

(1985) 10 KAR CK 0036
In the Karnataka High Court
Case No : Writ Petition No. 13941 of 1979

Karnataka Cement Pipe Factory Industrial Estate	APPELLANT
Vs	
Superintendent of Central Excise and Another	RESPONDENT

Date of Decision : 18-10-1985

Acts Referred:

Central Excise Act, 1944 — Section 2 (d), 26 AA, 3
Central Excise Rules, 1944 — Rule 8, 8 (1)

Citation : (1986) 7 ECC 25 : (1986) 6 ECR 432 : (1986) 23 ELT 313

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : Chander Kumar, for the Appellant; K. Shivshankar Bhat, Central Govt. Senior Standing Counsel, for the Respondent

Judgement

1. The Petitioner has approached this Court challenging the show-cause notice issued by the Superintendent of Central Excise, Hubli, calling upon the petitioner to file his objections to the proposed levy of Central Excise on the total value of the clearances made from his two factories at Goa and Hubli during the year 1976-77.

2. This Writ Petition deserves to be dismissed on the sole ground that the petitioner has adequate remedy under the Act. However, sine Rule Nisi is issued in the case, the matter is disposed of on its merits and the following order is made.

The petitioner is a registered partnership concern, owning two factories, one at Goa and another at Hubli, for the manufacture of R.C.C. cement pipes and other allied products. The production in the Hubli factory started in the year 1960 and in Goa unit in the year 1971. In the Hubli factory the petitioner had employed more than 49 workers, and in Goa, it was less than 49 during the relevant period.

3. The Government of India issued a Notification No. 54/1975 dated 1st March, 1975 in exercise of its powers under Rule 8(1) of the Central Excise Rules, 1944

("Rules") which reads as follows :-

"In Exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts all goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and produced in any factory, including the precincts thereof, whereon not more than forty-nine workers are working, or were working without the aid of power, on any day of the preceding twelve months, from the whole of the duty of excise leviable thereon."

As per this notification the clearance made from the God Factory was exempted from levy of excise duty since the Goa factory had employed less than 49 workers. But so far as Hubli factory is concerned, it was paying duty of the goods manufactured as it was not entitled to the exemption.

4. On 18th June, 1977, the Government of India issued another Notfn. No. 176/1977 under Rule 8(1) of the Rules. The said notfn. is reproduced below :-

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and cleared for home consumption on or after the first day of April in any financial year, by or on behalf of a manufacturer from one or more factories from the whole of the duty of excise leviable thereon, if any officer not below the rank of an Asst. Collector of Central Excise is satisfied that the sum total of the value of the capital investment made time to time on plant and machinery installed in the Industrial unit in which the goods, under clearance, are manufactured, is not more than rupees ten lakhs :

Provided that this exemption shall not be applicable to a manufacturer if the total value of all excisable goods cleared by him or on his behalf in the preceding financial year had exceeded rupees thirty lakhs."

5. After this notification was issued, there was a change in the criterion for granting exemption in respect of the duty on excisable goods leviable under the Act. The petitioner, was issued a show-cause notice dated 30th June, 1979, as per Anx. D., proposing to club the clearances from the two factories and levy excise duty in accordance with Notfn. 176/1977. Applying the said notification to the petitioner's case, the total value of all the excisable goods cleared by the petitioner from the two factories owned by him, exceeded Rs. 30 lakhs during the relevant period. It was, therefore, proposed to levy excise duty on the total value of the goods cleared from 18th June, 1977 upto 31st March, 1978.

To this show-cause notice the petitioner replied by his letter dated 27th June, 1977 objecting to the proposed levy and also contended that their total turnover did not exceed Rs. 30 lakhs during the preceding year, and that therefore, it was not eligible to duty under Notf. No. 176/1977. It is thereafter that the petitioner approached this Court and filed the writ petition on 11th September, 1979,

challenging the show-cause notice and obtained an order of stay of further proceedings.

6. The question that arises for consideration is; Whether in view of the Notfn. 176/77, the petitioner would be liable to pay excise duty on the excisable goods cleared by it from its two factories between 18-6-77 and 31-3-1978 ?

