(1976) 02 BOM CK 0019

In the Bombay High Court

Case No : Special Civil Application No. 999 of 1971 with Special Application No. 1000 of 1971

Jayant Fibre Containers Pvt. Ltd. APPELLANT

Vs

A.V. Venkateswaran, Jt. Secretary RESPONDENT

Date of Decision : 23-02-1976

Acts Referred:
Central Excise Rules, 1944 — Rule 8

Citation : (1976) 02 BOM CK 0019

Hon'ble Judges : Hajarnavis, J;B. Lentin, J

Bench : Division Bench

Advocate : K.R. Wadhwani, for the Appellant; L.J. Manjarekar and J.H. Parekh, for the Respondent

Judgement

Hajarnavis, J.—In these two petitions, the petitioners, who licensed manufacturers of paper, challenge the orders passed by the Central Excise authorities rejecting their claim for concession in respect of duty of accordance with Notification No. 163/65-C.E. dated 1st October, 1965 and also under Notification No. 135/67-C.E. dated 3rd July, 1967.

2. The petitioners manufacture corrugated boards which are assessed to excise duty at the concessional rate of 7 paise per kilogram rate of 7 paise per kilogram as prescribed by the Government of India, Ministry of Finance (Department of Revenue and Insurance) under Notification No. 135/67-C.E. dated 3rd July, 1967. The petitioners requested the Assistant Collector, Central Excise, Bombay, to grant them concession in duty as provided in the Notification No. 163/65-C.E., dated 1st October, 1965 as they had commenced production of corrugated boards in their factories from 1st May, 1966. The Assistant Collector rejected their request observing that since the concessional rate of duty of 7 paise per kilogram payable on corrugated boards manufactured out of duty paid paper has been specifically prescribed by Notification No. 135/67-C.E., dated 3rd July, 1967, the concession in duty provided under Notification No. 163/65-C.E., dated

1st October, 1965, is not applicable to corrugated boards.

3. An appeal filed by the petitioner was dismissed by the Collector, Central Excise, Bombay, who held that the petitioners were assessed to duty at a concessional rate of 7 paise per kilogram as specifically prescribed under Government of India Notification No. 135/67-C.E. dated 3rd July, 1967, and, therefore, further concession under Notification No. 163/65-C.E., dated 1st October, 1965 could not be allowed to the corrugated board manufactured by the petitioners. He observed that the concession granted under Notification No. 163/65-C.E., dated 1st October, 1965 is on the tariff rate of the excisable products mentioned therein. He, therefore, held that the Notification No. 163/65-C.E. cannot be made applicable to the petitioners'' corrugated board. The petitioners thereafter filed an application for revision to the Central Government but that was also dismissed. The Joint Secretary to the Government of India, Ministry of Finance (Department of Revenue and Insurance) observed :

"In this context, the Government of India observe that Notification No. 135/67-C.E. was issued subsequently to Notification No. 163/65-C.E. and the latter notification prescribes a specific exempted rate of duty for corrugated boards. It is thus clear that the rate of 7 paise prescribed in Notification No. 135/67-C.E. cannot be read with the previous notification and that it stands independently of the earlier notification."

4. He, therefore, dismissed the application for refund. It is against these orders that the present petitions are filed.

5. Mr. Wadhwani, the learned Counsel for the petitioners, urged that the Central Excise authorities have committed an error in observing that the petitioners were not entitled to both the benefit or concessions which were granted under those two notifications. He further invited our attention to the two decisions given by the Collector of Bombay in which said concessions had been granted. In our view, the submission made by the learned counsel for the petitioners deserves to be accepted.

6. There is no dispute that the product falls under tariff Item No. 17(3) of the First Schedule, according to which duty is 35 paise per kg. of the product. It is also not disputed that the petitioners had commenced production with effect from 1st May, 1966. The two relevant notification are as under :

"Notification No. 163/65, Central Excise, dated the 1st October, 1965 :

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the Ministry of finance (Department of Revenue). Nos. 33/64-Central Excise, dated 17th April, 1964 the Central Government hereby exempts paper, all sorts, falling under Item No. 17 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) specified in column 2 of the Table annexed hereto from so much of the duty of excise leviable thereon under the said Item, read with any notification for the time being in force issued by the Central Government in relation to the duty so leviable, as is specified in the corresponding entry in columns 3, 4, 5(a), 5(b) and 5(c) of the said Table, as the case may be."

