

(1980) 01 MAD CK 0053
In the Madras High Court

Assistant Collector of Central Excise, Vellore

APPELLANT

Vs

Subramania Chettiar

RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Central Excise Rules, 1944 — Rule 63

Central Excises and Salt Act, 1944 — Section 2, 6, 9(1)

Citation : (1980) 6 ELT 609

Hon'ble Judges : Maheswaran, J

Bench : Single Bench

Judgement

Maheswaran, J.—This appeal by the Asstt. Collector of Central Excise, Vellore, is against the judgment of the learned judicial First Class

Magistrate, Vellore, acquitting the accused who has been charged for offence ""punishable under R.174 and S. 6(a) of the Central Excise Act.

2. The accused respondent (hereinafter referred to as the accused) is the Proprietor of M/s. Mohan Match Factory at Thandarampet Road,

Triruvannamalai. He has a valid licence issued by the Central Excise Department to use the approved trade labels on the matches manufactured in

his factory. He is himself a resident of 91, Kammalar Street, Triruvannamalai. On certain information that the accused is engaged in manufacture of

matches and is running a mini match factory without a valid licence to do so at his residence, the officers of the department proceeded to the

residence of the accused on 29-9-1975. The door which was locked outside was opened by an employee and they noticed that ""a part of

manufacture of matches"" was carried only three children and a woman Rukmani who is the wife of an employee of the accused, in Mohan Match

Factory. The match boxes were found to be in labelling and packing stages. There

were frames used for side painting of matches. A bucket of potash, match labels boxes were found and they were seized under a mahazar. The accused came at 30 p.m. to his residence but refused to attest the mahazar. Rukmani gave statement voluntarily when examined. She admitted the statement to be correct. The accused gave a statement voluntarily to the Supdt. of Police, Triruvannamalai on 4-10-1975 at about 11.30 a.m. and he contended that the matches seized from his house were duty paid and as they were drenched they were brought to his house for drying and the matches were covered by the delivery note dated 27-9-1975.

A complaint was lodged by the Asstt. Collector. The learned Magistrate found that "there is no sufficient and satisfactory evidence in this case to conclude that the accused has manufactured "matches" in his residence without a valid licence".

3. The real question that falls for determination is whether the packing of "match" in a match box is a process incidental or ancillary to the completion of the manufactured "match". The other question is whether the accused committed the offences punishable under R.174 of the Central Excise Rules and S. 6(a) read with Section 9(b) of the Central Excise Act.

4. A reference to the Central Excise Term shows that "matches" are described in Tariff Item No. 38. It runs thus :

Match includes a fire work in the form of a "match" and where a match stick has more heads than on e capable of being ignited by striking, each such head shall be deemed to be a match.

It is therefore, contended for the respondent by his learned counsel that a match stick with a match head shall be deemed to be a "match" and

once when the manufacture of match stick with match head is complete, the manufacture of a "match" is complete and packing them in the boxes is

not a process of manufacture and even if the employees of the accused were packing match sticks in boxes, the accused would not be guilty of the

offence with which he is charged. He derives support from the fact that duty is payable on the match and not on match boxes with match sticks.

The rate of duty as seen from Tariff Item No. 38 is "65 paise for every thousand matches or fraction thereof". The learned counsel for the appellant

referred me to the exemptions notified in Notification No. 45/61-CE, dated 1-3-1961 which shows that in the case of matches in or in relation to

the manufacture of which any process is ordinarily carried on with the aid of power, the rate of duty is Rs. 4.60 per gross of 50 matches cash and

in the case of matches in or in relation to the manufacture on which no process is ordinarily carried on with the aid of power, the rate is Rs. 4.30

per cent gross of 50 matches each. It each argued for the appellant that actually duty is levied on gross of matches of 50 each. But it is pointed out

of the respondent that there is no reference to match box in this notification, but only to matches. Learned counsel also pointed out that for

purposes of any calculation and for purposes of affixing banderoles, they are packed in boxes. This leads on to the question as to whether the

packing of "match" in match boxes in a process which is incidental or ancillary to the manufacture of "match". This question is bereft of authority.

In *alembeic Glass Industries Ltd. v. Union of India* 1979 E.L.T. J 461Mys it was held that packing is not incidental or ancillary to the manufacture

of bottles. We are not concerned with bottles in this case, but with "match" and match boxes. This ruling is therefore, of not much use. Rule 63 of

the Central Excise Rules says :

All matches, other than matches of the type known as ""Bengal Lights"" or packed in booklets which are issued by the manufacturers for home

consumption shall be packed in boxes containing on the average 50 sticks."" (Proviso omitted.)

