

(2010) 10 SC CK 0109

In the Supreme Court Of India

Case No : Civil Appeal No's. 7041-7043 of 2002

Indian Oil Corporation Ltd.

APPELLANT

Vs

Commissioner of Central Excise, Vadodara

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q

Central Excises and Salt Act, 1944 — Section 11A, 35L, 4

Citation : (2010) AIRSCW 6811 : (2010) 181 ECR 101 : (2010) 11 JT 581 :
(2010) 11 SCALE 215 : (2010) 12 SCC 750 : (2010) 7 Supreme 963 : (2010) 9
UJ 4741

Hon'ble Judges : T. S. Thakur, J;D. K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

D.K. Jain, J.—These civil appeals u/s 35L(b) of the Central Excise Act, 1944 (for short "the Act) are directed against the order dated 21st January 2002 passed by the Customs, Excise & Gold (Control) Appellate Tribunal (for short "the Tribunal), as it then existed, whereby it dismissed the appeal filed by the appellant, denying it the benefit of concessional rate of Excise duty under Notifications No. 5/98-CE and 5/99-CE.

2. Shorn of unnecessary details, the facts material for the adjudication of these appeals, may be stated thus:

The appellant viz. M/s Indian Oil Corporation Ltd, a public sector undertaking, hereinafter referred to as the assessee, is manufacturer of petroleum products, including "superior kerosene" classified under Chapter sub-heading 2710.90 of the Central Excise Tariff Act, 1985 (for short "the Tariff Act").

3. By virtue of Notification No. 5/98-CE dated 2nd June 1998 certain excisable goods were brought under General Exemption No. 66, and a certain category of kerosene products were made subject to concessional rate of duty. It would be

expedient to extract the relevant portions of the said notification:

S. No.

Chapter or heading No. or subheading No.

Description of goods

Rate

Conditions

(1)

(2)

(3)

(4)

(5)

27.

27

Kerosene, that is to say, any hydro-carbon oil (excluding mineral colza oil and white spirit) which has a smoke point of 18mm or more (determined in the apparatus known as smoke point lamp in the manner included in the Bureau of Indian Standards Specification ISI: 1448 (p.31)-1968 as in force for the time being) and is ordinarily

10%

4. Thereafter, vide Notification No. 5/99 dated 28th February 1999, the rate of excise duty on the kerosene products envisaged under Notification No. 5/98-CE, was reduced to 8%. The relevant portion of the said notification reads as follows:

S. No.

Chapter or heading No. or subheading No.

Description of goods

Rate

Conditions

(1)

(2)

(3)

(4)

(5)

28.

27

Kerosene, that is to say, any hydro-carbon oil (excluding mineral colza oil and white spirit) which has a smoke point of 18mm or more (determined in the apparatus known as smoke point lamp in the manner included in the Bureau of Indian Standards Specification ISI: 1448 (p.31)-1968 as in force for the time being) and is ordinarily used as an illuminant in oil burning lamps

8%

5. The assessee claimed the benefit of concessional rate of duty under Notification No. 5/98-CE for their kerosene products in their declaration effective from 2nd June 1998. Subsequently, in their declarations effective from 28th February 1999 and 4th August 1999 respectively, they claimed benefit of concessional rate of duty under Notification No. 5/99. It is pertinent to note that during the period 1998-99 and 1999-2000, the tariff rate corresponding to Chapter sub-heading 2710.90 was 15% and 16% respectively.

6. The Excise department issued three show cause notices to the assessee, dated 31st March 1999, 12th July 1999 and 19th November 1999, for the periods September, 1998 to February 1999, March to April 1999 and May to September 1999, respectively; proposing to recover the amounts of '86,089/-, '1,46,731/- and '47,012/- respectively for the said periods.

7. On 18th April 2000, the Assistant Commissioner passed a common order in respect of the said three show cause notices, whereby he confirmed the demand of '2,79,832/- u/s 11A of the Act, holding that the benefit of concessional rate of duty under the said Notifications cannot be extended to kerosene products sold and used for industrial purposes. The Assistant Commissioner also imposed a penalty of '10,000/- under Rule 173Q of the Central Excise Rules, 1944.

8. Aggrieved by the said order, the assessee preferred an appeal before the Commissioner (Appeals), which was dismissed by order dated 29th November 2000. The penalty was, however, deleted by the Commissioner (Appeals).

9. The assessee, thereafter, carried the matter in appeal before the Tribunal. As afore-noted, the Tribunal has, vide the impugned order, dismissed the appeal of the assessee, inter alia, holding that:

8. The Notifications were, obviously, meant to be beneficial to the economically backward masses of people in our country insofar as the kerosene-related provisions were concerned. The Notifications provided concessional rates of duty in respect of kerosene which was ordinarily used as illuminant in oil burning lamps....

