

(1991) 01 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 233 of 1980

Kakar Fuels Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3(1)
Constitution of India, 1950 — Article 226

Citation : (1991) 33 ECC 294 : (1991) 38 ECR 36 : (1992) 58 ELT 438

Hon'ble Judges : B.P. Jeevan Reddy, C.J.; V.N. Mehrotra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

V.N. Mehrotra, J.—This writ petition has been filed under Article 226 of the Constitution of India praying for quashing the orders dated 28th April, 1980 and 30th June, 1979, passed by the Appellate Collector, Central Excise, New Delhi and Assistant Collector of Central Excise, Ghaziabad respectively. The petitioners have also prayed for suitable writ, order or direction restraining the respondents from realising the excise duty on the formed coal briquettes and formed coke briquettes from the petitioners under Entry No. 68 of the First Schedule of the Central Excise Act and also for directing the respondents to refund a sum of Rs. 3,29,000/- paid by the petitioners as excise duty under Entry No. 68 of the First Schedule of the Act. It has also been prayed that the respondents be directed to refund the excise duty as and when realised by them in future after 21st June, 1979.

2. The petitioners have alleged that petitioner No. 1 is a Private Limited Company, incorporated under the Indian Companies Act, 1956. The petitioner No. 2 is one of the directors of the petitioner No. 1. The petitioners have their factory at Ghaziabad. They are preparing Formed Coal and Formed Coke briquettes from coal. The process for preparation of the Formed Coal and Formed Coke briquettes has been narrated in para 3 of the writ petition. They have

asserted that the contents of the formed coke and formed coal briquettes remain the same as in any other coal and coke and hence they do not cease to be coal and coke on account of mere change in the shape by mechanical pressing process. They have asserted that coal and coke briquettes is only a preparation of coal in the same manner as soft coke under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). The coal and coke were not classified prior to 1978 for the purposes of levying excise duty. The petitioners had commenced preparation of Formed Coal and Formed Coke in December, 1976. These items were not covered under Tariff Entry No. 68 of the Schedule I of the Act. However, subsequently on 18th June, 1977, the Government of India revised the criteria for levy of duty under Tariff Entry No. 68. The petitioners had been paying duty under Tariff Entry No. 68 since that time. Subsequently, with effect from 1st March, 1978, a new Item 11D "Coal (excluding Lignite and Coke not elsewhere specified)" was included in the First Schedule to the Central Excises and Salt Act attracting a duty of Rs. 10/- per metric tonne. On the same day, i.e. 1st March, 1978, itself, the Central Government issued a notification exempting all excisable goods falling under Tariff Item 11D other than coal raised from the mines, and coke of all sorts not elsewhere specified. On the introduction of Tariff Item 11D, the coal and coke could not have been taxed under the residuary Tariff Item 68; and the coal and coke briquettes manufactured and sold by the petitioners were also covered by Tariff Item 11D. By notification dated 27th April, 1978 issued by the Central Government, coke of all sorts was exempted from payment of excise duty and the coal was also exempted other than the coal raised from the mines. Subsequently, by notification dated 18th July, 1979 all the goods falling under Item No. 11D of the First Schedule were exempted from payment of excise duty by the Central Government. The petitioners have asserted that in this view of the matter, they were not liable to pay excise duty under Tariff Entry 68 but were liable to pay excise duty under Tariff Item 11D during that period only. However, even though excise duty was not payable under Entry No. 68, the respondents demanded the same which was paid by the petitioners under protest. The petitioners made a representation in respect of the same to the Assistant Collector, Central Excise, Ghaziabad but no decision was taken in the matter. The petitioners were, however, forced to pay the excise duty under Item No. 68. The petitioners, thereafter filed writ petition No. 278 of 1979, M/s. Kakar Fuels Private Ltd. and Anr. v. Union of India and Ors., in this Court. In that case, it was directed that the application moved by the petitioners for classification should be decided. In view of this direction, the Assistant Collector, Central Excise, Ghaziabad proceeded to decide the matter. The earlier writ petition was then dismissed on the ground of alternative remedy as an appeal lay against the order of the Assistant Collector. The petitioners filed an appeal against the order by the Assistant Collector holding that the excise duty was leviable under Entry No. 68 in respect of formed coal and formed coke briquettes. The Appellate Collector, however, dismissed the appeal taking the same view which was earlier taken by the Assistant Collector. The petitioners have asserted that the orders passed by the Assistant Collector and the Appellate

Collector were not legal and should be quashed. It is asserted that the excise duty could not be levied under Item No. 68 in respect of formed coal and formed coke briquettes prepared by the petitioners from coal.

