
(1985) 06 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 1437 of 1981

Godfrey Phillips India Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-06-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 2

Citation : (1990) 48 ELT 508

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

Bench : Single Bench

Advocate : G.E. Vahanvati and P.D. Ghandy, instructed by Crawford Bayley and Co, for the Appellant; J.P. Deodhar, for the Respondent

Final Decision : Allowed

Judgement

S.C. Pratap, J.—The petitioners - M/s. Godfrey Phillips India Limited (hereinafter the company) - are engaged in the business of manufacture of cigarettes. On the said cigarettes excise duty is payable on ad valorem basis under the Central Excises and Salt Act, 1944 (hereinafter the Act). u/s 2(f) of the Act:

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

(i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff;

(ia) in relation to manufactured tobacco, includes the labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer."

Thus in the case of manufactured tobacco or cigarettes, re-labeling of containers and re-packing from bulk packs to retail packs or the adoption of any treatment to render the product marketable to the consumer is deemed to be included in the concept of "manufacture" and is deemed to constitute a part and parcel of

the process of "manufacture".

2. By Notification No. 201 of 1979 dated 4th June 1979, the Central Government introduced a set-off procedure for the duty of excise payable on goods falling under Tariff Item No. 68 of the Act, where the said goods went into the manufacture of other excisable goods. The said notification is as follows :

"In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in super-session of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 178/77-Central Excises, dated the 8th June, 1977 (hereinafter referred as "the said goods"), on which duty of excise is leviable and in the manufacture of which any goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred as "the inputs") have been used, from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs.

Provided that the procedure set out in the Appendix to this notification is followed:

Provided further that nothing contained in this notification shall apply to the said goods which are exempted from the whole of the duty of excise leviable thereon or are chargeable to nil rate of duty.

Provided also that nothing contained in this Notification shall apply to the said goods on which duty of excise is paid through banderols."

(Hereinafter referred as the notification).

3. In accordance with the requisite procedure, the company duly submitted from time to time declarations with regard to specific (inputs) namely, tear tape, slides, shells and printed cartons i.e. outers/blanks used in the packing of cigarettes and these (inputs) were accepted by the respondents as necessary (inputs) in the manufacture of cigarettes. The company was accordingly availing of the set-off under the aforesaid notification. However, and for the first time, by his letter of 10th June 1981, the third respondent informed the company that the packing material viz., tear tape, slides, shells and printed cartons i.e. outers/blanks used in the packing of cigarettes could not be called "inputs" and that the company could not avail itself of the set-off procedure under the notification and credit under the set-off procedure was disallowed with retrospective effect. Correspondence ensued but to no avail. The company was asked to strictly follow the instructions issued in the aforesaid letter of 10th June 1981. And ultimately, the third respondent - Superintendent of Central Excise - demanded payment of duty as per his notice of demand dated 25th September 1981 and annexures thereto. Hence this petition.

4. Now, it is undoubtedly true that the company has approached this Court directly without recourse to the remedies under the statute. But no objection in this regard is raised on behalf of the respondents. Besides, the question here

involved is short and simple and one that needs no inquiry or investigation into facts. Indeed, there is no disputed question of fact at all. There is also no reply filed by the respondents. The short question is:

What should be the meaning put on or ascribed to the word "inputs" mentioned in bracket in Notification No. 201 of 1979 after the words

"...the Central Government hereby exempts all excisable goods (hereinafter as "the said goods"), on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (hereinafter referred as "the inputs") have been used...."

(Emphasis added)

5. Now, there is no dispute that the product here would fall u/s 2(f)(ia) and not u/s 2(f)(i) of the Act. Indeed, it is on that very basis that the company has been consistently paying excise duty on the entire product which includes not merely the bare cigarettes but also tear tape, slides, shells and printed cartons i.e. outers/blanks used in the packing of these cigarettes and utilising which materials the product is ultimately rendered marketable to the consumer. And, what is more, credit was in fact also being consistently given to the company accordingly without demur. However, much later in June 1981 the excise authorities have had second thoughts resulting in this petition.

6. There is no dispute here that in the manufacture of the goods involved Tariff Item No. 68 goods have been used. There is also no dispute that the declarations accordingly made have been accepted by the authorities and credit also has been accordingly given to the company. This is again not a case of the company seeking any exemption on the basis of the concept of post manufacturing expenses. As indicated, the company has been paying duty on the entire manufactured product which includes not only the cigarettes but also tear tapes, slides, shells and printed cartons i.e. outers/blanks used in the packing of cigarettes. Indeed, the value of packing material was included in the assessable value of cigarettes on the basis that manufacture of cigarettes was complete only at a stage after the same had been packed in shells and outers. The legislative intent to include "packing" in the concept of manufacture has been made clear by Section 2(f)(ia) itself which concept is different and clearly distinguishable from the concept of manufacture u/s 2(f)(i). All that the company then seeks is relief or credit qua duty already once and earlier paid on Tariff Item No. 68 goods going into the manufactured product which is finally rendered marketable to the consumer. In all such circumstances, the word "inputs" (with which word the authorities seem to have been overwhelmed) in the...1979 notification cannot have the effect of superseding and setting at naught the entire relevant earlier recital preceding thereto. The word "inputs" is only a cryptic abbreviated form not meant to change and alter the meaning and intention of the substantive and the really relevant part of the notification but only indicative thereof. The

interpretation put by the authorities on the said word is too narrow and technical defeating the very object of the notification and running counter thereto. Reading the said notification as a whole, it is obvious and clear that a much wider meaning to the word "inputs" is intended. It is not used as the grammatical equivalent of or otherwise synonymous with the word "ingredients". The effort to equate the two would render the notification to a great extent infructuous and nugatory. Indeed, the notification itself clarifies the word (inputs) to mean :

"...any goods falling under Item No. 68."

The sum and substance is to enable manufacturers to claim credit for all Tariff Item 68 goods that go into the manufactured product and on which product full duty is being paid.

7. It, however, requires to be clarified that this position will hold good only till the date the aforesaid Notification No. 201 of 1979 stood amended by Notification No. 105 of 1982 on 28th February 1982. The position under the said 1982 notification which amends the 1979 notification is not being considered and decided in this petition filed prior "hereto.

The said question is left open.

8. In the result this petition succeeds and the same is allowed. The impugned notice of demand dated 25th September, 1981 (Exhibit F) is set aside and quashed. It is further directed that all reliefs flowing from this order should be granted to the petitioner-company within six months from today.

9. Rule is made absolute in terms aforesaid but, in the circumstances, with no order as to costs.

10. As the bank guarantee given by the company in favour of the Collector also includes the period after coming into force of the amended notification, being Notification No. 105 of 1982, dated 28th February 1982, the said bank guarantee shall continue to enure for the benefit of the Union of India for the period on and from 28th February 1982 in respect of liability, if any, that may be due from the company to the Union of India on and from 28th February 1982. This bank guarantee shall be kept alive by the company for a period of six months from now in order to enable the excise authorities to consider the position after coming into effect of the aforesaid Notification No. 105 of 1982 dated 28th February, 1982.