....

In other words, the stock was ordinarily used as illuminant in oil burning lamps

and the benefit of the notifications was rightly extended to the kerosene cleared through the PDS to domestic consumers....

....

9. The subject matter of this case is the stock of kerosene which the appellants cleared to industrial users during the period of dispute, on payment of duty at the concessional rates under the notifications. The appellants have estimated such clearances at about 1% of their total production of kerosene of the said period. The appellants have no case that any part of the said stock was used as illuminant in oil burning lamps. They have not contested the fact that the entire quantity was used for industrial purposes. It follows that the said stock of kerosene did not satisfy the description ordinarily used as an illuminant in oil burning lamps and therefore did not attract the benefit of the notifications. The fact that about 99% of the total production of kerosene was ordinarily used as illuminant in oil burning lamps is not determinative of the question whether the remaining 1% (which was cleared to industrial users) was ordinarily used as illuminant in oil burning lamps. Whether the kerosene cleared to industrial users was suitable for use in oil burning lamps as illuminant is also not relevant to the said question....

We are also not impressed by the learned DR's argument that the word "ordinarily" used in the notifications should be understood in the same way as that word used u/s 4 of the CE Act.

10. Hence, the present appeals.

11. Mr. Alok Yadav, learned Counsel appearing on behalf of the assessee, assailed the judgment of the Tribunal on the ground that the conditions mentioned in the notifications relate only to the quality of the kerosene, which should be such that it is capable of illumination, and the said conditions do not relate to the end-user of the kerosene. Therefore, it is immaterial for the purposes of the said notifications that the kerosene was cleared to industrial users, as long as the said kerosene was capable of illumination in oil burning lamps. Commending us to the decision of this Court in *Commissioner of Customs, Mumbai v. J.D. Orgochem Ltd.* (2008) 16 SCC 576 and the decision of the Gujarat High Court in *Viswa and Co. v. The State of Gujarat* (1966) 17 S.T.C. 581, learned Counsel contended that the word "ordinarily" used in the notifications means "in the majority of cases, but not invariably", and therefore, the fact that 1% of the kerosene manufactured by the assessee was cleared to industrial users does not change the fact that most of the kerosene manufactured by the assessee was cleared to the Public Distribution System (for short "PDS").

12. Per contra, Mr. P.P. Malhotra, learned additional Solicitor General, while supporting the impugned judgment, strenuously urged that the twin conditions contemplated in the notifications should be fulfilled for attracting the concessional rate of duty, and therefore, the assessee could not claim the benefit of the said notifications as kerosene was supplied to industrial consumers.

13. It is manifest that the object of providing concessional rate of duty on kerosene used for illuminating burning oil lamps was to provide some relief to those economically backward sections of society who use kerosene for illumination and other domestic purposes, and therefore, the benefit of concessional rate of duty was available only on the kerosene cleared by the assessee to the PDS.

14. In relation to the import of the expression "ordinarily" used in the said notifications, it would be instructive to refer to the observations made by this Court in Union of India (UOI) and Another Vs. Hemraj Singh Chauhan and Others, , wherein it was held that:

The word "ordinarily" must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used." (See also: Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah,).

15. Similarly, in State of A.P. Vs. V. Sarma Rao and Others Etc. Etc., , this Court held that:

The expression "ordinarily" may mean "normally", as has been held by this Court in Kailash Chandra Vs. Union of India (UOI), and Krishan Gopal Vs. Sri Prakashchandra and Others, but, the said expression must be understood in the context in which it has been used.

16. Therefore, in light of the object and context of the notifications, it becomes abundantly clear that the word "ordinarily" implies that the kerosene must be ordinarily used for illumination purposes, and it would be immaterial if the kerosene is also used for other domestic purposes.

17. From a bare perusal of the two notifications it is plain that the benefit of concessional rate of duty extends only to that variety of kerosene that: (i) has a smoke point of 18mm or more, and (ii) is ordinarily used as an illuminant in oil burning lamps. It is manifest that these two conditions are conjunctive, and therefore, the twin conditions need to be satisfied in order to avail of the concessional rate of duty. In the instant case, the fact that the assessee cleared kerosene manufactured by it to industrial consumers would entail that the assessee cannot claim the benefit of Notifications No. 5/98-CE and 5/99-CE.

18. In light of the foregoing discussion, the impugned order of the Tribunal cannot be flawed, and deserves to be affirmed and we order accordingly. Resultantly, the appeals, being devoid of any merit, are dismissed with costs, quantified at '20,000/-.