3. The contention on behalf of the respondents is that the petitioners manufactured formed coal and formed coke briquettes by using the manufacturing process. The manufactured product, which is formed coal or formed coke, cannot be said to be the same as the coal or coke. Molasses and clay are also added during manufacturing process while preparing the formed coal and formed coke briquettes. These manufactured articles are not covered by Entry Item No. 11D of the Schedule First of the Act, but excise duty will be payable under Item No. 68 which is the residuary article. The petitioners were in the circumstances liable to pay the excise duty in respect of the article manufactured by them under Item No. 68. The Assistant Collector as well as the Appellate Collector, Central Excise have rightly held that the excise duty was payable by the petitioners under Item No. 68.

4. We have heard the learned counsel for the petitioners and the respondents.

5. The main question to be considered in this case is as to whether the formed coal and formed coke briquettes were covered under Item No. 11D of the First Schedule of the Act and the excise duty was payable in respect of the same under that item, or excise duty was payable on these articles under Item No. 68 of the Schedule.

6. It will be proper to first consider the relevant provision of Central Excises and Salt Act, 1944 under which the excise duty on manufactured goods is levied. The relevant provision of sub-section (1) of Section 3 provides that:

"There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India, and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the First Schedule:"

7. In the First Schedule of the Act distinct articles on which excise duty has been levied at different rates have been mentioned. The articles which are not covered by these items are excisable under Item No. 68 which can be said to be residuary provision. It is applicable to only those goods which have not been elsewhere specified in Item Nos. 1 to 67 of the Schedule. In case any article is covered by any other Item, the duty will be levied in respect of that article under that item only and not under the residuary Item No. 68.

8. The petitioners have asserted that with effect from 1st March, 1978 a new Item 11D was included under which excise duty @ Rs. 10 per metric tonne was levied on coal (excluding Lignite and Coke not elsewhere specified). It was also asserted that by Notification No. 46/78-C.E., dated 1st March, 1978 the Central Government exempted all excisable goods falling under Tariff Item 11D other than coal raised from the mines and coke of all sorts not elsewhere specified.

Thus under these Notifications which are dated 1-3-1978 Coal (excluding Lignite and Coke not elsewhere specified) was included in Item No. 11D on which excise duty of Rs. 10/- per metric tonne was levied. However, by Notification No. 46/78-C.E. all the items covered by Item 11D excepting coal raised from the mines and coke of all sorts were exempted from duty. Subsequently on 27-4-1978 Notification No. 102/78-C.E. was issued. Under this Notification excise duty of Rs. 5/- per metric tonne was levied on coal, excise duty of Rs. 7/- per metric tonne was levied on Coking coal; while coke, of all sorts was exempted from duty. Thus from 27-4-1978 by virtue of Notification No. 102 no excise duty could be levied on coke of all sorts while excise duty @ Rs. 5/- per metric tonne could be levied on coal other than coke.

9. Subsequently on 18-7-1979 Notification No. 231/79-C.E. was issued by the Central Government exempting all excisable articles falling under Item No. 11D of the First Schedule to the Central Excises and Salt Act, 1944 from the whole of the duty of excise leviable thereon under the said Act. In view of this Notification coal and coke all sorts mentioned in Item 11D were exempted from whole of the excise duty. Subsequently Item No. 11D was omitted by Finance Act, 1982 and a new Item 11 was added by the same Act in respect of coal (excluding lignite) and coke (all sorts), including calcined petroleum coke, asphalt, bitumen and tar at different rates in that item. We are, however, not concerned with Item No. 11 in the present case as it relates to the period prior to the deletion of Item No. 11D and substitution of Item No. 11 of the First Schedule.

10. As mentioned earlier the question to be considered in this petition is as to whether formed coal and formed coke briquettes can be said to be included in Item No. 11D that is whether it may be said that formed coal and formed coke briquettes can be included in the "coal" and "coke" mentioned in Item No. 11D. In case it is so held then obviously excise duty on these items can be levied under Item No. 11D only and not under Item No. 68.

11. According to the petitioners formed coal and formed coke briquettes are nothing but "coal" and "coke". It is asserted that in the process of manufacture of formed coal and formed coke briquettes the coal is crushed and reduced to small fractions of size up to 3 mm. The crushed coal is briquetted in different shapes and sizes on a Roll Press after adding water and a negligible percentage of clay to act as a lubricant to protect the inner surface of machines from wear and tear and small percentage of molasses for binding the material to sustain handling. It was also asserted that the briquettes formed in this manner after air drying or mechanical drying at a very low temperature are "Formed Coal" for use as coal and this very material when charged in stack carbonisers for combustion in a confined space with temperature above 500 C to drive away its more volatile constituents and obnoxious gases gives, after quenching with water, "FORMED COKE" for use as coke.

