(1970) 07 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 166 of 1964

Dharampur Leather Cloth Co. P. Ltd. APPELLANT

Vs

A.B. Patel, Insp. of C. Ex., Surat RESPONDENT

Date of Decision : 30-07-1970

Acts Referred:
Central Excises and Salt Act, 1944 — Section 3

Citation : (1970) 07 GUJ CK 0014

Hon'ble Judges : P.N. Bhagwati, C.J;T.U. Mehta, J

Bench : Division Bench

Advocate : B.J. Shelat, for the Appellant; J.R. Nanavati and M.G. Doshit, for the Respondent

Judgement

P.N. Bhagwati, C.J.—The petitioners manufacture leather cloth in a factory situate in Dharampur near Bulsar within the State of Gujarat. Polyvinyl Chloride Resin Powder (hereinafter for the sake of convenience referred to as P.V.C. Powder) is used by the petitioners for preparing paste which is to be coated on cotton fabrics for the purpose of manufacturing leather cloth. The petitioners admittedly do not manufacture P.V.C. powder but they import it from different foreign countries. On the midnight of 28th February 1961, the petitioners had a certain stock of imported P.V.C. powder lying in their godown and factory. The Central Excise and Salt Act, 1944, which provides for levy of excise duty on manufacture of excisable goods was amended by the Finance Act, 1961 with effect from 1st March 1961 and Item No. 15-A was introduced in the First Schedule of that Act. That item specified inter alia plastic moulding powders, granules, and flakes and Polyethylene firms, lay-flat tubings and P.V.C. sheets as excisable goods and laid down the rate of 20 per cent ad valorem as the rates of excise duty chargeable on them. The result of this amendment was that with effect from 1st March 1961, P.V.C. powder manufactured or produced in India became chargeable to excise duty but this amendment did not have the effect of levying excise duty on the existing stock of P.V.C. powder held by the petitioners on the midnight of 28th February 1961 since it was imported and not manufactured or produced in

India and moreover, even the import was made prior to 1st March 1961. Still, however, the Excise Inspector sent three notices to the petitioners, one dated 24th February 1962, the other dated 8th April 1962 and the third dated 27th April 1962 demanding various sums from the petitioners on account of excise duty on the stock of P.V.C. powder held by the petitioners on the midnight of 28th February 1961 calculated at the rate of 20 per cent ad valorem. These notices were subsequently modified by the Excise Inspector and in place and stead of them three fresh notices dated 5th October 1963 were issued by the Excise Inspector demanding various amounts aggregating to Rs. 24,633.47 on account of excise duty calculated at the rate of 20 per cent ad valorem on the stock of P.V.C. powder held 1961. The petitioners contented the validity of these notices but they were confirmed by the Assistant Collector of Central Excise and Customs by an order dated 28th December, 1963. The petitioners thereupon filed the present petition challenging the validity on these notices as also of the order passed by the Assistant Collector confirming these notices.

2. The demand made in the impugned notices as confirmed by the Assistant Collector was for excise duty on the stock of P.V.C. powder held by the petitioners on the midnight of 28th February, 1961. Now it is difficult to see how any excise duty could be levied on the stock of P.V.C. powder in possession of the petitioners on the midnight of 28th February, 1961. In the first place excise duty was levied on P.V.C. powder for the first time with effect from 1st March, 1961 as a result of the amendment of the Central Excise & Salt Act, 1944 by the Finance Act, 1961 and, therefore there could be no excise duty on the stock of P.V.C. powder with the petitioners on the midnight of 28th February, 1961. Secondly, it is apparent from the language of Section 3 which is the charging Section in the Central Excise and Salt Act, 1944 that excise duty is leviable only on excisable goods produced or manufactured in India. Therefore, by reason of the amendment of the Central Excise and Salt Act, 1944, by the Finance Act, 1961, P.V.C. powder produced or manufactured in India became chargeable to excise duty with effect from 1st March, 1961 but there could be no excise duty on P.V.C. powder imported from foreign countries. The stock of P.V.C. powder held by the petitioners on the midnight of 28th February, 1961 consisted entirely of imported P.V.C. powder and it was, therefore, not liable to excise duty. The demand made in the impugned notices for excise duty in respect of stock of P.V.C. powder with the petitioners on the midnight of 28th February 1961 was, therefore, wholly unjustified and the impugned notices as also the order of the Assistant Collector confirming the impugned notices must be quashed and set aside.

3. We, therefore, allow the petition and make the rule absolute by a writ of mandamus quashing and setting aside the impugned notices dated 5th October, 1963 issued by the Excise Inspector as also the order of the Assistant Collector dated 28th December, 1963 in so far as it confirms impugned notices of the demand. The respondents will pay the costs of the petition to the petitioners.

