
(1997) 04 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeal No. 3070 Of 1990

Collector of Central Excise

APPELLANT

Vs

Reckitt Colman of India Ltd.

RESPONDENT

Date of Decision : 30-04-1997

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1997) 92 ELT 457 : (1997) 7 SCC 248

Hon'ble Judges : S. C. Sen, J;K. T. Thomas, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Suhas C. Sen and K.T. Thomas, JJ.—In this case the question is how to compute the investments made in an industrial unit. The question arises in the following manner. A Notification No. 89/79-C.E., dated 1-3-1979 was issued by the Central Government, Department of Revenue and Banking, in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. The Notification stated that in respect of certain goods falling under Tariff Item 68 of the First Schedule of the Central Excise Act exemption was to be granted for goods cleared for home consumption "on or after the 1st day of April in any financial year, by or on behalf of a manufacturer from one or more factories if the following conditions are fulfilled:

(a) In the case of first clearances of the said goods up to an aggregate value not exceeding rupees fifteen lakhs, from the whole of the duty of excise leviable thereon; and

(b) in the case of the clearances (being clearances of the said goods of an aggregate value not exceeding rupees fifteen lakhs), immediately following the said first clearances of the value of rupees fifteen lakhs from so much of the duty of excise leviable thereon as is in excess of four per cent ad valorem

Provided that an officer not below the rank of an Assistant Collector of Central

Excise is satisfied that the sum total of the value of the capital investment from time to time on plant and machinery installed in the industrial unit in which the said goods, under clearance, are manufactured, is not more than rupees ten lakhs.

2. There is no dispute about Clauses (a) and (b). The dispute relates to the Proviso. The Proviso says that the Central Excise Officer has to be satisfied that the sum total of the value of the capital investment from time to time on plant and machinery installed in the industrial unit in which the said goods, under clearance, are manufactured, is not more than rupees ten lakhs. It is of significance to note that although the earlier part of the Notification refers to goods cleared by or on behalf of the manufacturer "from one or more factories", the Proviso speaks of "an industrial unit". Therefore, the industrial unit has not been used in the sense of a factory, but as something quite distinct and separate from it. The Tribunal has pointed out that "industrial unit" is an expression well understood in the Excise Department. It is an old practice in the Central Excise Department to treat different parts of a factory licensed to produce different goods separately and to issue licence separately under Rule 174 of the Central Excise Rules, 1944 for the different parts of a factory. All such sections or parts of a factory are known as industrial units holding individual L-4 licences.

3. The factual position has not been controverted. If that be so, in the Notification, the expression "industrial unit" must have been used in the sense in which the Excise Department understands it.

4. Having regard to the facts of the case, we do not find any infirmity in the order of the Tribunal.

5. We were also referred to a number of decisions in which the Central Excise Tribunal has consistently followed the same view. Two of the cases came to this Court in appeal where this Court did not interfere with the orders passed by the Central Excise Tribunal [1. CCE v. Prem Cables (P) Ltd., 1989 (43) ELT 739 (Trib) affirmed by this Court in (1997) 83 ELT A-46 Texspin Engg. & Mfg. Works v. CCE, Final Order No. 204/86-D, dated 11-4-1986 - Affirmed by this Court in 1990 (50) E.L.T. A57. Our attention was also drawn to a judgment of the Bombay High Court in Devidayal Electronics & Wires Ltd. v. Union of India (1984 (16) ELT 30 (Bom)) , where a similar view has been taken. The learned Addl. Solicitor General has contended that these cases were decided under different Notifications. The contention of the assessee is that this view of the Bombay High Court has been consistently followed by the Tribunal in many other notifications also.

6. We need not express any view on any other notification.

7. We are of the view that the Tribunal has correctly interpreted the Notification No. 89/79-C.E., dated 1-3-1979 with which we are concerned in this case.

8. This appeal must fail and is dismissed.

9. There will be no order as to costs.