(1990) 07 BOM CK 0042

In the Bombay High Court

Case No : Writ Petition No. 788 of 1982

Hindustan Lever Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 25-07-1990

Acts Referred:
Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 36(2)

Citation : (1990) 50 ELT 500

Hon'ble Judges : H.H. Kantharia, J

Bench : Single Bench

Advocate : Mr. Shiraj Rustomji, instructed by Crawford Bayley and Company, for the Appellant; Mr. K.R. Bulchandani and Mr. K.C. Sidhwa, for the Respondent

Judgement

1. By Notification No. 121/72 dated April 1, 1972, in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 39/72 dated 17-3-1972, the Central Government exempted vegetable product falling under Item No. 13 of the First Schedule to the Central Excises and Salt Act, 1944, in the manufacture of which indigenous cotton seed oil is used and cleared from a factory in any quarter of a financial year, from so much of the duty of excise leviable thereon as was equivalent to the amount calculated, at the rate specified in column 3 of the Table annexed thereto, on the quantity of indigenous cotton seed oil used in the manufacture of such vegetable product to the extent specified in column 2 of the said table. The table in question shows, under column 2, the extent of indigenous cotton-seed oil used in the manufacture of vegetable product and column 3 shows the rate of metric tonne of indigenous cotton-seed oil.

2. The said notification was supersed by another Notification No. 230/72-CED dated December 15, 1972 thereby slightly changing the percentage of the extent

of indigenous cotton seed oil used in the manufacture of vegetable product and likewise this notification was superseded by another Notification No. 23/75-C.E., dated March 1, 1975 once again changing the percentage of the extent of indigenous cotton seeds used in the manufacture of vegetable products.

3. The first Petitioner, M/s. Hindustan Lever Limited, filed supplementary rebate claims on account of the cotton seed oil used in the manufacture of vegetable product for the period from July to December, 1975 and January to June, 1976 respectively for Rs. 35,829.99 and Rs. 21,241.42 relying on their own method of calculation. The first Petitioner excluded the quantity of the vegetable product wherein no cotton seed oil was used while arriving at the total quantity of vegetable product cleared. Therefore, a show cause notice was issued in February 24, 1977 calling upon them to explain the reasons as to why the said supplementary rebate claims should not be rejected as the same were not based on correct lines of calculation. A reply to the said show cause notice was filed by the first Petitioner raising various contentions. The Assistant Collector of Central Excise, Bombay Division - F (fourth respondent) was of the opinion that according to Notification No. 121 of 1972, as subsequently amended, all the quantity of vegetable product cleared irrespective of whether the cotton seed oil was used or not, should be taken into account for computing the slab-wise rebate envisaged therein and the method adopted by the first petitioner in arriving at the total quantity of vegetable product was not correct and acceptable to him accordingly by his order dated July 6, 1977 he rejected the two supplementary rebate claims preferred by the first petitioner.

4. Feeling aggrieved by the said order of the Assistant Collector of Central Excise, the first petitioner filed an appeal before the Appellate Collector, Central Excise and Customs, Bombay. The Appellate Collector was of the view that the total quantum of concession available to the first petitioner had to be worked out not for one quantity but for three different quantities for the same period and as such the order passed by the Assistant Collector was erroneous. He accordingly allowed the appeal by his order dated June 17, 1978.

5. In exercise of the powers u/s 36(2) of the Central Excises and Salt Act, 1944, the Additional Secretary to the Government of India issued a show cause notice to the first petitioner on June 7, 1979 calling upon them to show cause why the order passed by the Appellate Collector be not reviewed. After the first petitioner filed a reply to the said show cause notice on June 27, 1979 the Additional Secretary to the Government of India by his order dated August 19, 1981 set aside the order passed by the Appellate Collector and restored the one passed by the Assistant Collector holding that the view taken by the Assistant Collector was correct and the one taken by the Appellate Collector was incorrect.

6. Feeling aggrieved by the order passed by the Additional Secretary to the Government of India, the petitioner-company filed the present writ petition under Article 226 of the Constitution of India.