The petitioner's contentions are :-

(i) That the goods manufactured and cleared from the Goa factory had been exempted from duty applying Notfn. 54/75;

(ii) That the value of clearances made from the Hubli factory did not exceed Rs. 30 lakhs during the relevant preceding financial year; and

(iii) That therefore the 1st respondent was not right in proposing to club the value of goods cleared by him from both the factories for the purpose of the application of the notfn. 176/77.

Elaborating his contentions, Sri Chander Kumar, learned Counsel for the petitioner, has submitted that having regard to the fact that the goods cleared by the petitioner from its Goa factory had been exempted from payment of excise duty under the Notfn. 54/75, they were not "excisable goods" within the meaning of the said term as defined u/s 2(d) of the Central Excises and Salt Act ("Act"). As a consequence, if only the value of the goods cleared from the Hubli factory is taken into consideration, it would be below Rs. 30 lakhs for the purpose of applying the criterion fixed by Notfn. 176/77.

7. According to the Department, the clearances of both the factories should be taken into consideration for the purpose of determining the total value of goods cleared by the petitioner during the preceding financial year and if so clubbed, it would exceed Rs. 43 lakhs during the relevant period and the proposed levy is valid in law and does not warrant interference.

In support of his contention, the learned Counsel for the petitioner has relied upon two decisions of the Supreme Court - one of Delhi High Court and another of Allahabad High Court.

(i) The Supreme Court in *Kailash Nath and Another Vs. State of U.P. and Others*, has laid down that, any notification issued under an enactment has statutory force and validity and that the notification should be considered as if it is a part of the parent Act. That was a decision rendered under the U.P. Sales Tax Act.

(ii) The next decision relied upon is *J.K. Steel Ltd. Vs. Union of India (UOI)*, . In that decision, interpretation of Item 26AA of the Central Excise Act was involved during the relevant period.

The assess, M/s. J. K. Steels, were manufacturers of iron and steel products. Item No. 26AA was added in the First Schedule to the Act with effect from April 24, 1962. The point that arose for consideration before the Supreme Court was :

what is the duty leviable on the wires manufactured by the assessee out of steel rods which had already been imported ?

Only para 37 in M/s. J. K. Steels case is relevant for this case, wherein reference is made to its decision in Kailash Nath and Another Vs. State of U.P. and Others, in which it was held that the exemption granted in pursuance of a notification issued under the U.P. Sales Tax Act must be considered as having been contained in the parent Act itself.

In the decision of Allahabad High Court in E. Septon & Co. (P) Ltd. v. Superintendent of Central Excise and Another [1985 E.L.T. 57] dealing with the definition of "excisable goods", their Lordships held on the facts of that case, the petitioner therein need not obtain a license for manufacturing ice, since the same was exempted from levy of excise duty by virtue of a notification issued by the Government under Rule 8(1) of the Act.

In the decision rendered by Delhi High Court in Sulekaram & Sons v. Union of India [1978 ELT 525] it was held that reading the exemption notification along with the Act, the effect is that goods manufactured by the petitioner therein, were taken out of the First Schedule and therefore were not "excisable goods" within the meaning of S. 2(d) of the Act.

This decision has since been overruled in Vishal Andhra Industries v. Union of India [1983 ELT 2265 (Delhi)].

8. Sri Bhat has argued that on a correct interpretation of the notification, the clearances made by the petitioner from his two factories during the relevant period would be exigible to duty.

Dealing with the definition "excisable goods" under the Act, Sri Bhat has submitted that it is only descriptive of the goods which are being subjected to duty. All excisable goods are subjected to levy under the charging Section 3 at the rates set forth in the First Schedule. The Government of India may, by a notification issued under Rule 8 exempt, subject to such conditions as may be specified in the notification, any excisable goods from the whole or any part of duty leviable on such goods. His contention is, that the goods continue to be excisable goods notwithstanding the exemption or concession granted under a notification issued by the Government of India in exercise of its power under Rule 8(1) of the Rules. It is, therefore, his submission that though the clearances made from the Goa factory were exempt from duty under Notfn. No. 54/75, they did not cease to be "excisable goods" for the purpose of applying the criterion for levy of duty as specified under Notification No. 176/77. In support of this contention Sri Bhat has relied upon the following decisions :

(i) Tamilnadu Handloom Weavers Society v. Asst. Collector of Central Excise, Madras - [1978 E.L.T. 57];

(ii) Andhra Pradesh Paper Mills Ltd. v. Asst. Collector of Excise [1980 E.L.T. 210 (A.P.)], and

(iii) Vishal Andhra Industries v. Union of India - [1983 E.L.T. 2265.]

