

(1985) 03 GUJ CK 0014
In the Gujarat High Court

Case No : Misc. Civil Application No's. 649 and 4694 of 1984

Machine Products (T) Private Limited	Vs	APPELLANT
Union of India and Another		RESPONDENT

Date of Decision : 27-03-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)

Citation : (1986) 9 ECC 341 : (1986) 23 ELT 426

Hon'ble Judges : N.H. Bhatt, J;J.P. Desai, J

Bench : Division Bench

Advocate : S.I. Nanavati, Rakesh Gupta and K.B. Trivedi, for the Appellant; S.R. Shah, for the Respondent

Judgement

J.P. Desai, J.—The petitioner is a private limited company engaged in the business of modernisation and renovation of the existing ring frames and inter frames in the textile industry. For the said purpose, the petitioner manufacturers SKF drafting conversion components and for the aforesaid activities of modernisation, the petitioner has also to purchase from open market some of the components which they purchase from the Associated Bearing Company Ltd. The petitioner does not carry on any manufacturing activities whatsoever on the components purchased by them and they are supplied in the same packed condition in which they are received by the petitioner. Excise duty was payable under Item 68 of the First Schedule of the Central Excises and Salt Act, 1944 by the petitioner. The Central Government being empowered to authorise exemption from duty in special cases by sub-rule (1) of Rule 8 of the Central Excises Rules, 1944 issued notifications from time to time laying down certain conditions which must be satisfied before exemption could be claimed. One of the conditions was that the value of total clearances should not exceed a particular amount as laid down in the notification pertaining to the relevant year. According to the petitioner, the value of the components bought out and purchased by them was not to be taken into consideration while arriving at the same. The contention of the petitioner was negatived by the Assistant Collector and the Collector of the

Customs, but ultimately the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter to be referred to as "the Tribunal"), allowing the appeal of the petitioner, held that the value of the component parts which were bought out by the petitioner company was not to be taken into consideration while considering whether the conditions set out in the notifications issued from time to time were satisfied or not. The petitioner also contended that the packing charges were not to be included, but the same was rejected even by the Tribunal and the petitioner does not make a grievance about the same in this petition. The order of the Tribunal is produced at Annexure "A". The Tribunal has held that the value of bought out components was to be excluded and also directed consequential relief to be given to the petitioner. Thereafter, the petitioner approached the concerned authorities for grant of refund as a consequential relief granted by the Tribunal. The Assistant Collector, Central Excise, Ahmedabad, by his order dated 13-6-1984 held that the petitioner was entitled of the Tribunal and, therefore, that amount was to be treated as net profit to the petitioner and required to be considered for computing the clearance value during financial year 1979-80. So far as the next financial year is concerned, the contention of the petitioner was that the cost of the plant and machinery which was installed was less than Rs. 10,00,000 and that way, the condition imposed by the Government while issuing notification for the relevant year was satisfied. The contention of the petitioner was that the petitioner had purchased some machinery in the month of October but that machinery was not installed and, therefore, the cost of the said machinery cannot be taken into consideration while considering whether the value of the machinery was more than Rs. 10 lakhs or not. The Assistant Collector included the value of the whole of the machinery and taking it as Rs. 13,35,718 he held that the petitioner was not entitled to the benefit of exemption as per the said notifications.

2. The petitioner has specifically alleged at para (7) of the petition that machinery worth Rs. 3,48,445.46 p. was purchased on various dates between 1-10-1980 and 31-12-1980 but it was not installed during the period 1980-81 and, therefore, the value of the said machinery cannot be taken into consideration because the notification says that value of the machinery installed has to be taken into consideration. There is no averment in the counter-affidavit filed on behalf of the respondents that the whole of the machinery was installed. Even the order of the Assistant Collector, while considering the question of refund in pursuance of the order of the Tribunal, does not indicate that the Assistant Collector applied his mind on this aspect.

