
(1987) 07 AP CK 0002
In the Andhra Pradesh High Court

International Packing Industry

APPELLANT

Vs

Central Board of Excise and Customs

RESPONDENT

Date of Decision : 23-07-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (1989) 19 ECC 9 : (1987) 32 ELT 317

Hon'ble Judges : K. Bhaskaran, C.J.; S.S. Mohammed Quadri, J

Bench : Division Bench

Judgement

K. Bhaskaran, C.J.—The petitioner is the International packing Industry, predator, Respondents 1 to 3 are the Central Board of Excise and Customs, New Delhi, the collector of Central Excise, Hyderabad, and the Assistant Collector of central Excise, Anantapur, respectively. The Writ petition is for the issue of a writ of certioraris quashing order No. 278/BB of 1981 dated 30-4- 1981 passed by the 1st respondent modifying the order of the 2nd respondent in Adjudication Order No. 28 of 1980 dated 29-7-1980 and for other allied reliefs.

2. The petitioner is a packing industry manufacturing, among other things, laminated gunny bags. The question that falls for decision is whether laminated gunny bags manufactured by the petitioner-industry would fall under Item No. 68 or under Item No. 22A of the First Schedule to the Central Excise and salt Act, (for short, `the Act`).

3. The short facts relevant for the purpose of the disposal of the writ petition are : During the financial year 1978-79, the petitioner had manufactured laminated Jute bags, the value of which exceeded. Rs. 30,00,000/-. A show-cause notice was issued by the 3rd respondent Assistant Collector of Central Excise in 22-2-1980 as to why penal action under Rule 173-Q should not be taken and excise duty under Rule 992) of the Central Excise Rules, 1984 (for short, "the rules") should not be levied on the petitioner-industry. The petitioner-industry filed its reply on 21-3-1980 contending inter-alia that it was not necessary for it to take a licence or to pay excise duty treating the goods as

falling under Item No. 68 of the First Schedule to the Act. The further contention raised was that, in any event, the demand was barred by limitation u/s 11A of the Act, inasmuch as, admittedly the relevant date viz., the date of clearance was on or before 31-3-1979 and notice by the Assistant Collector of Central Excise had been issued only on 22-2-1989. The Collector of Central Excise disposed of the matter levying a fine of Rs. 5,000/- for not having taken a licence; and penalty of Rs. 50,000/- for having cleared the goods without paying the excise duty of Rs. 1,50,277/- which was considered to be the duty payable for the goods manufactured in excess of the goods valued at Rs. 30,00,000/- inasmuch as under Notification No. 176/77 dated 18-6-1977, the goods of the value of Rs. 30,00,000/- was amenable to excise duty. It might also be noticed that, by Notification No. 111/78 dated 9-5-1978, no licence was required if no duty was payable.

4. The 1st respondent, the Central Board of Excise and Customs, by its order dated 30-4-1981, allowed the appeal in part by reducing the fine of Rs. 5,000/- to Rs.1,000/- and totally deleting the penalty of Rs. 50,000/- imposed for clearing the goods without payment of duty while affirming the duty Rs. 1,50,277/- levied by the Collector Central Excise.

5. Aggrieved by the order of the 1st respondent, the petitioner has filed this Writ Petition.

6. The learned counsel for the petitioner, Shri. Jogayya Sarma, has raised the contentions before us (1) the gunny bags manufactured by the petitioner-industry would fall under Item No.22A of the First schedule and as such, the petitioner being a manufacturer of gunny bags with jute purchased from outsiders, it was not liable to pay any duty because the goods had already suffered excise duty at the hands of the person, who produced it and sold it to the petitioner; and (2) in any event, the claim was barred by limitation in view of the provisions contained in Section 11A of the Act, which lays down a period of six months as the period within which proceedings are to be initiated for short levied or non-levy etc. He also submitted that even the proviso to Section 11A could not be invoked because, in the show- cause notice, it was not specifically stated that the petitioner had suppressed the fact relating to the production and clearance of the goods in question.

7. In regard to the first question as to whether the goods involved in this case fall under Item No. 22A or Item No. 68 of the First Schedule to the Act, there had been considerable debate at the Bar; the learned counsel for the petitioner maintaining that it clearly fell under Item No. 22A, while the learned Central Government Pleader took the stand that it would not fall under Item No. 22A, but would fall under Item No. 68. For the purpose of clarity and precision, we would quote Item No. 22/a and Item No. 68 of the First Schedule.

