(1964) 10 BOM CK 0005

In the Bombay High Court

Case No : Misc. Petition No. 188 of 1963

Indian Hume Pipe Company Limited — APPELLANT

Vs

C.D. Morey — RESPONDENT

Date of Decision : 14-10-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1964) 10 BOM CK 0005

Hon'ble Judges : Tarkunde, J

Bench : Single Bench

Advocate : R.J. Joshi, for the Appellant; S.S. Rangnekar, for the Respondent

Judgement

1. The Indian Hume Pipe Co. Ltd., who are the Petitioner, are manufacturers of pipes, pipe fittings known as "Specials" and other equipment made from plate in various shapes. They have filed the present petition under Article 226 of the Constitution for getting quashed certain orders passed by the Inspector of Central Excise and confirmed by the first respondent, who is the Assistant Collector of Central Excise in Bombay.

2. By the Finance Act of 1962, being Act XX of 1962, Iron and Steel products were included in the central excise tariff as item No. 26AA in the First Schedule to the Central Excises and Salt Act, 1944. Sub-item (iv) of Item 26AA was in the following terms :-

"(iv) Pipes and tubes (including Five per cent ad valorem blanks therefore,) all sorts, plus the excise duty for whether rolled, forged, spun, the time being leviable cast drawn, annealed, welded on pig iron or steel or extruded. ingots, as the case may be."

3. Now, the petitioners manufacture certain pipe fittings or Specials such as tapers, tees, bends, Y junctions, bell mouths, sleeves, shoes, collars, etc. By a letter dated 6th November 1962, the Inspector of Central Excise informed the petitioners, on the authority of a communication received from the Central Board

of Revenue, that duty on the pipe fittings "will be recovered at pipes state". Then on 12th December, 1962 the Inspector of Central Excise served a demand notice on the petitioners calling upon them to pay excise duty or Rs. 1,315/37 p. on the value of certain quantities of Specials such as tapers, tees, bends, Y Junctions and a bell mount. The petitioners went in appeal from this assessment order to the Assistant Collector of Central Excise (the first respondent) on the ground that the items of Specials, on the value of which duty was assessee by the Inspector of Central Excise, were not pipes or tubes and were not covered by Tariff Item 26AA(iv). The appeal was rejected on 2nd March 1963 by the Assistant Collector of Central Excise on the ground that the Specials were "correctly assessable for duty under Tariff Item 26AA as pipes". Thereafter, on 28th March 1963, another demand notice was served on the petitioners by the Inspectors by the Inspector of Central Excise and this notice was for a payment of Rs. 1,111/49 p. as excise duty on another group of Specials such as sleeves, shoes and collars. This amount also was paid under protest by the petitioners, who thereafter filed the present petition for setting aside the two demand notices and the appellate decision of the first respondent dated 2nd March, 1963.

4. After hearing Mr. R. J. Joshi for the petitioners and Mr. Rangnekar for the respondents, it has now become clear to me that there was a good deal the misunderstanding on the part of the petitioners as well as the respondents with regard to the basis on which the Specials or pipe fittings could possibly be assessee under Tariff Item 26AA(iv). Although the pipe fittings have been assessee in the demand notices as if they were directly included in the category of "pipes and tubes" specified in Tariff Item 26AA(iv), it is the case of the respondents that these pipe fittings are not pipes or tubes by themselves. What the respondents say is that, during the manufacture of these Specials or pipe fittings, the petitioners had prepared pipes which were subsequently processed into these pipe fittings or Specials and that the petitioners are chargeable to excise duty, not on the value of the Specials or pipe fittings, but on the value of the pipes which went into their manufacture. This position is now clear from paragraph (iii) of the letter of the Central Board of Revenue dated 24th May 1962, which has been reproduced at Exhibit 2 to the affidavit in reply filed on behalf of the respondents. It was on the basis of this letter of the Board of Revenue that the Inspector of Central Excise wrote to the petitioners on 6th November 1962 that duty on pipes fittings would be "recovered at pipes stage". But it is clear that, on the one hand, the petitioners did not understand what exactly was implied by that expression, and that, on the others, the Inspector of Central Excise himself processed to levy excise duty, not on the value of the pipes which, according to him, went in to the manufacture of the pipe fittings, but in the value of the pipe fittings themselves.

5. In view of the clarification, which has now been made, two grievances of the petitioners survive. Firstly, the petitioners did not have a proper opportunity of showing to the Excise Officers concerned that the pipe fittings, or some of them, were not prepared from pipes at all. It the pipe fittings were prepared, for

instance, from plate without first converting the plate into a pipe, then obviously the pipe fittings cannot be subjected to an excise duty under Tariff Item 26AA(iv). Secondly, even in the case of pipe fittings which have been prepared from pipes, the amount of excise duty ought to be calculated, not on the value of the pipe fittings, but on the value of the pipes that went into their manufacture. This admittedly has not been done in the case of at least some of the pipe fittings.

6. Accordingly, the demand notice dated 12th December 1962, the appellate decision of the first respondent dated 2nd March 1963 and the demand notice dated 26th March 1963 (being parts of Exhibits C, D and E to the petition) are set-aside. The respondents will proceed to re-assess the excise duty payable by the petitioners under Tariff Item 26AA(iv) after giving them an opportunity to show that any of the Specials or pipe fittings were not prepared from pipes, and, after assessing the value of the pipes, if any, which had gone in to the manufacture of the Specials or pipe fittings.

7. In the circumstances, there will be no order as to costs of this petition.