

(1988) 03 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 1251 of 1981

K.E.C. International Limited

APPELLANT

Vs

Union of India and another

RESPONDENT

Date of Decision : 16-03-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 4

Citation : (1988) 17 ECR 30 : (1988) 36 ELT 31

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. The petitioner is a Limited Company having a factory at Bombay where it manufactures parts of transmission towers from raw materials such as sections, angles or plates made of steel and zinc supplied to it by its customers. The customers include, for example, the Gujarat State Electricity Board. The manufacture of the parts of the transmission towers from the raw material supplied, as above, by the customers is done under a contract entered into by the Company with its customer. In the absence of a notification, to which a reference will be made shortly, excise duty will be leviable on the product which emerges from the factory of the petitioner under Item 68 of the First Schedule to the Central Excises and Salt Act, hereinafter referred to as "the Act". However, by Notification bearing No. 119/75, dated 30th of April, 1975, certain exemption was given to a factory of the type of the petitioner which manufactures articles of what can be called job work basis. The second respondent to this petition, who is the Assistant Collector of Central Excise, however, has taken a view that the said notification does not apply to the factory of the type owned by the petitioner but it applies only to a factory which does processing work. Taking this view, a show cause notice was given by the second respondent to the petitioner on 21st of March, 1980 wherein it was said by the second respondent, hereinafter referred to for the sake of convenience as "the respondent", that Notification No. 119/75, envisages a job work in which the sending of an article for some process and

return of the same is involved. It does not apply to a unit which even on job work basis manufactures the articles concerned. In other words, the view seems to be that if an article is taken by a job worker from its customer and by doing work on the same returns an article which is different from the one which it had originally received, the notification in question does not apply to it.

2. The petitioner replied to the notice pointing out that Notification No. 119 of 1975 applied to its factory. It was also pointed out to the respondent that a Division Bench of the Gujarat High Court had taken the view that the said notification applied to a unit which does the manufacture even on job work basis and since admittedly the petitioner was doing manufacturing work, the benefit of the exemption granted by the said notification was available to it. Rejecting the petitioner's submissions, the second respondent by his order dated 2nd June, 1981 confirmed the show cause notice which he had issued earlier. Subsequently, two more show cause notices were issued to the petitioner and they were also confirmed by the same officer taking a similar view. The petitioner, therefore, has approached this Court under Article 226 of the Constitution of India challenging the view taken by the respondent and seeking a writ from this Court for setting aside the orders dated 2nd June, 1981 and 13th August, 1981.

3. There is no return filed to this petition. That itself is hardly of any consequence because it has not been disputed, and indeed it could not be disputed, that the petitioner Company is carrying on a sort of manufacturing activity which has already been described by me in the earlier part of this judgment. That it is doing such manufacturing activity is evident from the order passed by the respondent. Indeed, it is on the basis that the petitioner is doing such manufacturing activity that the respondent has held that the Notification No. 119/75 is not applicable to the petitioner's factory.

4. That the respondent has taken the view that the notification applies only to a unit which does processing without transforming the articles entrusted to it is the very basis of the order passed by the respondent. So, in my opinion, the fact of not filing an affidavit-in-reply to the petition is of no consequence. The question is whether the view taken by the respondent is sustainable in law. It is necessary, therefore, to refer to Notification No. 119/75, dated 30th of April, 1975, which is as follows :-

"Notification No. 119/75, dated 30.4.1975.

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), manufactured in a factory as a job work, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work.

Explanation : For the purposes of this notification the expression "job work" shall mean such items of work where an article intended to undergo manufacturing

process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process, on charging only for the job work done by him."

5. Even a cursory reading of the said notification should show that the main part of the notification applies necessarily to a factory which does manufacturing activity because the first part of the notification says that the Central Government exempts goods "manufactured in a factory as a job work". Obviously, therefore, the notification must apply to a factory where goods are manufactured as a job work. In order to leave no doubt on the use of the word "job work" an explanation has been added to this notification which, if anything, reinforces the view that the notification must apply to a factory where manufacturing activities are carried on. Job work has been defined to mean such item of work where an article intended to undergo manufacturing process is supplied to the job worker. The words "intended to undergo manufacturing process" must necessarily mean that an article is given to a job worker and it is so given for the purpose of subjecting that article to a manufacturing process. An article is not subjected to a manufacturing process unless the result is intended to be some manufacture. It is, therefore, in my opinion, clear that the notification must apply to a factory which does job work for the purpose of manufacturing an article, the raw material for which is supplied to it by its own customers.

6. This is the view which was taken by a Division Bench of the Gujarat High Court in *Anup Engineering Ltd. v. Union of India* 1978 E.L.T 533. The facts in that case were identical to the facts involved in the present petition. There were four petitioners before the Divisional Bench of the Gujarat High Court. The petitioner in each of the petitions was doing what is known in the trade as a job manufacture. The petitioner concerned had a factory of his own wherein he carried out processes of manufacture of articles and materials brought by his or its customers from outside. After the manufacturing process was over, the final product was returned to the customer and the petitioner concerned, namely the job worker, charged for the work, that is, for the labour and other incidental charges which had been agreed upon between the customer and the job worker. The Division Bench noticed what is an obvious fact that unless there was a manufacturing process the article could not be subjected to excise duty. That was the very basis of taxation under excise law. The Division Bench further noted that in order to exempt job workers from payment of duty except to the extent of duty on the job work charges, the notification was issued and the Explanation to the notification made it abundantly clear. The defence on behalf of the department before the Division Bench was the same, namely the view that is reflected in the orders which are under challenge before me.

7. The view taken by the Division Bench of the Gujarat High Court was noticed by Bharucha J. in *Noble Paints and Varnish Company Pvt. Ltd. Vs. Union of India* and another, , and was followed by him. Personally I do not see how any other

view of this notification is possible. Even without the assistance of these two authorities I would have had no hesitation in holding that the notification in question necessarily applied to a unit which is doing job work and turning out articles, with the result that the article which was produced was the result of manufacture and not as a result of processing. Since there is no doubt that the articles which are turned out by the factory of the petitioner are the result of manufacturing activity, Notification No. 119/75 must necessarily apply to it. The view of the respondent that the said notification applies only to a processing unit is patently erroneous. Notices of demand based upon such a view are necessarily illegal and will have to be set aside. The excise duty that would be payable by the petitioner would be only on the value added to the raw materials supplied to it by its customers.

8. In the result, the petition must succeed. Rule is made absolute in terms of prayer clause (a). The Bank guarantee given by the petitioner, if any, under the ad-interim order is cancelled and the same shall be returned to the petitioner forthwith.

9. The petitioner is entitled to the cost of this petition.