(1984) 01 BOM CK 0057

In the Bombay High Court

Case No : Writ Petition No. 719 of 1980

Devidayal Electronics and Wires Ltd. and another APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 12-01-1984

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1984) 86 BOMLR 149 : (1989) 23 ECR 256 : (1984) 16 ELT 30 : (1985) MhLj 120

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. The object of this petition is to seek the Court''s opinion as to the meaning to be given to the words "industrial unit".

The words are used in a notification, issued under sub-rule (1) of rule 8 of the Central Excise Rules, 1944, bearing No. 74/78 C.E., dated 1st March, 1978. By the notification the Central Government exempts, inter alia, varnishes "manufactured with the aid of power ....upto an aggregate value not exceeding rupees one crore, 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, from so much of the duty of excise leviable thereon as to equivalent to two per cent ad valorem, if aggregate value of the said goods cleared, if any, for home consumption from one or more factories during the preceding financial year had exceeded rupees fifteen lakhs". There is a proviso which reads thus :

"Provided that the said goods are manufactured in an industrial unit in respect of which an officer not below the rank of an Assistant Collector of Central Excise is satisfied that the sum total of the value of capital investment made from time to time on plant and machinery only installed in the industrial unit in which the said goods, under clearance, are manufactured is not more than rupees ten lakhs."

2. The petitioners have a factory situated at Thane in which they manufacture electric wires, cables and varnishes. The varnishes are manufactured by a plant in a building used only for this purpose. It was the petitioners'' case that they were entitled to the exemption provided by the notification. In this behalf they filed an affidavit before the Excise authorities. In the affidavit they set out the facts thus :

"(a) The Company manufactures varnishes which fall under Item 14 of the 1st Schedule to the Central Excise Act. The Company does not manufacture any other goods covered by the said Notification.

(b) The varnishes are manufactured with the aid of power.

(c) The said varnishes manufactured by us and cleared for home consumption on or after the 1st day of April in any financial year does not exceed Rs. one crore. The value of the said varnishes cleared by us for home consumption during the financial year 1978-79 exceeded Rs. 15,00,000/- but did not exceed Rs. one crore.

(d) At the said factory at Thane there are several buildings wherein the Company manufactures various types of goods. However, all the varnishes manufactured by the Company are manufactured only in a separate independent building. In fact, the entire plant and machinery for the manufacture of the said varnishes are located only in this building. Further, apart from the said varnishes no other goods are manufactured by the Company in the said building. Thus the manufacturing activities in regard to varnishes as confined to this independent compact unit.

(e) The capital investment made from time to time on the plant and machineries installed by us for the manufacture of the said varnishes is less than Rs. 10,00,000/-.

These facts are not in dispute. To queries put by the Excise authorities the petitioners'' officer stated that each worker working in the varnishes unit had a separate attendance card bearing its name. Its workers'' list was separately maintained. The salary, dearness allowance, provident fund, Employees State Insurance contribution, etc. in respect of the workers of the varnishes unit were separately shown. The workers working in it did not work elsewhere in the factory; they were not interchangeable. Separate accounts were maintained in respect of varnish unit.

3. At the hearing before the Assistant Collector of Excise, the dictionary meaning of the word "unit" was referred to and it was contended on behalf of the petitioners that they manufactured the varnishes in an industrial unit which satisfied the requirements of the proviso in the notification. The Assistant Collector noted that the petitioners had relied upon the dictionary meaning of the word "unit" but commented that they had not furnished the dictionary meaning for the words "industrial unit". In the absence of such dictionary meaning, the

words would have to be understood as in common practice. An Industrial unit was synonymous to an industrial undertaking, industrial enterprise or factory which connoted the entire factory complex could be a manufacture for different items. The premises wherein the petitioners manufactured varnishes could not be termed a separate industrial unit since they were a part of the factory which, in fact, was an industrial unit. The petitioners'' entire factory complex at Thane was one industrial unit having separate sections for the manufacture of different items. Accordingly, the Assistant Collector rejected the petitioners'' claim to the benefit of the exemption under the notification.

4. The order of the Assistant Collector is impugned.

5. The notification uses the word "factory" and it uses the words ''industrial unit''. It must, therefore, be assumed that the words were intended to bear different meanings. Put differently, the words "industrial unit" must mean something other than "factory".

6. The word "Unit" is defined in the Shorter Oxford English Dictionary, Third Edn., to mean "one of the separate parts or members of which a complex whole or aggregate is composed". A similar meaning is given to the word in Webster''s Third New International Dictionary, viz., "a single thing or person or group that is a constituent and isolable member of some more inclusive whole". The word ''industrial'' is defined in the Shorter Oxford Dictionary to mean "pertaining to, or of the nature of, industry or productive labour". An industrial unit must, therefore, mean a separate or isolable part, concerned with industry, of a complex.

7. Given this meaning, the plant and building within the petitioners'' factory at Thane used exclusively for the manufacture of varnishes must be held to be an industrial unit.

8. In this view, the order of the Assistant Collector must be set aside and the rule made absolute in terms of prayers (a), (b) and (c).

9. Mr. Taraporevala fairly stated that Exhibit ''L'', which is a statement of the refund claimed by the petitioners in regard to excise duty paid on varnishes from 1st January, 1980 to 31st May, 1980, is erroneous in the sense that in column 6 thereof the duty payable is shown at 2 per cent ad valorem when it ought to have been shown at 8 per cent ad valorem. Accordingly, the excess duty paid stated in column 7 is also erroneous; it should be less. The refund that the respondent are ordered to make pursuant to prayer (c) shall take account of this error.

10. The respondents are also directed to refund to the petitioners the excess duty paid by them after 1st June, 1980 until advantage was taken by them of the stay order obtained from this Court on 12th August, 1980.

11. Rule accordingly. No order as to costs.