"22A : Jute manufactures (including manufactures of Bimlipatam Jute or of Mesta Fibre) all sorts, not elsewhere specified in which jute (including Bimlipatam Jute

or Mesta fibre) predominates in Weight.

EXCISE LAW TIMES

(1) Hessians Six hundred rupees per metric tonne.

(2) Others Six hundred rupees per metric tonne

68. All other goods not elsewhere Eight per cent Ad Specified, excluding valorem

(a) Alcohol, all sorts, including alcoholic liquors from human consumption

(b) Opium, Indian hemp and other narcotic drugs and narcotics; and

(c) Dutiable goods as defined in Section 2(c) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955)"

On a close reading of item No. 22A we are inclined to hold that the goods in question could fall under Item No. 22A. The expression "Jute manufactures", in our view, not only takes in jute or Mesta Fibre, but also other goods, inasmuch as that item itself makes it clear that it is comprehensive enough to include all sorts of jute manufactures not elsewhere specified and in respect of which jute predominates in weight. The very expression "jute predominates in weight" used in Item No. 22A leads to the inference that that item within its fold take in not only jute as such or jute manufactures made of jute alone, but also other jute as such or jute manufactures made of jute alone, but also other jute manufactures of which one of the components is jute, provided it (jute) predominates in weight. The true test, therefore, to ascertain whether a particulate jute manufacture falls within the ambit of Item No. 22A is whether jute predominates in weight; and whether it has been elsewhere specified in the schedule. In case the jute manufacture is one not elsewhere specified and in it jute predominates in weight, it squarely falls within Item No. 22A.

8. The learned Central Government Pleader argued that laminated jute bag has on identity its one separate from from jute as such; and it being the result of a manufacturing process in which not merely jute but other components also are involved, it could not be treated as "jute manufacture" falling under item No. 22A of the Schedule. May be that jute or jute fabric might be different from jute bags, but that difference is of little relevance, and cannot be the deciding factor as to whether or not the goods falls under item No. 22A. As already discussed and found, the real test is whether the description of the goods is such that it would fall within the ambit of Item No. 22A. In this case, it could not be disputed that it is a product in which one of the compounds is jute; jute predominates in weight; and it is not elsewhere specified in the schedule. If the goods in question answers the description attributed to "jute manufacture in item No. 22A, the fact that there is difference in form or name of the goods would not take out one or the other from the ambit of Item No. 22A so long as each one of them answers the description attributed to jute manufacture in that item.

9. The learned Central Government Pleader on behalf of the respondent placed in

our hands the notification of the Central Government signed by the Deputy Secretary to the Government of India, dated 6-6-1979, which reads as follow :-

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government exempts Laminated Jute hags falling under Item No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) from the whole of the duty of excise leviable thereon. The object of the learned Central Government Pleader in placing this notification in our hands was to contend that it was under that notification the Central Government exempted laminated jute bags from the whole of the duty of excise leviable thereon; and in the very notification laminated jute bags having been described as goods falling under item No. 68 of the First Schedule, it must be presumed that it fall under Item No. 68, not under Item No. 22A. If on a true interpretation of the expressions used in Item No. 22A, we find that laminated jute bags fall within that item and merely for the reason that the Government in the notification granting exemption of excise duty, described it as one falling under Item No. 68, it would not either cease to be one falling under Item No. 22A or became one falling under item No. 68. The object of the notification was only to exempt the whole of the duty of excise leviable on laminated jute bags; whether it fell under any particular item was not real consequence; it does not appeal that the government described it as one falling under Item No. 68 after due and proper application of mind on the question.

10. Now that we find that the goods would fall under Item No. 22A of the First Schedule of Act; and that whatever duty was payable must have been paid by the manufacturer of the jute; who sold the jute to the falling under Item No. 68, it is not necessary for us to consider the question pertaining to limitation. We do not, therefore, pronounce anything on the merits of the second point raised by the learned counsel for the petitioner with respect to that.

11. For the foregoing reasons, the Writ Petition is allowed quashing the order of the first respondent to the extent it was detrimental to the petitioner and to the extent it was object to in the Writ petition. There would be no order as to costs.