3. The contention of the petitioner is that the Assistant Collector was not entitled to go into any question while considering the question of refund after passing of the order by the Tribunal because all that the Assistant Collector was entitled to consider was to arrive at a figure after excluding the value of the bought out components. We do not propose to go into this question because even assuming that the Assistant Collector was entitled to go into other questions on merits as has been done by him, then also we are inclined to say that the action of the

Assistant Collector in considering the amount of refund as profit and his action in taking into consideration the value of the machinery which was not installed cannot be justified even on merits looking to the facts of the case as alleged in the petition and looking to the notifications in question.

4. So far as the action of the Assistant Collector in taking into consideration the refund as profit is concerned, the learned Counsel Mr. S. R. Shah appearing for the respondents fairly contended that his action in doing so was not justifiable. Even otherwise also it is obvious that the refund which the petitioner was entitled as a result of the order of the Tribunal cannot with any stretch of imagination be taken as profit to the company. The petitioner was not liable to pay that much amount as per the decision of the Tribunal and, therefore, the amount which the petitioner had paid was required to be refunded to the petitioner and that cannot be with any stretch of imagination, be said to be a profit to the company.

5. So far as the act of the Assistant Collector in considering the value of the whole of the machinery including that which was not installed is concerned, the learned Counsel Mr. S. R. Shah submitted that it was a question of verification and investigation. Now, even assuming that it was a matter of verification and investigation, the Assistant Collector should have investigated that fact himself by gathering necessary materials. But it is pertinent to note, as stated a little earlier, that the order of the Assistant Collector does not even give an indication that he was alive to the difference between the machinery installed, on one hand and the machinery though purchased but not installed. The order does not indicate that he was alive to this difference. Even the affidavit-in-reply filed on behalf of the respondents does not give any indication that they were alive to this situation. Notification No. 105/80 dated 19-6-1980, which is reproduced in the petition at pages 5 to 8, shows that only the value of the plant and machinery installed in the industrial unit is to be taken into consideration while ascertaining whether the value is more than Rs. 10 lakhs or not. The relevant proviso reads, as follows :-

"Provided further that an officer not below the rank of an Assistant Collector of Central Excise is satisfied that the sum total of the value of the capital investment made from time to time on plant and machinery installed in the industrial unit in which the said goods, under clearance, are manufactured, is more than rupees ten lakhs".

When the petitioner has made a specific allegation in the petition that the machinery was not installed and when the order passed by the Assistant Collector shows that he took into consideration even the value of plant and machinery which was not installed and when he does not even indicate that he was alive to this difference and when even the affidavit in reply does not give any indication in this regard, we have to take it that the petitioner was entitled to exemption as per the aforesaid notification because the value of the machinery which was installed was less than Rs. 10 lakhs, which allegation is not even denied on behalf of the respondents.

6. The above are the only two questions required to be considered in this petition.
7. The result of the aforesaid discussion is that the petition is allowed, the order of the Assistant Collector in treating the refund of Rs. 66,127.45 p. pertaining to financial year 1979-80 as net profit is, as stated earlier, not justifiable and that amount is required to be excluded while considering the question of refund for that period. So far as the refund claimed for financial year 1980-81 is concerned, the cost of the plant and machinery has to be taken as less than Rs. 10 lakhs as per the above discussion and the petitioner is entitled to necessary relief accordingly. In the view that we are inclined to take as regards the above two questions, it is clear that the conditions laid down by the Government in Notification No. 89/79, dated 1-3-1979 are satisfied, so far as financial year 1979-80 is concerned and the conditions laid down in Notification No. 105/80, dated 19-6-1960 are satisfied for Financial Year 1980-81 and, therefore, the petitioner is entitled to the refund for the aforesaid two financial years. The Assistant Collector is hereby directed to calculate the amount of refund accordingly without going into any other questions, in the light of the decision of the Appellate Tribunal and the findings recorded in this judgment. The refund should be calculated and the amount should be refunded as clearly as possible but not later than six weeks from the date of the receipt of the writ from this court. Rule is made absolute with costs.