(1986) 07 BOM CK 0064

In the Bombay High Court

Case No : Writ Petition No. 1691 of 1982

Light Metal Works and others — APPELLANT

Vs

Union of India and another — RESPONDENT

Date of Decision : 24-07-1986

Acts Referred:
Central Excise Rules, 1944 — Rule 56

Citation : (1987) 11 ECC 16 : (1986) 25 ELT 613

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The controversy in this petition lies in a very narrow compass, and the facts set out hereinafter would make it clear. Petitioner No. 1 is a partnership firm and the other petitioners are the partners. The petitioners purchase duty paid aluminium sheets and the same are cut to required sizes in the square shapes at the first stage. The pieces are further cut on the hand operated shearing machine to convert then into circular shape. Such circular pieces are then put in the spinning machine to get the required shape and thereafter the same are welded for the purpose of manufacture of topes. During the entire process of manufacture of topes, the square shapes or circles are not removed from the factory nor are they marketed.

2. Tariff Item No. 27 of the Central Excises and Salt Act, 1944 deals with subject of ''aluminium'' and Item 27(b) prescribes levy of duty at 50% ad valorem plus Rs. 4000/- per metric tonne on manufacturers of plates, sheets, circles, strips, shapes and sections in any form or size, not otherwise specified. The process of manufacture of topes is liable to duty under Tariff Item 68, which is a residuary item.

3. The petitioners claim that as the circles cut out from the aluminium sheets are used in the manufacture of topes, the claim of the department that circles are liable for payment of duty under Tariff Item 27(b) is not correct and the petitioners are not required to follow the procedure under Rule 56-A of the

Central Exercise Rules. The petitioners addressed a letter to the Excise Authorities to clarify the position, but having failed to receive any positive response, filed the present petition on August 7, 1982 for a writ of mandamus directing the respondents to grant exemption to the petitioners from following the procedure prescribed under Rule 56-A of the Central Excise Rules, while manufacturing aluminium topes.

4. In answer to the petition, S.D. Patil, Assistant Collector of Central Excise, has filed return sworn on August 21, 1984, and it is claimed that the aluminium circles manufactured by the petitioners squarely fall under Tariff Item 27(b) of the Central Excise Tariff. It is further claimed that the aluminium circles are sold in the market as circles. The return does not dispute the claim of the petitioners that the circles manufactured by the petitioners are not removed from the factory or sold in the open market, but are only used for the further process of manufacture of topes.

5. Shri Mehta, learned counsel appearing on behalf of the petitioners, submitted that the authorities are clearly in error in assuming that Tariff Item 27(b) is attracted to the facts of the case. The submission of the learned counsel is correct and deserves acceptance. It is undoubtedly true that Tariff Item 27(b) provides for levy of excise duty on the manufacture of circles from the aluminium sheets, but it is incorrect on the part of the Excise Authorities to ignore the process of manufacture of topes carried out by the petitioners. The petitioners while manufacturing the topes are require to cut the aluminium sheets into various shapes and further process takes place on these circles for bringing into existence the end product, like topes. It hardly requires to be stated that the process of manufacture of topes starts from cutting of aluminium sheets into different sizes and ends when the end product comes into existence. The mere fact that during this process the circles of aluminium sheets are manufactured cannot lead to the conclusion that Tariff Item 27(b) is attracted, and as such circles are liable for payment of excise duty. It is not in dispute that the circles manufactured by the petitioners for the process of manufacture of topes are not removed from the factory or sold in the market. In these circumstances it is difficult to hold that every process at the intermediate stage amounts to a manufacture and is liable for payment of excise duty.

Shri Rege, learned counsel appearing on behalf of the Department, relied upon the decision of the Supreme Court reported in 1978 E.L.T. 386, Union of India v/s. Hindu undivided Family Business known as Ramlal Mansukhrai Rewari and another. In paragraph 8 of the this judgment, the Supreme Court observed that to start process of manufacture of utensils, the manufacturer initially takes metals in crude form as raw material. Two different kinds of metals are mixed together to prepare alloys of kansi and brass and these alloys are brought into the form of billets and later on the billets are rolled into circles. The Supreme Court observed that the excise duty is payable on the end product and not in respect of the product which are manufactured at the interim stage. The decision of the Supreme Court, in my judgments, does not support the claim of Shri Rege that circles, which come into existence as an interim stage of the process of manufacture of topes, are liable for payment of excise duty. In my judgment, the petitioners are entitled to the relief sought.

6. Accordingly, petition succeeds and the rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs.

