

(1986) 02 CAL CK 0017
In the Calcutta High Court
Case No : C.R. No. 5315 (w) of 1979

Kishan Lal Dalmia

APPELLANT

Vs

Collector of Central Excise and Others

RESPONDENT

Date of Decision : 28-02-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 173, 173G, 7, 8(1), 9
Central Excises and Salt Act, 1944 — Section 2, 3
Tariff Act, 1934 — Section 2A

Citation : (1990) 25 ECC 426 : (1986) 26 ELT 76

Hon'ble Judges : Ajit K. Sengupta, J

Bench : Single Bench

Advocate : Nanilal Banerjee, for the Appellant; S.M. Sanyal, for the Respondent

Judgement

Ajit K. Sengupta, J.—In this application the petitioner has challenged the demand of duty made, certificate proceedings initiated and the distress warrant issued against the petitioner by the Central Excise Authorities consequent upon the assessments made under the Central Excises & Salt Act, 1944.

2. The facts are in a narrow compass:

The petitioner purchased cold rolled strips from the market in the usual course of business and re-rolled and re-processed the same in his own factory at Salkia into cold rolled strips of different length and gauges through rolling machine and sold the same to his customers. According to the petitioner the said cold rolled strips purchased by the petitioner from the market were duty paid. It is the case of the petitioner that the re-rolling or reprocessing of the said cold rolled strips is not manufacture but only processing. The petitioner duly submitted monthly returns of production in Form No. R.T. 12 in accordance with Rule 173G of the Central Excise Rules, 1944.

The Superintendent, Central Excise, Assessment Group Assessment Group No. II Calcutta-V Division in his assessment orders held that the petitioner could not

prove that the said goods purchased from the market and utilised in the processing were duty paid in terms of the Government of India's Notification No. 75 of 1967 dated 20th May 1967. The Superintendent levied the differential duty and raised demand on the petitioner. The Petitioner's factory was allegedly closed for labour trouble since 16th February 1974 to July 1975 and the petitioner did not have any access to his own factory and office records nor the petitioner was allowed to enter into the factory by the employees. The petitioner by a letter dated 15th February 1974 brought the said fact to the attention of the Central Excise Authority as well as Labour Directorate. The petitioner had to declare closure of his business. Because of the said closure, it is alleged, that the petitioner could not make necessary representation against the said demands raised or the certificate issued under the Public Demands Recovery Act for enforcement of the demand amounting to Rs. 40,376.38 p. The respondents also purported to issue distress warrant for realisation of the said demand, which according to the petitioner, he is not liable to pay at all. As indicated earlier all those proceedings are the subject matter of challenge in this application.

3. At the hearing Mr. N.L. Banerjee, learned Advocate for the petitioner has contended that the Assessing Officer proceeded on the assumption that the petitioner produced or manufactured the goods and was accordingly liable for duty on the rerolled and re-processed articles u/s 3 of the Central Excises & Salt Act. The job done by the petitioner is not manufacture in terms of Section 2(f) of the said Act. According to the petitioner those who manufactured cold rolled strips removed the said goods upon payment of Central Excise Duty under Rules 7, 9 and 173(a) of the Central Excise Rules. Therefore the manufacturers of the cold rolled strips paid the duty on the said goods. Otherwise the said goods could not come to the market for being sold to the buyers like the petitioner. Because the petitioner re-rolled the cold rolled strips with the help of rolling machine, it cannot come within the purview of the "manufacturer". He has relied on certain notification and/or circular in support of his contention.

4. In this case the ground on which the differential duty was charged by the Superintendent of Excise is that the petitioner could not prove that the said cold rolled strips from the market were duty paid in terms of notification No. 75/67 dated 20th May, 1967. The said notification relied on by the assessing officer" relates to set off of duty of iron and steel products if made from duty paid materials. The said notification is 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 iron or steel products falling under item No. 26AA of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), if made from another article falling under the said Item, and on which the appropriate amount of the duty of excise or the additional duty u/s 2A of the Indian Tariff Act, 1934 (32 of 1934), as the case may be, has been paid, from so much of the duty of excise as is equivalent to the duty so paid on that article."

It is contended by Mr. Sanyal, Ld. Advocate for the respondents, that the said notification provides that the final products are exempt from so much of duty of excise as is equivalent to the duty so paid on the inputs. Thus, it is required to be proved that the appropriate duty of excise has been paid on the inputs. No documents in support of payment of duty on the inputs could be produced by the petitioner as required by the said notification. Hence duty was levied.

