

(1977) 03 MAD CK 0038

In the Madras High Court

Case No : Writ Petitions No's. 1746/72, 1453 and 1676/73

E.I D. Parry Limited and Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 11-03-1977

Acts Referred:

Central Excises and Salt Act, 1944 — Section 13, 2, 3

Citation : (1978) 2 ELT 18

Hon'ble Judges : Koshal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Koshal, J.—By this judgment I shall dispose of three petitions under Article 226 of the Constitution of India, namely. Writ Petition No. 1746 of 1972 and Writ Petitions Nos. 1453 and 1676 of 1973. In Writ Petition No. 1453 of 1973, the petitioner is Shaw Wallace and Company Limited, a corporate body manufacturing chemical fertilisers in a factory situate at Avadi, while the other two petitions have been instituted by another Corporate body known as E.I.D. Parry Limited which is running a similar factory at Ranipet

2. The circumstances which have given rise to the three petitions may be shortly stated. No excise duty was leviable in respect of chemical fertilisers till the 28th of February, 1969. With effect from the 1st of March, 1969, however, Schedule 1 to the Central Excises and Salt Act. 1944 (hereinafter referred to as the Act) was amended by the addition of Item 14HH according to which 10 per cent ad valorem excise duty was levied on chemical fertilisers. On the close of the 28th of February 1969 the petitioners had in their godowns large stocks of chemical fertilisers which they had manufactured till that date but had not sold to third parties. These stocks, were allowed to be cleared on payment of excise duty in accordance with the provisions of Item 14HH above mentioned. Claiming that these stocks were not liable to any excise duty because they were comprised of chemical fertilisers which were not subjected to any further manufacturing

process, the petitioners made applications to the Assistant Collector of Central Excise, Madras, for refund of the excise duty paid as aforesaid. Those applications were rejected on the 11th of February, 1970 and appeals taken to the Collector of Central Excise, Madras and revision applications filed by them before the Government of India met the same fate. The sole reason for the refusal to refund the excise duty is thus stated by the Government of India in its order, dated 22nd November, 1971 :-

"The Government of India observe that Rule 9 of the Central Excise Rules, 1944 prescribes that duty of excise is to be collected at the time of removal as excisable goods from the factory. To be treated as goods, an article must be something which can ordinarily come to the market to be bought and sold. However, it is observed that under Clause 13 (i) (b) (i) of "The Fertiliser (Control) Order, 1957" the "Fertiliser" cannot be delivered except in packed condition only. It is not correct to say that the said provision is applicable to removal for sale only. The term "Distribution" used therein has a wide scope to cover removals for all purposes other than for sales. All the same it is admitted by the petitioners that the sales to the consumers is made in single and second hand gunnies and to dealers in jute gunnies lined with alkathene sheets. Rather the entire stock of fertilisers held in stock in bulk on the midnight of 28.2.1969/1.3.1969 by the petitioners is admitted to have been actually cleared in single second hand gunnies packing of standard and non-standard weights to their mixing entries. Under the circumstances Fertiliser in question would not be treated as goods as it is not packed and ready for marketing or delivery.

3. The orders of the Government of India are challenged in those (sic) with prayers that they be quashed by writs of certiorari.

4. The charging provision contained in the Act in Sub-section (I) of Section 3 thereof which states :-

"There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into any part of India, as and at the rates, set forth in the First Schedule."

5. It is common ground between the parties that in view of this provision excise duty is leviable on chemical fertilisers which were manufactured on or after the 1st of March, 1969. It is also not disputed that the goods in question had attained the form of chemical fertilisers before that date and that they were not subjected to any further processes before being offered for sale. The sole question which calls for determination is whether packing of the fertiliser into gunny bags, etc. (which process were admittedly carried out after the 28th February, 1969 by the petitioners) can be regarded as part of the process of manufacture. If the answer to that question is in the affirmative, no fault can be found with the impugned orders. If, on the other hand, the question is answered in the negative, the Chemical fertiliser in question cannot be said to have been

manufactured to any extent after the 28th of February, 1969 so that the impugned orders would have to be revised. In this connection, the provisions of Clause (f) of Section 2 of the Act are material. According to that clause :-

"manufacture" includes any process incidental or ancillary to the completion of a manufactured product."

6. So it has to be decided whether packing of the fertiliser lying in stock with the petitioners can be regarded as a process incidental or ancillary to the completion of the manufactured product. In my opinion packing cannot be so regarded. The expression "Completion of the manufactured product" would in my opinion mean subjection of a product which though answering to the description of the name by which it is sold in the market but is yet in a crude form to processes would include those meant for purification, colouring and otherwise beautifying the end product. But then such processes must be limited to the process of manufacture properly so called.

7. In this view of the matter, processes which are incidental or ancillary not to the manufacturing process of sale of the end product would not fall within the definition of "manufacture" appearing in Clause (f) above extracted. Thus the mere transfer of the end product into containers which can be handled conveniently, the sealing of such containers with the object of preservation of the end product and ensuring that they w could not be subjected to adulteration easily and of putting marks or labels on the containers with the object of identifying the end product and enhancing the good-will of the manufacturer would not form part of manufacture.

8. In this view of the matter, the fact that Section 13 of the Fertiliser (Control) Order 1957 enjoins a particular type of packing for the fertiliser before it is sold a d the stage at which excise duty shall be collected on fertilisers are wholly irrelevant for they do not determine whether packing is a process of manufacture. This interpretation finds support from the judgment in Amar Dye-Chem Limited, Bombay and Anr. v. Union of India and Ors. - Special Civil Application No. 2070 of 1963 decided by Chinani, C.J., and Gohala, J., of the Bombay High Court on the 18th of January, 1965.

9. In the result I hold that the goods in question were not subjected to any process of manufacture by the petitioners after the 28th of February, 1969, that on that date they were lying with the petitioners in the form of chemical fertilisers fully manufactured and that no excise duty was leviable in respect thereof. All the three petitions therefore succeed and are accepted, the impugned orders are reversed and the excise authorities are directed to refund to the petitioners the excise duties respectively paid by them in respect of the fertilisers in question. The parties are, however, left to bear their own costs.