

(1988) 05 J&K CK 0002
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 468 of 1982

J.K. Cigarettes Ltd.

APPELLANT

Vs

Superintendent of Central Excise

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2, 3, 4, 4(1)

Citation : (1988) 17 ECC 390 : (1989) 39 ELT 373

Hon'ble Judges : A.S. Anand, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Anand, C.J.—Shorn of details the facts necessary for the disposal of this petition are : that the first petitioner is a limited company

registered under the Companies Act, 1956. It had set up a factory for manufacture of cigarettes and is licensed under the Central Excises and Salt

Act, 1944 (1944 Act, for short) and L-4 licence is held by the petitioner in respect of the factory. The petitioner-company in its factory besides

manufacturing other cigarettes has also been receiving raw material from its customers, particularly the Golden Tobacco Company Ltd., Bombay

and manufacturing cigarettes out of the raw material. While levying the excise duty respondent No. 1 held the petitioner liable to assessment on the

actual assessable value of the cigarettes manufactured by it out of the raw material supplied by Golden Tobacco Company. On behalf of the

petitioner, the only point canvassed at the time of hearing of the petition is that since it only processes the raw material received from its customers

and manufactures cigarettes for them, it cannot be charged excise duty on the basis of the actual assessable value of the cigarettes and that if at all it

is liable to pay excise duty, it has to be assessed on the basis of the quantum of job charges and nothing more. It is on this basis that the petitioners

have sought a writ of certiorari for quashing the impugned directions issued by the respondent No. 2 vide communication No. : CE-

17/3/Sog/80/2202 dated 21.8.1982.

2. The writ petition has been resisted by the respondents who have disputed some of the factual averments made in the writ petition and besides

questioning the maintainability of the petition, have also asserted that the petitioner being manufacturer of excisable goods, i.e. the cigarettes, is

liable for assessment on the basis of the actual value of the manufactured product and not only on the quantum of "job work charges" because

excise duty is a levy collected at the stage of manufacture of excisable goods. Since, the parties have confined their arguments only on the lone

point as noticed above, I refrain from dealing with the challenge to the maintainability of the petition on the ground that disputed questions of facts

have been raised.

3. The first point for consideration, therefore, is : whether the petitioners, who on their own showing manufacture cigarettes from "raw material

supplied by their customers, can be said to manufacture cigarettes so as to attract the levy of excise duty on the assessable value of the cigarettes?

The answer to the question would depend upon the true meaning and import of the expression "manufacture". Their Lordships of the Supreme

Court had an occasion to consider this aspect in Empire Industries Limited and Others Vs. Union of India and Others, - and after an elaborate

discussion on different aspects, their Lordships opined:

It may be noted that the taxable event in the context of sales tax law is 'sale'. The taxable event under the excise law is 'manufacture'. The moment

there is transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name,

whether be it the result of one process or several processes, 'manufacture' takes place and liability to duty is attracted...." (Emphasis supplied)

Apart from this authoritative pronouncement, for the purpose of the instant case, the definition of "manufacture" as contained in Section 2(f) of the

1944 Act, puts the controversy beyond any pale of doubt. The definition of "manufacture" reads :

manufacture' includes any process incidental or ancillary to the completion of a manufactured product; and

* * * *

Sub-clauses (i) and (ia) of Section 2(f) of the 1944 Act deal specifically with the preparation of cigarettes and manufactured tobacco and read :

(i) in relation to tobacco includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hooka tobacco, chewing tobacco or snuff;

(ia) in relation to manufactured tobacco, includes the labelling or relabelling of containers and repacking from bulk packs to retail packs or the adoption of any other treatment to render the product marketable to the consumers;

Thus, from the above definition itself it is abundantly clear that the process of manufacture in relation to tobacco includes the preparation of

cigarettes, etc., and in relation to manufactured tobacco includes the labelling or re-labelling of containers or the adoption of any other treatment to render the product marketable to the consumer.

5. On the petitioner's own showing the raw material which it receives from its customers "'Golden Tobacco Company'" is processed by it for the

preparation of cigarettes so as to render the product marketable to the consumer. It is not denied by learned counsel for the petitioner that the raw

material which is received by the petitioner from Golden Tobacco Company is processed by it and that processing results in the transformation of

the raw material into a new commodity, commercially known as "'cigarettes'", which have distinct character and name. That process, which the

learned counsel for the petitioners has styled as "'the job'" is nothing but process of "'manufacture'" both according to the definition given in Section

2(f) (supra) and the judgment of the Supreme Court in Empire Industries case (supra). It is not the "'operation'" which is relevant for determining

whether the party is a manufacturer or not. It is the effect of the operation on the commodity which is material for determining whether the

operation constitutes such a process which is a part of "'manufacture'" or not. As held by their Lordships of the Supreme Court in Chowgule and

Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, "'any process or processes creating something else having a distinctive name,

character and uses, would be 'a manufacture'." On the basis of the material on the record, the conclusion is inescapable that while manufacturing

cigarettes from the raw material provided by its customers, by use of human skill and labour, the petitioner-company is engaged in the process of

manufacture" of cigarettes and since the taxable event under the Excise Law is "manufacture", it is liable to pay excise duty.

6. The next question requiring determination is regarding the method of valuation for the purposes of assessment of duty.

7. Section 3 of the 1944 Act is the charging section. It provides for "levy and charge of duty of excise on all excisable goods produced or

'manufactured' under the Act". The determination of valuation of the excisable goods for the purposes of charging of duty-of excise is provided in

Section 4 of the Act. The method of levy, in the instant case, is covered by Section 4(l)(a) proviso (i) of the Act. Since the taxable event under the

excise law is the manufacture or production of the goods, it follows that the petitioner-company has rendered itself liable for assessment on the

basis of the assessable value of the cigarettes and not only on the quantum of "job work charges". Even if it be assumed for the sake of argument

(though it is strongly controverted by the respondents) that the petitioner-company itself does not indulge in the sale of the manufactured cigarettes,

it would not make any difference because it is not necessary to attract excise duty that the goods should be sold. The "manufacture" of the

excisable goods is itself sufficient to attract the excise duty and whether those goods are eventually consumed, sold or not used, is irrelevant. The

obligation to pay excise duty under the Act is of the manufacturer of excisable goods and not that of the, purchaser or consumer of such goods. On

that account also the department has to recover the excise duty from the petitioner and not from the Golden Tobacco Company, which is

admittedly not the manufacturer, even if the plea of the petitioner is accepted. How the petitioner is to recover it from the consumer, is a matter

between the petitioners and the consumers and the department is not concerned with it. The petitioner is, therefore, liable to be assessed on the

basis of the actual assessable value of the cigarettes manufactured by it and the argument that it is liable to be assessed only on the basis of the

quantum of job services, is misconceived and has no basis. The respondents are, therefore, justified in law to recover excise duty from the

petitioner-company on the basis of the price of the goods sold by them.

8. The writ petition, therefore, fails and is dismissed. The interim directions of the Court shall stand vacated and the respondents shall be entitled to

assess and recover the excise duty after giving credit for the excise duty already paid by the petitioner on the basis of ""job charges"" at the rate of

Rs. 3.25 per thousand cigarettes pursuant to the interim order of the court in Civil Misc. Petition No. 1076 of 1982 dated 20.9.1982. The

petitioner shall however be bound to carry out the. directions of the court dated 11.10.1982 in Civil Misc. Petition No. 1158 of 1982. No costs.