In my view until all the processes, incidental or ancillary, have been completed, one cannot say that a product has been manufactured. In other

words, the definition of ""manufacture"" in Section 2(f) of the Act suggests that the process which is regarded as incidental or ancillary must have

some relation to the manufacture of the finished product. For example, in the case referred to, the packing of glass and glassware is not a process

incidental or ancillary to the completion of manufacture, for the glassware could be taken delivery of in the buyers' own packing materials like

baskets or boxes or in vehicles. So also printing of lacquering cannot be said to be incidental or ancillary to the completion of manufacture of the

products. Could the same thing be said of the "match"? What is contended for the respondent by has learned counsel is that the method or manner

of marketing of excisable goods which have been manufactured, and that it would depend on the nature of the goods and the construction of the

relevant entry in the First Schedule of the Act and invited my attention to Item 38 and stated that the manufacture of "match" is complete when a match stick has a head which is capable of being ignited by striking. He further contended that when once the manufacture of excisable goods is complete, there is an end of the matter. It is no doubt true that the duty is payable on every thousand matches or fraction thereof. But then could it be sad that the goods, namely, a match stick with a head, can be marketed as such without being placed in a box and without the sides of the box being painted for striking the head of the "match". What use is a bundle of "match" to a user without the box for igniting the match? A "match" by itself cannot ignite unless struck on the painted surface of the match box. Though the duty is leviable on every thousand matches, the matches are packed in boxes of 50 each. Reference is as already made to R.63 which requires matches to be packed in boxes, nor is it done as a matter of convenience to facilitate such excisable goods as "match" can be used without being packed in a box and without the sides of the box being painted for striking the "match". If that could be done, then packing in boxes cannot be considered as a process of manufacture. But if packing in a box has some direct relation to the manufacture of that product called "match", there, in my view, packing of "match" in boxes is a process which is incidental or ancillary to the completion of the manufactured product so as to come within the purview of the expression ""manufacture"" as found in Sec. 2(f) of the Act. Though a match stick with a head capable of being ignited by striking can be deemed to be a match for purposes of levy of duty, something more is necessary to make use of it, for without a match box having its sides painted a match cannot be ignited. The box with the sides painted has clearly an impact on the excisable product itself. I am therefore of the view that packing of "match" in boxes with the sides painted is clearly a ""process incidental or ancillary"" to the completion of manufacture of "match".

5. The next point to be considered is whether the accused is guilty of the offences with which he is charged. P.W. 2, Superintendent of Central

Excise, admitted in cross examination that he went to the house of the accused and saw loose boxes without side paint. He also stated that he has

not made any enquiry whether the goods were duty paid as mentioned in Ex. D-1 and that he also did not verify the address found in Ex. D-1 with

the entries in the records maintained in the factory of the accused. Rukmani who is said to have been pasting labels on the boxes, has not been examined though she is said to have given a statement, Ex. P-1 P.W. 3 is a goldsmith who has attested Ex. P-3 a mahazar for seizure of the material objects from the house of the accused. He admits that the Excise officials P.W. 1 and P.W. 2 are officials who also implement the Gold Control Act. He further admitted that he filed a suit against the accused and withdrew it later. He also admitted that he was not on terms with the accused, but would later say that he is on friendly terms with the accused now. The evidence of such a witness is not entitled to any weight. P.W. 4 proved Ex. P-5 the statement of the accused. But the accused states that , that statement, Ex.P-5, was taken under compulsion. The accused also states in his statement u/s 313, Cr. P.C. that Rukmani is not the wife of the foreman of the factory. The defence in the case is that the goods found in his house were duty paid. Ex. D-1, the credit ill, shows that duty has been paid on the stock. It is inn evidence of P.W. 2 that there is no prohibition to take duty paid goods from the licensed premises to any non-licensed premises. But then he later stated that even for duty paid goods, repacking in non-licensed premises is prohibited and added that there is no clear order about it. Therefore, a doubt arises as to whether the accused was having these duty paid goods in his house and was repacking them on account of the fact that they were drenched. The prosecution has not ruled out that possibility and therefore the benefit of that doubt must go to the accused. In that view, the prosecution has not proved the offences with which the accused is charged. The judgment of the Magistrate acquitting the accused is confirmed though not for the reasons stated by him. The appeal is dismissed.