(1975) 02 KAR CK 0009

In the Karnataka High Court

Case No : Writ Petition No. 2297 of 1973

Krishnarajendra Mills Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 07-02-1975

Acts Referred:

Central Excise Rules, 1944 — Rule 10
Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953 — Section 5 (2) (3)

Citation : (1989) 20 ECR 216

Hon'ble Judges : E.S. Venkataramiah, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

E.S. Venkataramiah, J.—The petitioner is a Company manufacturing textile goods in Mysore City. Under the Central Excises and Salt Act (hereinafter referred to as the Act) excise duty was leviable by virtue of Entry 19 in Schedule I of the Act on some of the cotton fabrics manufactured by the petitioner. By a notification issued by the Central Government on March 1 1969 as amended by Notifications dated 6.6.1970, 29.5.1971 and 20.6.1971 cotton fabrics-medium-A Grey (unprocessed), cotton fabrics?medium-B Grey (unprocessed) arid Bleached of/ and dyed but not printed were exempted from1 payment of excise duty levied under the Act. Under the Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act (No. 12 of 19S3) (hereinafter referred to as Act 12 of 1953) additional excise duty was leviable on cloth. Under a notification issued by the Government of India dated 25.7.1953 all varieties of cloth which were for the time being exempted from the payment of excise duty levied under the Act were exempted from the additional excise duty leviable under Act No. 12 of 1953. By a notification dated 1.10.1966, the notification dated 25.7.1953 was amended by the addition of a proviso stating that the said exemption was not applicable to certain kinds of cloth. The above proviso was substituted by another notification of the Government of India dated 7.7.1970. After the said substitution, the notification issued on 25.7.1953 read as follows:

D.R.O. 1479?In exercise of the powers conferred by Clause (3) of Sub-section (2) of Section 5 of the Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953 (XII "of 1953), the Central Government hereby makes the following rule:?

All varieties of cloth which are for the time being exempted from the duty of excise levied thereon under the Central Excises and Salt Act, 1944 (1 of 1944), shall be exempt from the additional excise duty leviable ""leviable thereon under the Khadi and other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953 :

Provided that nothing contained in these rules shall apply to the following description of cotton fabrics manufactured in a composite mill, namely:

(i) Medium-A, if unprocessed ; and

(ii) Medium-B and Coarse, if unprocessed, or if bleached, or dyed, or if bleached and dyed but not printed ; or which answer the description of ''Dhoti'', ''Saree'', ''Longcloth'', ''Shirting'' or ''Drill'' as defined from time to time by the Textile Commissioner under the Cotton Textile (Control) Order, 1948 and for which maximum ex-factory prices have been specified by the Textile Commissioner under the said Order.

Explanation : For the purposes of these rules ''Composite Mill'' means manufacturer who is engaged in spinning of cotton twist, yarn or thread or weaving or processing of cotton "cotton twist, yarn or thread or weaving or processing of cotton fabrics with the aid of power and has a proprietary interest in at least two of such manufacturing activities.

2. It is, therefore, clear from the Notification dated 25.7.1953 as amended by the Notification dated 7.7.1970 that the exemption given was not applicable to cloth of the description of Medium-A (unprocessed) and Medium-B and Coarse, if unprocessed, or if bleached or dyed, or if bleached and dyed but not printed which answered the description of dhoti, saree, etc. as defined by the Textile Commissioner under the Cotton Textile (Control) Order, 1948.

3. It is not disputed that the petitioner?Mill is a composite mill and the goods with which we are concerned are those which are referred to in Clauses (i) and (ii) of the proviso as it stood after the amendment on 7.7.1970.'' After the above, amendment was made, unfortunately, the Superintendent of Central Excise, Mysore, on a wrong interpretation of the notification dated 7.7.1970 wrote to the petitioner on 26.9.1970 that all varieties of cloth which were for the time being exempted from the duty of excise under the Act were also exempted from the additional duty levied under Act 12 of 1953.

4. He omitted to notice the effect of the proviso to the notification dated 25.7.1953 substituted by the notification dated 7.7.1970 which took away from

the purview of exemption the kinds of cloth referred to in Clauses (i) and (ii) of the proviso which was introduced on 7.7.1970. On the basis of the representation of the Superintendent as contained in his letter dated 26.9.1970, the petitioner did not include in its sale price the additional excise duty which it was liable to pay under Act 12 of 1953 thinking that no such duty was recoverable in respect of the said goods as they had been exempted from payment of duty under the Act. Later on, the Assistant Collector of Central Excise, who was the proper officer empowered to exercise the power under Rule 10 of the Central Excise Rules read with Rule 173J of the said Rules, realised that there was a short levy of additional excise duty payable under Act 12 of 1953 in respect of certain goods which answered the description of goods referred to in Clauses (i) and (ii) of the proviso to notification dated 25.7.1953 as amended by the notification dated 7.7.1970 and called upon the petitioner to show cause as to why the additional duty payable under Act 12 of 1953 should not be recovered from it. The petitioner represented that it had not paid the excise duty in view of the letter dated 26.9.1970 received from the Superintendent of Central Excise and that the revenue was debarred from claiming the said amount by virtue of the principle of equitable estoppel. It was contended by the petitioner, that but for the representation made by the Superintendent, the petitioner would have passed on the additional duty payable by it to the consumers and that the petitioner having been prevented from doing so, it was unjust on the part of the revenue to insist on the payment of the same.

5. The Assistant Collector who functioned as the proper officer in this case was of the view that the contention of the petitioner could not be upheld and ordered that a sum of Rs. 58,052.73 was liable to be paid by the petitioner as additional excise duty under Act 12 of 1953. The appeal filed by the petitioner before the Appellate Collector and the revision petition before the Central Government, were unsuccessful. Hence, this writ petition.

6. Sri T. Rangaswamy Iyengar, learned Counsel for the petitioner, relying upon two decisions of the Supreme Court in Union of India v. Anglo Afghan Agencies AIR 1968 SC 718 and Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , contended that the Central Government was not entitled to demand the sum of Rs. 58,052.73 in view of the representation made by the Superintendent of Central Excise that no additional excise duty was payable under Act 12 of 1953. 1 find it difficult to agree with the submission made by Sri Iyengar. The two cases relied on by him are cases in which the Supreme Court was not concerned with a statutory rule like Rule 10 of the Central Excise Rules which authorises the proper officer to collect the duty payable from an assessee when he is of the opinion that there has been a short levy of the duty, The principle of estoppel which a rule in equity cannot prevail against law. The proper officer who is empowered to recover the duty due and payable by an assessee by virtue of a statutory rule cannot be prevented from exercising the said power by applying the principle of equitable estoppel. It is not disputed that if duty had been assessed under Act 12 of 1953

read with notification dated 25.7.1953 as amended by notification dated 7.7.1970, the petitioner would be liable to pay the sum demanded by the Assistant Collector. Since the only ground urged, namely, the ground of equitable estoppel is not available to the petitioner in the instant case, the petition has to fail.

7. In the result, the petition is dismissed. In the circumstances of this case, each party would bear and pay its own costs.

