

(1975) 10 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Petitions No's. 1591, 1592 and 1607 of 1967

Jain Soap Mills

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-10-1975

Acts Referred:

Citation : (1979) 4 ELT 147

Hon'ble Judges : T.P.S Chawla, J

Bench : Single Bench

Judgement

T.P.S. Chawla, J.—There are three petitions under Articles 226 and 227 of the Constitution of India before me. The petitioner in each of them has been manufacturing soap for the last many years. For diverse periods falling between September 1962 and 29th February 1964, the petitioners were required to pay excise duty on the soap manufactured by them at a rate higher than that which they considered was applicable. Nevertheless, they paid by duty demanded, under protest, and then applied for the refund of what the alleged to be the excess. The Assistant Collector of Central Excise rejected their claims. Appeals to the Collector of Central Excise, and petitions for revision to the Central Government were dismissed. The petitioners seek to have all these orders quashed, and pray for directions to be issued to the Union to refund the amounts over-charged.

2. The only question requiring determination in these cases is whether the petitioners have been charged excise duty at the correct rate for the periods to which the dispute relates. The rates of duty chargeable on soap are specified in item 15 of the First Schedule to the Central Excise and Salt Act, 1944. By two sub-items under this item, soap is divided into two broad classes for purposes of levying the duty : (1) that "in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power or of steam for heating", and (ii) that in the "manufacture of which" no such "process" is involved. Different rates of duty are prescribed for these two classes. There are further

sub-divisions of the classes which are not presently relevant. Of course, the rates of duty applicable to both the classes have been altered from time to time.

3. In exercise of the powers conferred by the Act, the Central Government made the Central Excise Rules, 1944. Rule 8 authorises the Central Government to "exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of duty livable on such goods". It is admitted that till 1962, none of the petitioners was required to pay excise duty on the soap manufactured by them. This was because each of the petitioners produced less than one hundred tons of soap in a financial year, and there was a notification then in force which exempted soap "in or in relation to the manufacture of which no process has been carried on with the aid of power or steam for heating" if the quantity produced was less than that amount.

4. On 24th April 1962, another notification was issued superseding the earlier one. It reduced the rate of duty, chargeable under item 15 of the First Schedule to the Act, on soap "in or in relation to the manufacture of which no process has been carried on with the aid of power or steam for heating" if the quantity produced by a manufacturer was between 100 to 300 tons in a financial year. At this time, each of the petitioners had begun to produce more than 100 but less than 300 tons. They maintain that they were entitled to the benefit of this notification.

5. Yet another notification was issued on 1st March, 1964. It exempted soap "in or in relation to the manufacture of which no process has been carried on with the aid of power or of steam for heating and falling under sub-item II of item No. 15 of the First Schedule to the Central Excises and Salt Act, 1944 (I of 1944), from the whole of the duty of excise livable thereon". Again, it is admitted that ever since this notification was issued, none of the petitioners has been required to pay excise duty.

6. An important admission is made in paragraph 17 of the affidavit filed on behalf of the respondents. There it is said : "The petitioner's concern was at no stage treated as a manufacturer of soap with the aid of power or steam". Presumably, it was because this condition was fulfilled that the petitioners were held exempt from the payment of duty under the notification in force prior to 1962 and that in force from 1st March 1964. The words of qualification used in these two notifications are verbatim the same as those in the notification of 24th April 1962. Nonetheless, the petitioners were held not entitled to the reduced rate of duty permissible under the latter. In their orders, the reason given by the Assistant Collector and the Collector is that the petitioners had used "soap stock" in manufacturing their soaps, and since power had been used in manufacturing the soap stock in the factory from which the petitioners had purchased it, the soaps produced by them must be treated as having been produced with the aid of power. The orders of the Central Government are laconic and merely say that there is "no justification for interfering with the order-in-appeal". So it is legitimate to infer that the Central Government agreed with the reason given by

the authorities below.

7. To begin with, it is worth observing that if the reason given by the excise authorities was sound, then for the self-same reason the petitioners ought not to have been exempted from the payment of duty prior to 1962 and after 1st March 1964. It was not suggested on their behalf that any mistake had been made in granting the exemption for these periods. And, there appears no reason for supposing that soap stock had not been used by the petitioners for manufacturing their soaps throughout. If the facts were otherwise, one would expect the Assistant Collector or the Collector to say something on the point

8. But, in any event, I think that the very basis of their orders, and those of the Central Government, is fallacious. In a monograph of "Soaps" by JG. Kan (1959 edition) the raw materials used for making soap are described in Chapter IV. They are water, alkalis, fats, fatty acids and soap stock : resin and tall oil, builders filters and auxiliary substances. Soap stock", it is explained in page 60 is obtained as a by-product in the refining of oils and fats". In a booklet entitled "Supplement to the Manual of Departmental Instructions on Manufactured Excisable Products", issued by the Central Board of Revenue in 1960, which deals, with soap, it is said on page 27 that "Soap stock" is a product which contains appreciable amounts of soap". However, "it is not in a condition suitable for direct consumer use. In other words, it is an intermediate stage before the final soap."

9. For the purpose of deciding whether the notification of 24th April, 1962 applied to the petitioners, I think it is immaterial whether soap stock be regarded as a "raw material" for soap or as an "intermediate" product, on its plain words, the notification is concerned only with the processes carried on by the manufacturer who produced the soap sought to be charged with duty. The soap referred to is that "cleaned for home consumption by any manufacturer". Anterior processes, by which the ingredients of that soap were manufactured by other manufacturers, are beyond the ken of the notification. Hence, one must confine one's attention to the activities of the manufacturer in whose hands the soap is subjected to duty.

10. There is no warrant in the words of the notification for injecting into it any wider or deeper consideration of the question whether power or steam have been used in the process of manufacturing the soap. A somewhat similar attempt to introduce extraneous ideas in applying a notification exempting aluminium products from duty under the Act, was castigated by the Supreme Court in an unreported case entitled Aluminium Corporation of India Ltd. v. Union of India and Ors., decided on 22nd August, 1975 1978 E.L.T. 452. The futility of the view canvassed on behalf of the excise authorities is at once apparent when it is remembered that many, if not most, of the other ingredients of soap are also prepared by the use of power or steam : for example alkalis. On their view there would be no kind of soap which would be covered by any of the notifications, or, indeed, even by sub-item II of item 15 of the First Schedule to the Act. In the

extreme, it could possibly be argued that even water used in the manufacture of soap had itself been produced by the use of some power or steam. That demonstrates the absurd results which would follow if the view of the excise authorities were accepted. Thus, in my opinion, on its proper interpretation the petitioners were entitled to the benefit of the lower rate of duty prescribed by the notification of 24th April 1962.

11. Furthermore, the orders made by the Central Government would have to be quashed on the short ground that they give no reasons. In *Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others*, , it was said :

"The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law".

Regretfully the Supreme Court recounted its earlier decisions in which it had made similar protests. Having regard to these authorities, the orders made by the Central Government cannot be allowed to stand.

12, For these reasons, the orders made by the Assistant Collector, the Collector, and the Central Government, are quashed, and these petitions, are allowed with costs. The respondents will refund forthwith the amounts collected from the petitioners in excess of the duty chargeable from them under the notification of 24th April 1962.