7. Mr. Shiraj Rustomji, learned Counsel appearing on behalf of the petitioners, urged that the orders passed by the Assistant Collector and Additional Secretary to the Government of India are erroneous and bad in law inasmuch as the entire vegetable product cleared by the petitioner-company cannot be taken into consideration for the purpose of giving exemption under the notifications in question and what should be taken into consideration is only that quantity of the vegetable product in the manufacture of which indigenous cotton seed oil was used. Controverting his arguments Mr. Bulchandani, learned Government Counsel, submitted that if the contention of Mr. Shiraj Rustomji is accepted, the very purpose for which the notifications in question were issued granting exemption to the producers at certain rates for using indigenous cotton seed oil in the manufacture of vegetable product would be defeated inasmuch as the central idea in granting such exemption was to encourage more and more use of indigenous cotton seed oil in the manufacture of vegetable product. Even otherwise, according to Mr. Bulchandani, a plain reading of the notifications shows that the entire vegetable product cleared from the factory in any quarter of a financial year had to be taken into consideration for the purpose of granting exemption as provided in the tables annexed to the notification in question.

8. Now, the first point made by Mr. Shiraj Rustomji is that where the language of the notification is clear, it is to be interpreted as such and no question of policy of the Government be read in it otherwise it would violate the language of the statute. In support of his argument he relied upon a Supreme Court decision in case of Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others, and a decision of Madras High Court in case of Witco Match Works, Kalugumalai and Another Vs. Union of India and Another, . There is no dispute about the legal proposition made by Mr. Shiraj Rustomji but the point is whether the Assistant Collector and the Additional Secretary to the Government of India made mistake in properly reading and interpreting the notifications in question. In my judgment, the Assistant Collector and the Additional Secretary to the Government of India correctly interpreted the notifications for the purpose of giving benefit of the exemption and the one adopted by the Appellate Collector was incorrect. It is important to note that the table appended to the notifications provide for different rates of rebate depending upon the quantity of cotton seed oil used in the manufacture of vegetable product produced and cleared during the prescribed period and as such the total quantity of vegetable product produced and cleared is required to be taken into consideration for determining the percentage of cotton seed oil used. I find no substance in the argument of Mr. Shiraj Rustomji that a bare reading of the notifications shows that only that portion of the vegetable product in the manufacture of which indigenous cotton seed oil was used and cleared from the factory in any quarter of a financial year has to be taken into consideration for calculating the amount of exemption as per the table appended to the notifications for the simple reason that there is no provision in the notifications that only such batches of vegetable products should be taken into

account which have been manufactured by the use of indigenous cotton seed oil contended by Mr. Shiraj Rustomji. It may be noted here that the exemption under the notifications granted to the manufacturers of the vegetable product was with an underlined idea of encouraging use of more and more cotton seed oil and therefore, if only that portion of the vegetable product in the manufacture of which the indigenous cotton oil was used is taken into consideration, the very object sought to be achieved by such notifications would be defeated.

9. Mr. Shiraj Rustomji then argued that in this case the Assistant Collector and the Additional Secretary to the Government of India acted in pursuance of certain clarifications issued by the Government of India which is not permissible in law inasmuch as when an authority is acting in exercise of quasi-judicial power it is not to be guided by the directions of the Central Government and when it does so, such an order gets vitiated. In support of his contention, Mr. Shiraj Rustomji relied upon a Supreme Court decision in a case of Orient Paper Mills Ltd. Vs. Union of India (UOI), and a decision of this High Court in case of Associated Film Industries Pvt. Limited Vs. D.R. Kohli and Others, . Once again the legal proposition made by Mr. Shiraj Rustomji is not in dispute as the law is very clear that a quasi-judicial authority has not to be guided and act under the directions of Government but has to apply its independent mind to resolve the dispute between the parties. It is no doubt true that the Assistant Collector and the Additional Secretary to the Government of India heavily relied on and acted upon certain clarification issued by the Government of India with regard to the notifications in question but apart from such clarification issued by the Government of India, in my opinion, the interpretation given by the Assistant Collector and the Additional Secretary to the Government of India to the notification in question is correct. Therefore, whether or not these authorities were guided by the clarification issued by the Government of India, in my judgment, the correct interpretation of the notifications would be to take into account the entire vegetable product, including so much of the quantity in the manufacture of which indigenous cotton seed oil was used and cleared from a factory in any quarter of a financial year for the purpose of claiming exemption under the notifications. That seems to be the clear and unambiguous meaning of notifications under reference.

10. In this view of the matter, I find no substance in this writ petition which fails and stands rejected. Rule is accordingly discharged but with no order as to costs.