"Notification No. 135/67 Central Excise, dated 3rd July 1967 :-

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts corrugated board falling under Item No. 17(3) of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon as is in excess of 7 paise per kilogram :

Provided that the same is manufactured out of paper falling under the said item on which the appropriate duty of excise, or the appropriate additional duty leviable u/s 2A of the Indian Tariff Act, 1934 (32 of 1934), as the case may be, has been paid."

7. It is the petitioner''s case that he had started manufacture of papers from 1st May, 1966 and, therefore, he is entitled for concession of 20% and 15% given in columns of Table annexed to Notification No. 163/65. It is not disputed that the petitioners had been granted concession under Notification No. 135/67 and that they had been charged excise duty at the rate of 7 paise per kilogram. It is true that Notification No. 163/65 was a prior notification and the concession given in percentage, in the normal course, should operate on the duty as prescribed before any concession under Notification No. 135/67 is granted and that is what the Central Excise authorities have done in this particular case. It our view, they have not correctly interpreted the Notification No. 163/65-C.E. which clearly says :

"......... the Central Government hereby exempts paper, all sorts .... specified in column 2 of the Table annexed hereto from so much of the duty of excise leviable thereon under the said item, read with any notification for the time being in force issued by the Central Government in relation to the duty so leviable, as is specified in the corresponding entry in columns 3, 4, 5(a), 5(b) and 5(c) of the said Table, as the case may be."

8. It the Central Government by this notification did not want exemptions, granted under future notifications that may be issued by the Central Government, to be taken into consideration, it was not necessary for them to state that the duty to be taken into consideration for grant of exemption was that leviable thereon under the said item, read with any notification for the time being in force issued by the Central Government. It would have only stated that this exemption is granted on the duty in force at the time of issue of notification. The very fact that the Central Government has specifically mentioned "the notification for the time being in force" clearly shows that this exemption will have to be calculated on the duty that will be actually leviable at the time of the collection of the duty after taking into consideration all the notification in force. That being so,

it is not possible to accept the interpretation of the Central Excise authorities that the subsequent notification ought not to have been taken into consideration. We are of the opinion that the mention in the notification "for the time being in force" means that the notification issued at that time and also future notification that would be issued subsequently.

9. We are fortified in out view by the decision of the Madhya Pradesh High Court in Dev Kumar singhji Kasturchandji Vs. State of Madhya Pradesh and Others, , where the Madhya Pradesh High Court has observed :

"The expression" any other enactment "for the time being in force" does not mean an enactment which was already in force at the time the corporation imposed a tax u/s 132(1)(a); but means any legislation enacted whether before or after the imposition of the tax by the corporation. The general sense of the phrase "for the time being" is that of time indefinite, and refers to indefinite state of facts which will arise in future and which may vary from time to time. See Ellison v. Thomas (1862) 31 L.J. Ch. 867."

10. Stroud has also defined "time being" as under :

"(1) The phrase "for the time being" may, according to its context, mean the time present, or denote a single period of time; but it general sense is that of time indefinite, and refers to an indefinite state of facts which will arise in the further, and which may (and probably will) vary from time to time Ellison v. Thomas 1962 31 L.J. Ch. 867".

11. That being the position, the submission of the petitioners that they were entitled to both these notifications is well-founded.

12. Mr. Manjarekar, the learned counsel for the respondents urged that this is a disputed question of facts and this Court should not interfere in the findings recorded by the Central Excise authorities. He further urged that we should also take into consideration Notification No. 208/67, dated 8th September, 1967. It is not possible to accept any of these contentions of the learned counsel for the respondents. Notification No. 208/67 has absolutely no relevance to this case. In our view, the petitioners are entitled to the concessions granted under the notifications, and the orders passed by the Central Excise authorities are not well-founded and deserve to be set aside.

13. In the result, the petitions are allowed and the rules are made absolute. Under the circumstances of the case there will be no order as to costs.