
(1976) 07 GUJ CK 0001

In the Gujarat High Court

Case No : Special Civil Application No. 1398 of 1973

Iron Rolling Mills (Pvt.) Ltd.

APPELLANT

Vs

V.C. Ghose, Assistant Collector, Central Excise, Ahmedabad

RESPONDENT

Date of Decision : 15-07-1976

Acts Referred:

Central Excise Rules, 1944 — Rule 10 , 233

Central Excises and Salt Act, 1944 — Section 35

Citation : (1976) 07 GUJ CK 0001

Hon'ble Judges : S.Obul Reddi, J;P.D. Desai, J

Bench : Division Bench

Judgement

P.D. Desai, J.—This petition is directed against an order dated July 20, 1973 Annexure "J" made by the Assistant Collector of Central Excise, Division I, Ahmedabad holding that excise duty in the sum of Rs. 18216.09 was erroneously refunded to the petitioner and that the petitioner should forthwith pay back the said amount to the excise authorities. The said order purports to have been made under Rule 10 of the Central Excise Rules, 1944. In order to appreciate the point which arises for our determination, it would be necessary to state a few facts.

2. The petitioner manufactures certain iron and steel products in its mill which is of the type known as Bar mill/Merchant Mill. There is a controversy between the parties as to the nature and character of those products. The petitioner contends that its products are known as "Bars" and that they are manufactured in different shapes such as round bars, square bars, flat bars etc. and that they are not subject to excise duty. The Excise authorities content on other hand that the products manufactured by the petitioner are "hoops" and that they are subject to excise duty. The relevant tariff items under which excise duty, if any, if leviable is Item 26AA of the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act").

3. During the period March 20, 1965 to May 24, 1967 the petitioner cleared its

products from the factory on payment of excise duty under item 26AA(iii) describing the products so cleared as "strips" and "flats" in the relevant assessment forms. The excise duty was paid under protest. The petitioner subsequently submitted a refund claim for the amount of Rs. 65,613.74 by its letter dated September 15, 1967 in respect of goods cleared by it during the period March 1, 1965 to July 11, 1967. The refund claim was found to be in order by the Assistant Collector of Customs in respect of certain products. However, in respect of other products, on the basis of their thickness, it was prima facie found that the refund claim was not admissible. Under the circumstances, the petitioner was advised to resubmit the refund claim in two lots. Thereafter the petitioner submitted by its letter dated December 19, 1967 its refund claim for Rs. 47,399.69 in the prescribed form reserving its right to claim refund in respect of other products. The other refund was sanctioned to the extent of Rs. 41,699.65. Thereafter the petitioner again submitted on November 5, 1969 a separate claim for refund of the amount of Rs. 18,216.09 in the prescribed form. This claim was in respect of the products which were cleared during the period March 20, 1965 to May 24, 1967 and it was confined to products which were cleared on payment of duty under protest describing such products as "strips" and "flats". The thickness of these products was of 3 mm to 1 mm. Thereupon the Assistant Collector of Excise issued a show cause notice dated March 20, 1972 to the petitioner asking it to show cause as to why its claim should not be rejected because of the fact that the concerned products appeared to be not "flats" and "bars" as per the specifications indicated in the Customs Tariff Guide. The petitioner made its representation and after considering the same the Assistant Collector sanctioned the petitioner's claim for refund. Within a few months thereafter, however, on November 9, 1972 the Assistant Collector of Central Excise, Division I, Ahmedabad, issued a show cause notice (Annexure "G") calling upon the petitioner to show cause why the amount which was refunded as aforesaid should not be recovered from it on the following grounds :

(1) The Iron and steel products viz. Hats in respect of which the refund aforesaid has been granted were not covered under Tariff Item No. 26AA (ia) with effect from 1-3-1966 in respect of which exemption was granted under Notification No. 206/63, dated 30-11-1963 as amended from time to time.

(2) The Iron and steel products viz. flats in respect of which the refund aforesaid has been granted did not conform to the description of flats given in the Customs Tariff Guide made applicable in this regard under Collectorate Trade Notice No. 106/67, dated 21-6-1967.

4. Pursuant to the said show cause notice the petitioner made written representation on December 18, 1972. Ultimately the impugned order was passed on July 20, 1973 and the petitioner was directed to pay back the amount which was refunded to it earlier by the excise authorities.

5. Now there are two grounds on which the impugned action based on the show cause notice at Annexure "G" required to be quashed and set aside. The first is

that in ground (1) of the said show cause notice it has been stated that the goods in respect of which the refund was granted were not covered under Tariff Item No. 26AA (ia) with the effect from March 1, 1966 and that, therefore, the exemption notification under which the refund was granted itself was not applicable. Even assuming that from March 1, 1966 the goods in question were not covered by Item No. 26AA(ia), the entire amount refunded could not have been claimed back from the petitioner by the excise authorities, for the period for which the refund was granted was from March 23, 1965 to May 24, 1967. Therefore, the refund granted for the period from March 23, 1965 to March 1, 1966 could not have been claimed back from the petitioner on the said ground. The second ground on which the impugned action has been assailed, and in our opinion rightly assailed, is that the impugned action is based upon the Trade Notice dated June 21, 1967 (Annexure "B"). This is apparent from the second ground set out in the show cause notice at Annexure "G" and the impugned order. The words "flats, bars, hoops, strips etc." occurring in Entry 26AA have not been defined in the Act. No identifiable standard to distinguish between these various products has been laid down in the relevant entry or anywhere else in the Act. It is only by means of the trade notice that some supplementary material was supplied to the traders as well as the excise authorities by the Collectorate of Central Excise, Baroda. Such trade notice cannot supplement the entry which is enacted in exercise of legislative powers.

6. In *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, it has been ruled that the power of assessment of excise duty is a quasi judicial power and that it has to be exercised by the person designated. Such power cannot be controlled by directions issued by higher authorities. There is no provision in the Act empowering to issue directions to the assessing authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. The only authorities who can issue directions are those named in Rule 233 of the Central Excise Rules 1944. Under that rule instructions could be issued only relating to administrative matters. Any other construction of the said rule would render it ultra vires Section 35 of the Act. This decision supports the view which we are taking herein.

7. The conclusion is inevitable, therefore, that Collectorate of Central Excise, Baroda's instructions are issued, they would not be binding on the subordinate authorities. Under the circumstances, the impugned action in so far as it is solely or even partly based on such instructions issued by the Collectorate of Central Excise, Baroda is vitiated. In our opinion, therefore, the petitioner must succeed on these two grounds and we are not required to go into the other questions. The impugned decision must accordingly be quashed and set aside.

8. We wish to make it clear, however, that it would be open to the excise authorities, subject to the provisions of the Act, to issue a fresh notice on legal and permissible grounds for recovery of the amount which according to them has been erroneously refunded and that this judgment will not come in their way in

doing so.

9. The petitioner accordingly succeeds. Rule made absolute in terms aforesaid with no order as to costs.