Notification dated 23rd September, 1965, the petitioner finds that he has, in fact, to pay more duty thereunder than what was leviable in accordance with the provisions against item No. ISA in the First Schedule to the Act. He further states that the Department was in error in subjecting the Phenol Resin, together with its water content, to duty, instead of levying duty only on the solid content thereof, after excluding its water content.

4. He also drew our attention to a Circular (pp. 71-72) stated to have been issued by the Central Board of Revenue, an extract of which reads as follows :

"However, solution of any of the products mentioned in item 15A(I) in volatile organic solvents are excluded from the scope of this item when the weight of the solvent exceeds 50% of the weight of the solution. The underlying idea is to exclude varnishes which contain less than 50% of synthetic/artificial resins (basic plastic material) and which are specifically mentioned as Tariff item No. 1411. In the case of factories manufacturing synthetic resins directly, for example for making varnishes by adding the solvents, etc. they would be liable to pay duty on the resin content of the solution if such solutions contain more than 50% by weight of volatile organic solvents, since the fact remains that the synthetic/ artificial resin is actually first manufactured in the factory, and on the entire products in case it contains not more than 50% by weight of volatile organic solvents at the time of clearance/use within the factory".

5. Mr. Sen has not been able to satisfy us that this circular, which, he submits, he has received from the Central Board of Revenue, is issued in pursuance of any statutory authority to do so. We, therefore, cannot take this circular, for whatever it may be worth, into our consideration in deciding this writ matter.

6. We are only required here to examine whether the Notification dated 23rd September, 1965, issued under Rule 8 of the Central Excise Rules is in contravention of any statutory rule or statutory authority, is discriminatory on any ground, or if the Central Board of Revenue has exceeded powers, conferred

7. We find that the Central Government, by virtue of the aforesaid Notification, had granted a concessional rate, so far as Phenol Formaldehyde Resin is concerned. At the same time, we are also told by the learned counsel for the Department that the petitioner had a free choice either to opt for this concessional rate or to accept liability for duty as leviable for item No. 15A in the First Schedule to the Act, and that the petitioner, on his free will, had chosen the concessional rate under the notification, considering that it would be advantageous for him to do so. Now that the concessional rate is bearing more heavily on him, he is challenging the validity of the Notification itself. We can find no substance in the petitioner''s contention.

8. Our attention was also drawn to Annexure ''B'' (P. 35), being the order of the Government of India, Ministry of Finance (Deptt. of Revenue and Insurance), New Delhi, dated the 31-3-1973, the relevant part of which reads as follows :?

"If the water present is removed thereafter the resin lose its property for use as a adhesive, if coil be diluted further, but not concentrated. As the final product in a liquid form is a composite one, from which water cannot be driven out with determinant to the quality or nature of the adhesive property of the resin, Government hold that the assessment of gross weight is in order."

"In the course of hearing, the petitioner have also referred to the manufacture of Phenol Formaldehyde using sulphuric acid as catalyst in the production of the resin in granular form The correspondence with the foreign collaborator has also been to this end. However, as the actual process of manufacture employed by the petitioner company is different, these points have no relevance to the issue in hand."

9. In the result we do not find that the notification granting the concessional rate dated the 23rd Sept, 1973 can be assailed on any of the grounds, taken by the petitioner ; nor, can we hold that there is any statutory rule enjoining on the Department to levy duty on the phenol Formaldehyde Resin, without taking into account its water content, if any. Accordingly, this application must fail. The rule is discharged. The stay order is vacated. There will be no, order as to costs.