

(1990) 03 KAR CK 0057

In the Karnataka High Court

Case No : Writ Petition No's. 3731 and 3732 of 1988

Eyelite Optical Industries Pvt. Ltd.

APPELLANT

Vs

Collector of C. Ex.

RESPONDENT

Date of Decision : 06-03-1990

Acts Referred:

Central Excise Act, 1944 — Section 6
Central Excise Rules, 1944 — Rule 173Q, 174

Citation : (1991) 33 ECR 295 : (1990) 50 ELT 3

Hon'ble Judges : M.P. Chandrakantaraj Urs, J

Bench : Single Bench

Advocate : Shri S. Srivastav and N.S.S. Prasad, for the Appellant; Shri Sailendra Kumar, Central Govt. Standing Counsel, for the Respondent

Judgement

1. This petition is filed by a company which claims to be a manufacturer of spectacle frames made of plastic material - cellulose acetate sheets. It further claims that the goods manufactured by the petitioner fall under Tariff sub-heading 9003.11 of Chapter 90 of the Central Excise Tariff Act and chargeable to on duty. Admittedly, for a number of years, to petitioner was carrying on the manufacturing activity without obtaining licence in terms of Section 6 of the Central Excise and Salt Act. He has averred that all attempts made by the Department to make him take out a licence had met with no success. However, a notice dated 1-2-1988 came to issued as at Annexure-V to the writ petition by which he was called upon to show cause to the Assistant Collector of the Central Excises, Rajajinagar Division, Bangalore, as to why he should not be proceeded against for violation of Rule 173(Q) and Rule 174 of the Central Excise Rules among other things. He was given 30 days time to file his reply to the show cause notice from the date of receipt of the notice. However, even before he had showed cause, a search and seizure was conducted of his factory premises by the fourth-respondent the Superintendent of Central Excise (Preventive), Bangalore, under a mahazar, a true copy of which has not been produced by the petitioner though he intended to do so as evidenced by the index to the petition

(however, at the time of passing this order, Mr. Shailendra Kumar, learned Central Govt. Standing Counsel, has produced a photostat copy of the mahazar and it has also been filed along with the counter filed on behalf of the respondents). Therefore, that certain seizure was conducted may not be disputed. Thereafter, on the day of search and seizure, he made an application for grant of licence and he was issued with the licence as at Annexure-X bearing No. 1/88 bearing the same date viz., 24-2-1988. On 1-3-1988, the petitioner presented this petition with prayers which appear to be very strange and they are as follows :-

"Wherefore, the petitioner prays that this Hon"ble Court may be pleased to quash the application for licence at the Annexure-W and Licence at Annexure-X by issue of the writ or order and grant such other or further relief or reliefs as this Hon"ble Court may deem fit in the circumstances of the case;"

inter alia on the ground that the application was obtained under threat and coercion and therefore the licence granted in pursuance thereof cannot be deemed to be a licence in the eye of law and as such both the application and licence are liable to be quashed by this Court. There is no other specific relief prayed for.

Admittedly, the petitioner is a manufacturer of spectacles and parts thereof or manufacturer of articles which are listed in the First Schedule of the Central Excise Tariff Act. Therefore, prima facie, having regard to the language of Section 6 of the Central Excise & Salt Act which is as follows :

"The Central Government may, by notification in the Official Gazette, provide that, from such date as may be specified in the notification, no person shall, except under the authority and in accordance with the terms and conditions of a licence granted under this Act, engage in -

(a) the production or manufacture of any process of the production or manufacture of any specified goods included in the First schedule or of saltpetre or of any specified component parts or ingredient of such goods or of specified containers of such goods, or

(b) the wholesale purchase or sale whether on his account or as a broker or commission agent or the storage of any specified goods included in the First Schedule."

This Court is not left in dark that goods specified and included in the Schedule of the Central Excise Tariff Act, 1985, are goods manufacturing of which has to be under a licence. That no duty is leviable under the First Schedule of the Tariff Act of 1985, in my view, does not absolve the manufacturer from taking out a licence.

2. However the learned Counsel for the petitioner drew my attention to a ruling of the Allahabad High Court (Division Bench) in the case of E. Septon and Company Private Limited Vs. Superintendent of Central Excise and Another, All that the said decision lays down is that if the excisable goods are exempted from payment of duty, the same shall be deemed to have been taken out of the First

Schedule to the Central Excise & Salt Act and taking out of the excise licence by the manufacturer of such goods is not required as contemplated under Rule 174 of the Central Excise Rules, 1944. That decision was rendered before the Central Excise Tariff Act came into force. The case relied upon by the petitioner was decided on 27-9-1984 as indicated in the reported decision. I am unable to see how exemption granted as payment of excise duty affects the language of either Section 6 or Rule 173(Q) of the Central Excise Rules or even the language of Rule 174.

Rule 173(Q) provides for confiscation and penalty if any manufacturer, producer or licence of a warehouse, removes any excisable goods in contravention of any of the provisions of the Rules; engages in the manufacturing or production or storage of any excisable goods without having applied for the licence required u/s 6 of the Act. There appears to be considerable case law on the subject holding that particular rule, the violation of which should call for deterrent penalty. Similarly, Rule 174 of the said Rules provides for licences being taken by either manufacturer, trader or person mentioned in the Rules and he shall not conduct his business in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer in the proper form. Under sub-rule 3 of Rule 174, manufacturing of other excisable goods except salt are required to obtain the licence. Section 6 of the Act cannot read as subservient to the Rules framed under the provision of the Act. As already noticed, the goods manufactured by the petitioner are to be found in the First Schedule to the Tariff Act. That no excise duty is payable on some of the items in the First Schedule is no ground why the licence to manufacture such goods should be disposed with u/s 6 of the Act.

3. It is not unusual that the Government in its discretion may subject certain goods manufactured to excise duty and at a later point of time exempt the same for various reasons and again reimpose duty at a subsequent point of time under different circumstances. The object of the Act is to raise revenue for the State. In order to control effectively the raising of the revenue, licensing has become necessary in terms of Section 6. Therefore, I do not see how exemption from payment of duty at any given point of time has anything to do with the dispensation of obtaining the licence. If any other view is taken, the effect is that a person who was required to take out a licence and has been so given a licence when goods were excisable to duty will become free to manufacture without licence when the goods are exempted from duty for any reason. When the same goods are again subjected to duty for some other reasons under different circumstances, it cannot be said that the licence gets automatically revived or cancelled as the case may be. Therefore, I do not see any reason why the Court should not rule, the decision relied upon by the learned Counsel, that Section 6 is mandatory requiring the manufacturer of goods which are mentioned in First Schedule to the Tariff Act to take out a licence.

4. I have no reasons to believe on account of the seizure in the same month in

which the show-cause notice was issued, it should be treated as coercive action compelling the petitioner to make the application and also to take out the licence which is issued. If he was afraid of the consequences of the lack of licence by being exposed to prosecution he would have had ample opportunity to defend himself in such prosecution by demonstrating that he is not required to take out a licence and therefore not liable to be prosecuted.

5. The petitioner is a company and not an ignorant person. One expects that such a company was properly advised in the matter.

6. As such no ground for interference is made out and the writ petitions are dismissed.