5. It has not been disputed that the Cold Rolled Strip had been purchased by the petitioner from the market. The documents in support of the purchase have also been produced before the assessing Officer. The said goods purchased by the petitioner were produced and manufactured by Indian Tube Co. Ltd., J.K. Steel & Industries Ltd. and Hindustan Steel Ltd. The assessing officer has cast burden upon the petitioner, to prove that the said cold rolled strips purchased by him from the market were duty paid. This in my view is an onerous burden upon the purchaser which he could not discharge. On the contrary, the assessing officer could have found out from the sellers of those materials whether the duty had been paid by the manufacturer or not. This, on the facts of this case, is not a relevant consideration. No goods can be removed by the manufacturer without payment of excise duty as leviable on such goods. The manufacture of cold rolled strips could not have removed the goods from their respective factories without payment of duty in accordance with provisions of Central Excise Rules. The ordinary presumption of law is that apparent state of affairs is real unless the contrary is proved. It, therefore, has to be presumed that the goods manufactured by the said manufacturers and sold in the market through various dealers are duty paid, if any duty is leviable on such goods under the Central Excise Act and the Rules. Rule 9 of the Central Excise Rules specifically provides that no excisable goods shall be removed from any place where they are produced, cured or manufactured whether for consumption, export, or manufacture or any other commodity in or outside such place, until the excise duty leviable thereon has been paid. Therefore, the assessing officer has misplaced the onus of proof and thereby misdirected himself in law in demanding differential duty.

6. That apart, the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the manufacture thereof. In this cause by rerolling or reprocessing the cold rolled strips, no new article is manufactured or produced. An article becomes excisable only when it is clearly within the enumeration of the excisable goods. The Government had occasion to consider a similar question in a Revision Application. The order of the Government dated 26th November, 1967 is in the following terms:

"Government of India have considered the points raised in the revision application, those, urged during the course of personal hearing and have examined the records of the case.

Government observed that cold rolled strips were produced by the process of

reduction of the same having wider dimension. Government thus find that as strips remain as strips even after reducing the dimension, it cannot be said that a new product has been manufactured for purpose of Central Excise levy.

Government accordingly allow the revision application."

7. The rerolling or reprocessing of the cold rolled strips is not manufacture and that is also the view of the Government. Secondly, the notification No. 75/67 dated 20th May, 1967 was issued under Rule 8(1) of the Central Excise Rules, 1944. The said Rules empower the Government to exempt partially or wholly the excise duty leviable on the goods by issue of the notification in the official gazette. In this case no excise duty at all leviable as there is no manufacture of any article. The excise duty is not leviable twice on the same product. The assessing officer in his assessment order admitted the fact that the cold rolled strips cleared from the factory were made out of cold rolled strips purchased from market.

8. The main contention of the petitioner is that there cannot be any double taxation of the same article. This principle is well-settled by the judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. Tata Iron and Steel Co. Ltd., Jamshedpur, . In that case the respondent manufactured ingot moulds and bottom stools from pig iron for use in steel melting shops. The respondent paid Central Excise duty on such ingot moulds and bottom steels in accordance with the provisions contained in Section 3. When ingot moulds and bottom steels became unfit for further use, they were scrapped into pieces and resulted in the respondent's steel melting shops in an admixture with other non-duty paid scraps and hot metal in the manufacture of steel ingots. Duty was realised from the respondent on those steel ingots. The respondent claimed a set-off of duty to the extent of duty paid on pig iron being the re-melted scrap used in the manufacture of steel ingots. This claim for exemption was based on Notification No. 38/60 D/I-3-1960 issued in terms of Rule 8(1) of Central Excise Rules, 1944, exempting steel ingots in which duty-paid pig iron was used. The Revenue Authorities rejected the claim of the respondent on the ground that exemption was given for virgin pig iron and the pig iron, for which exemption was claimed, was mixed with non-duty paid pig iron. The Supreme Court held that contention of the Revenue must fail on two broad grounds. First, there could not be double taxation on the same article; Second, Notification did not say that exemption was granted only when duty-paid pig iron was used and that the exemption would not be available if duty-paid pig. iron was mixed with other non-duty paid materials.

9. Having regard to the facts and circumstances of this case I am of the view that the respondents were not justified in demanding the differential duty on the goods utilised by the petitioner in the processing of the cold rolled strips.

10. The Rule is, therefore, made absolute. Let appropriate writs be issued.

11. There will be no order as to costs.

12. It is stated that at the time when the Rule was issued, a Bank Guarantee was furnished for the sum of Rs. 25,000/-. The Bank Guarantee will stand discharged. Let the Registrar Appellate Side return the Bank Guarantee Bond to the petitioner.