
(1985) 06 BOM CK 0032

In the Bombay High Court

Case No : Writ Petition No. 1025 of 1981

Everest Mudranalay

APPELLANT

Vs

J.F. Silva, Superintendent of C. Ex.

RESPONDENT

Date of Decision : 28-06-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Central Excises and Salt Act, 1944 — Section 3

Citation : (1990) 47 ELT 315

Hon'ble Judges : S.C. Pratap, J

Bench : Single Bench

Judgement

1. The short question for determination... and to which question alone this petition is restricted at the time of its final hearing... relates to the validity of Notification No. 155 of 1972 (hereinafter the impugned notification) dated 15th June, 1972 issued by the Central Government in exercise of its powers under Rule 8 of the Central Excise Rules, 1944.

2. Hearing on this question rival submissions of the respective Counsel - Mr. R. K. Habbu, for the Petitioners and Mr. M. I. Sethna for the Respondents, I find no merit in the challenge to the legality and validity of the impugned notification. It must, at the outset, be stated that there is no challenge to the validity either of Rule 8 of the Central Excise Rules or of Section 3 of the Central Excise and Salt Act, 1944. The challenge is only to the legality and validity of the impugned notification as being ultra vires the powers of the Central Government. It is, however, extremely difficult to accept this challenge once the rule making power of the Central Government as also the validity of Section of the Act stands conceded.

3. In the course of his arguments, learned counsel Mr. Habbu sought to challenge the impugned notification by going into the question whether the article here involved is or is not covered by it. This latter question falls squarely outside the challenge to the very validity of the impugned notification and is de hors the

same. Indeed, it assumes the impugned notification to be valid but with a proviso that the petitioners' case is not covered thereunder. As regards the merits of the petitioners' claim de hors the challenge to the legality and validity of the impugned notification, the petitioners can, in that behalf, raise all such contentions as advised before the Excise authorities in answer to the show cause notices and, if occasion so arises, by way of further remedies under the Act. So far as the only question (supra) here involved is concerned, the petitioners' learned Counsel was unable to show how or why the impugned notification is ultra vires either the rule making power of the Central Government or Section 3 of the Central Excises and Salt Act. It is one thing to challenge the applicability of the impugned notification to the facts and circumstances of the petitioners' case and an altogether different thing to challenge the legality, validity or vires of the notification itself. As regards the former challenge, it is open to the petitioners to raise the same before the appropriate authorities under the Central Excises and Salt Act and as regards the latter challenge - as indicated - I find no merit therein.

4. Mr. Habbu invited my attention to the ruling in *Empire Dyeing and Manufacturing Co. Ltd. Vs. V.P. Bhide and Others*, . The said ruling, however, does not help the petitioners in their challenge to the legality and validity of the impugned notification. The questions involved therein were altogether different from the one in this petition.

5. The impugned notification being legal and valid, the excise authorities will have to consider the petitioners' claims and contentions on the applicability or otherwise thereof to the petitioners' case. On this aspect, it will be open to the petitioners to contest the matter before the excise authorities on all such grounds as advised. And the said authorities will have to consider and decide the same on merits and in accordance with law.

6. In the result, this petition fails and the same is dismissed. Rule stands discharged but, in the circumstances, with no order as to costs.

7. At the request of the petitioners' learned Counsel, interim order passed at the stage of admission will continue to subsist till and inclusive of Monday, 22-7-1985 and will, unless extended or modified by the Appeal Court, and vacated thereafter.