(1991) 07 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 1430 of 1983

Copper Rollers Pvt. Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:
Central Excise Rules, 1944 — Rule 8

Citation : (1992) 40 ECR 336 : (1991) 56 ELT 51

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri N.M. Ganguli, for the Appellant; Shri V.G. Rege, for the Respondent

Judgement

Pendse, J.—The short question which falls for determination is this petition filed under Article 226 of the Constitution of India is whether the petitioners are entitled to claim exemption from payment of excise duty in respect of manufacture of copper cylinders liable to duty under Item 68 of the First Schedule to the Central Excise and Salt Act, 1944. The facts are not in dispute and are required to be briefly stated to appreciate the grievance of the petitioners.

2. The Petitioners are manufacturers of copper cylinders which are used in textile industries. It is not in dispute that at the time of the clearance from petitioners factory, copper cylinders are not engraved. The petitioners are liable to pay excise duty under Tariff Item No. 68 of the First Schedule to the Central Excise Act. The Government of India in exercise of powers conferred by sub-rule (1) of Rule 8 of Central Excise Rules, 1944 published exemption notification dated November 30, 1978 granting exemption from payment of the entire excise duty for engraved copper rollers or cylinders for use in textile industry as appearing in Serial No. 21 of the Notification. Serial No. 21 reads as follows :

"21. Engraved copper rollers or cylinders for use in textile industry."

The petitioners claim that the exemption notification enables the petitioners to clear the goods without payment of excise duty. The contention was not accepted by the superintendent of Central Excise, in appeal by the Collector of Central Excise and finally by Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The CEGAT recorded order dated April 29, 1983 rejecting the claim of the petitioners that the exemption is available to copper cylinders used in textile industry without being engraved. The decision of the CEGAT is under challenge.

3. Shri Ganguli, learned Counsel appearing on behalf of the petitioners, submitted that plain reading of Entry No. 21 of the Notification indicates that what is exempted is (a) engraved copper rollers, and (b) cylinders for use in the textile industry. We are unable to accept the claim of the petitioners that cylinders of whatever made are exempted if used in the textile industry. It is not in dispute that the textile industry uses cylinders of various types, like iron, steel, copper etc. What Entry 21 exempts is engraved copper rollers or engraved copper cylinders which are used in textile industry. The use of the word ''or'' between ''rollers'' and ''cylinders'' cannot be read as to lead to the conclusion that cylinders of all types are exempted from payment of excise duty Construction suggested by Shri Ganguli would do violence to the plain understanding of the entry as it would lead to the conclusion engraved copper rollers, even if not used in the textile industry, are entitled to exemption. In our judgment, the authorities below have correctly held that the exemption is available provided rollers or cylinders are made from copper and are engraved and are used in textile industry. As the cylinders manufactured by the petitioners are copper cylinders and used in textile industry but not engraved, exemption under the Notification is not available. The decision of the authorities below does not suffer from any infirmity and the petition must fail.

4. Accordingly, rule is discharged with costs.