12. In the Webster's Dictionary "Coke" has been defined as the hard, grey, porous residue, mostly carbon, obtained by destructive distillation of coal which

is heated in a retort or oven, driving off coal gas and other volatile matter. It is used as a fuel and burns with great heat and little smoke. "Briquette" has been defined as a brick shaped block especially of compressed coal dust.

13. Considering the above mentioned facts it can be said that from coal dust or coal pieces, formed coal or coal briquettes are manufactured. In this manufacturing process some clay and also some molasses for binding the material is used. The purpose is obviously to form brick shaped blocks to facilitate the use of coal for various purposes including the use in him sand industry. Further in order to prepare formed coke briquettes the above mentioned formed coke is heated in the manner mentioned above at a high degree of temperature. The purpose is to drive off volatile constituents of the formed coal and to make the same smokeless. The form coke briquettes are also used in industries or homes for heating purposes. The petitioners have asserted that they had sent the formed coal and formed coke briquettes to various institutes for analysing the same. They have filed copies of reports by the Central Fuel Research Institute (Annexure 8) and Institute of Fuel, London (Annexure 9).

14. According to the report dated 26-6-1979 by the Central Fuel Research Institute (Annexure 8) a "Formed Coal" Briquettes before carbonization and "Formed Coke" after carbonisation marketed by M/s. Kakar Fuels Private Limited, Ghaziabad, is nothing but coal and coke.

15. The report by the Institute of Fuel, London (Annexure 9) says that the product "Formed Coal" before Carbonisation and "Formed Coke" as marketed by the petitioner is nothing but coal and coke which is carbonised product of coal and a shaped fuel from Coal mines for the convenience of use.

16. According to both these reports "Formed Coal" and "Formed Coke" briquettes are nothing but coal and coke respectively. It is true that some manufacturing process is used by the petitioners in the preparation of "Formed coal" and "formed coke" briquettes from pieces of coal or coal dust but merely because of that it cannot be said that "formed coal" and "formed coke" ceased to be "coal" and "coke" respectively.

17. In case Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. : (1989) 1 S.C.C. 150, the question was as to whether carbon paper was covered by Item 17(2) of the Schedule I of the Central Excises and Salt Act, 1944 or it was covered by Item 68. Carbon paper was not specifically included in Item 17(2) but it was held that it was included in all kinds of paper including the paper which have been subjected to could not be levied under residuary Article 68. The contention in that case was that the word "Paper" mentioned in Item 17 could not include "carbon paper". Reference was made to dictionary meaning of the word "paper". It was observed that where no definition is provided in statute itself for ascertaining the correct meaning or a fiscal entry reference to a dictionary is not always safe as it gives all the different shades of meaning and in such a case trade meaning should be assigned. It was further observed that the

trade meaning is one which is prevalent in that particular trade where that goods is known or traded.

18. In the present case the petitioners are preparing formed coal and formed coke bricks from coal broken or coal dust. Though the shape of coal is changed when it is briquetted, it obviously remains coal and does not become a different substance. In the case of formed coke also though it is in the shape of briquette yet it remains coke and not a substance other than coke. In our opinion formed coke and formed coal briquettes can be said to be "coal" and "coke" within the meaning of the words mentioned in the Item No. 11D excise duty could not be levied on the same under residuary Item No. 68.

19. In the result, the Assistant Collector, Central Excise, Ghaziabad was wrong in levying excise duty under Item No. 68 for the period starting from 1st March, 1978. Appellate Collector, Central Excise, was also wrong in dismissing the appeal filed by the petitioners against the order dated 30-6-1979 by the Assistant Collector, Central Excise, Ghaziabad. Excise duty could be levied on the Formed Coke and Formed Coal manufactured by the petitioners under Item No. 11D of Schedule I for the period starting from 1st March, 1978.

20. This writ petition is accordingly allowed and the orders dated 30-6-1979 and 28-4-1989 passed by the Assistant Collector, Central Excise, Ghaziabad and the Appellate Collector, Central Excise, New Delhi respectively are quashed. The Assistant Collector, Central Excise shall redetermine the excise duty payable by the* petitioners on Formed Coal and Formed Coke briquettes under Item No. 11D in the light of the observations made in this judgment. No costs.