(1996) 04 GUJ CK 0011

In the Gujarat High Court

Case No : Spl. C.A. No''s. 8580, 8730, 9034, 9035 and 9036 of 1995

Indichem APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-04-1996

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2, 37B

Citation : (1996) 88 ELT 35

Hon'ble Judges : R.M. Doshit, J;B.C. Patel, J

Bench : Division Bench

Advocate : Paresh M. Dave, Kamal B. Trivedi and V.M. Joshi, for the Appellant; J.D. Ajmera, for the Respondent

Judgement

B.C. Patel, J.—In all these petitions the petitioners have challenged the issuance of a circular/order. Annexure ''D'' to the petition, issued u/s 37B of the Central Excises and Salt Act, 1944 by the Central Board of Excise and Customs.

2. Learned Advocates have stated that as facts and questions raised are common in all the cases, all the matters can be disposed of together, and accordingly, we have taken the facts from SCA No. 9034/95, and the aforesaid matters are disposed of by a common judgment.

3. Respondent No. 2 Central Board of Excise and Customs issued a circular, Annexure ''D'' to the petition, in exercise of the powers conferred u/s 37B of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) for the purpose of ensuring uniformity in classification and practice of assessment of the said goods, the Board directed that the addition of chemicals and other ingredients like inert carriers or solvents and also surface active dispersing and stabilizing agents to pesticidal chemicals in highly concentrated form would amount to "manufacture" within the meaning of Section 2(f) of the Act since it results in the emergence of a new and distinct product having different properties, viz., pesticide/insecticide fit for direct use.

4. Short facts are as under :-

Petitioners are engaged in the business of pesticides formulations and are trading the same. Petitioners are engaged in the activity of purchasing concentrated pesticides from outside market and thereafter they are diluting the same with the help of suitable diluents. It is contended by the petitioners that except the process of diluting a technical grade of pesticides, no other process is being undertaken by the petitioners; that no new product with a distinguished name, character and use comes into existence, since pesticides originally purchased from the market remain to be pesticides even after the process of dilution with the same chemical identity, character and use. It is contended by the petitioners that formerly they were paying the excise under strong objection. However, later on, in view of trade notice dated 8-2-1995, wherein it was indicated that processing of concentrated basic pesticidal chemicals carried out through addition of solvent, adjuvants, etc. resulting in their dilution does not amount to manufacture for the purpose of Section 2(f) of the Act, and considering the factual and legal position, several other Commissionerates in the county issued similar Trade Notices and were accepted in the field.

5. The question whether processing of concentrated basic pesticidal chemicals carried out through addition of inert carriers/solvent and dispersing and stabilizing agents resulting in their dilution amount to manufacture or not came up before the Central Excise and Gold Appellate Tribunal (CEGAT), Special Bench ''C'', New Delhi and the Tribunal in its decision reported in 1994 (50) ECR 417 , considering similar case, held that the same does not amount to manufacture''. In that case, the process carried out by the assessee mainly comprised of diluting concentrated basic pesticidal chemicals in question through addition of inert carriers/solvents and dispersing and stabilizing agents. It was contended that after such process, the products were marketed as MALATHION DDT, ALDRIN and SOHNAGAR. It was contended that no duty was chargeable on the products since the basic chemicals used were duty paid and the process carried out did not constitute ''manufacture'' within the meaning of Section 2(f) of the Act since there was no transformation resulting in the emergence of any new or different article having distinctive name, character and use. After considering the decisions of the Bombay High Court and the Apex Court, the Tribunal held that the processing of concentrated basic pesticidal chemicals in question carried out by the respondents through addition of inert carriers/solvents and dispersing and stabilizing agents resulted only in their dilution rendering them suitable for use either directly or after addition of water and formulations retained the name of the basic chemicals. The Tribunal further held that no new product having distinctive name, character and use appeared as a result of such process and held that the process carried out by the respondents did not amount to ''manufacture'' within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944.

6. In these proceedings, this Court is not called upon to decide whether the

process being carried out by the petitioners amount to ''manufacture'' or not but this Court is called upon to decide the validity of circular in the light of the decision rendered by the Tribunal.

7. It appears that the trade notice at Annexure ''C'' was accepted by all concerned, till annexure ''D'' came to be issued. Learned Advocate contended that by issuance of this trade notice, the Board has exceeded its limit and should not have sit in appeal over the decision rendered by the Tribunal. It was open for the department to move either the High Court or the Hon''ble Supreme Court to get the correctness decided, but having not done so, the effect must be given to the decision rendered by the Tribunal. Learned Advocates have placed reliance on the decision of the Apex Court in the cases reported in The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, and Union of India and others Vs. Kamlakshi Finance Corporation Ltd., .

8. Section 37B of the Act reads as under :-

"37-B. Instructions to Central Excise Officers. -

The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963) may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board :

Provided that no such orders, instructions or directions shall be issued,

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Collector of Central Excise (Appeals) in the exercise of his appellate functions."

This section empowers the Board to issue circulars for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods. Certainly, this section does not authorise the Board to issue directions which is contrary to the decision rendered by the Tribunal. Mr. Ajmera, learned Advocate could not point out anything which would suggest that the Board has such powers or that the Board was justified in issuing such circulars. It may be that the Board may not be in agreement with the view taken by the Tribunal. Then in that case, the Board may carry the matter in appeal but once the decision has become final by issuing circular, the decision rendered by the Tribunal cannot be made to be nugatory.

9. In the result, the Order No. 40/2/95-CX issued by the respondent No. 2 at Annexure ''D'' to the petition is required to be quashed and set aside, and is hereby quashed and set aside. Rule made absolute to that extent.

10. All the petitions are allowed accordingly. No order as to costs.