On an examination of the several decisions by both sides, and their arguments, the question that emerges for decision in this case is : whether the goods produced by the petitioner in its Goa unit ceased to be "excisable goods" for the purpose of application of Notification 176/77.

9. "Excisable goods" as defined u/s 2(d) of the Act has received varying interpretation by several High Courts.

The decision of Allahabad High Court in E. Septon & Co., does not help the petitioner's case and the decision of Delhi High Court in Sulekaram & Sons has been overruled by a Full Bench.

The two other decisions relied upon by the learned Counsel for the petitioner are :-

(i) Kailashnath & Anr. v. State of U.P. 1957 S.C. 790.

(ii) M/s. J. K. Steels Ltd. v. Union of India 1970 S.C. 1173.

The first of the above decisions did not deal with the interpretation of the term "excisable goods". The Supreme Court only laid down that in interpreting a notification issued under an enactment both should be read together. Their Lordships further observed, that the notification having been made in accordance with the power conferred by the statute, it has a statutory force and validity and therefore, exemption under the notification is to be construed, as if it is contained in the Act itself.

In J. K. Steels Ltd. case, the Supreme Court reiterated the same principle and held :

"..... the levy and exemptions are parts of the same scheme of taxation. The two together carry into effect the purpose of the legislation. For finding out the true scheme of a taxing measure, we have to take into consideration not merely the levy but also the exemptions granted."

10. In the decisions relied upon by Sri Shivashankar Baht, namely of : (i) Allahabad; (ii) Andhra Pradesh and (iii) Madras, High Courts their Lordships, on a detailed examination of the definition of "excisable goods" vis-a-vis the schedule and effect of notifications issued under the Act, have taken a uniform view that even though the excisable goods are exempted from excise duty by virtue of notifications issued by the Central Government, they do not cease to be "excisable goods".

11. I am of the opinion that the view expressed in the above said decision clearly support the contention of the Union of India.

The character of a product, as excisable goods, does not depend upon the actual levy of duty, but depends on the description as "excisable goods" as contained in the First Schedule to the Act.

"Excisable goods" is defined in Section 2(d) of the Act. "Excisable goods", means, goods specified in the First Schedule as being subjected to a duty of excise, and includes salt. Under the charging Section 3 of the Act, duty as specified in the First Schedule is levied on all excisable goods. The First Schedule to the Act gives description of goods, which are excisable and the rate of duty. It is significant to note that in respect of some of the goods given in the schedule, the duty is "nil".

12. In this context, reference to Rule 8(1) of the Rules would be necessary.

The Central Government may, by a notification in the Official Gazette exempt subject to the conditions, as may be specified in the notification, any excisable goods from the whole or any part of duty leviable on such goods.

Therefore, the power to exempt the whole or in part the duty leviable such on those goods referred to in the First Schedule rests with the Government.

The submissions made on behalf of the petitioner that the moment a manufacturer is allowed exemption in respect of any goods by virtue of a notification, it ceases to be "excisable goods" for all other purposes under the Act, has to be rejected.

The contention advanced on behalf of the respondents that the words, "as being subject to duty of excise" in Section 2(d) is only descriptive of the goods and not to the actual levy, is the correct approach to the question.

"Excisable goods" do not become non-excisable merely by the reason of the exemption given under a notification. "Excisable goods" get exemption from the payment of duty by virtue of the notification under which the Government chooses to grant exemption from the whole or part of the duty.

13. In this view of the matter, the Writ Petition has to fail and it is accordingly dismissed.