(2002) 03 DEL CK 0134

In the Delhi High Court

Case No : Civil Writ Petition No. 572 of 1980

Madras Rubber Factory Ltd. APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 22-03-2002

Acts Referred:
Central Excise Rules, 1944 — Rule 8
Constitution of India, 1950 — Article 226

Citation : (2003) 159 ELT 29

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : Non, for the Appellant; Maninder Singh and Nishakant Pandey, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—The petitioner in this petition has challenged the Order No. 327 of 1980, dated 22nd March, 1980 passed by the Special Secretary, Ministry of Finance, Department of Revenue, New Delhi in Central Excise Revision Application filed by the petitioner. Before pointing as to what this order decides, let us recapitulate the facts of the matter.

2. The petitioner carries on business of manufacture of automotive tyres and tubes which factories are situated at Madras, Goa and Kottayam. The petitioner''s factory at Goa manufactures tyres only and the factory at Kottayam manufactures only tubes. The factory at Madras manufactures both tyres and tubes.

3. It is stated in the petition that duty of excise is livable on tyres and tubes under Tariff Item No. 16 of the First Schedule of the Central Excises and Salt Act, 1944 (for short ''the Act''). Under sub-item (1) of Tariff Item No. 16 excise duty is livable on tyres at the rate of 60% ad valorem. The Central Government, under Notification dated 1st August, 1974 being Notification No. 123 of 1974 in exercise of powers conferred under Rule 8 of the Central Excise Rules, 1944 (for

short the ''Rules'') exempted tyres and tubes for motor vehicles falling under sub-item No. (1) of Item No. 16 of the First Schedule to the Act from so much of the duty of excise livable thereon as is in excess of 55% ad valorem. As such the excise duty livable on tyres and tubes under the aforesaid Tariff Item No. 16 read with the said Notification No. 123/74 is 55% ad valorem.

4. It is further stated that on 16th June, 1976 the Central Government issued a Notification under Rule 8 of the Rules being Notification No. 198/76 whereby the Central Government granted relief in respect of the excise duty leviable. The Excise Relief Scheme under the foresaid Notification dated 16th June, 1976 was for a period of 3 years commencing from 16th June, 1976 to 31st March, 1979. The Notification came into force on the 1st of July, 1976 and remained in force up to the 31st March, 1979. The relief was to operate in respect of every financial year during the period of the scheme. The said Notification No. 198/76 exempted certain excisable goods specified in the said Notification and cleared in excess of base clearances by the manufactures from so much of the duty of excise livable thereon as is in excess of 75% of such duty subject to the conditions mentioned in the said Notification. Serial Nos. 18 and 19 of Table annexed to the said Notification related to tyres and tubes respectively. The said Notification was issued in pursuance of the declared intention of the Central Government to give relief of excise duty in respect of certain specified commodities in order to encourage higher production of such commodities and to give incentives to new units.

5 On 8th February, 1977 the Central Government issued further Notification No. 20/77 according to which a manufacturer who has more than one factory and if in respect of one of its factories it has not been able to reach the base clearances in respect of such factory on account of power cut, flood or other natural calamities, the Collector of Central Excise having jurisdiction over such factory is empowered to de-link that factory from other factories after considering representations received from the manufacturers.

Based on that Notification, the petitioner submitted application on 11th February, 1977 to the Collector of Central Excise, Madras seeking permission to exclude its Madras factory for the purpose of computing the base as well as the excess clearances so as to earn the benefit of Notification No. 198/76-C.E., dated 16th June, 1976 during the year 1976-77 on the ground that power cut was imposed on the Madras factory to the extent of 25% with effect from 26th July, 1976 and on account of that the factory was not in a position to raise the production of tyres and tubes during the year 1976-77 beyond the clearances of the period 1974-75 which was the base year in respect of the Madras factory.

6. On this application, the Collector of Central Excise, Madras passed an order dated 15th April, 1977 de-linking the petitioner''s Madras factory from the factory at Goa. However, the respondent No. 4, namely, the Assistant Collector of Central Excise, Madras by order of even date limited the permission granted by Collector with effect only from 8th February, 1977 fixing the base clearance in

respect of the petitioner''s factory at Goa as Rs. 12,75,91,287.27 as against the base clearance of Rs. 10,85,58,114.79. Aggrieved by the aforesaid order, the petitioner preferred appeal dated 6th July, 1977 which was rejected vide order dated 6th September, 1978. The petitioner filed revision application before the Secretary to Government of India which was dismissed by the impugned order.

7. The main grievance of the petitioner is that the benefit of Notification No. 20/77, dated 8th February, 1977 should have been extended to the petitioner for the whole financial year in question, namely from 1st April, 1976 to 31st March, 1977 and should not have been restricted to the period from 8th February, 1977 to 31st March, 1977.

8. The question which arises for consideration Therefore is as to whether the amendment Notification dated 8th February, 1977 would apply retrospectively i.e. from the date when the first Notification dated 16th June, 1976 was issued or it would apply prospectively i.e. from the date of its issue on 8th February, 1977.

9. As noted above, the Notification dated 16th June, 1976 was issued under Rule 8(1) of the Central Excise Rules to give 25% exemptions from the payment of excise duty on the articles listed in the table at the end of the said Notification. Para 2(2) of this Notification dealt with the base period and base clearances in relation to the factory and Clauses (a) to (d) thereof dealt with various contingencies. Clause (d) thereof, which is material for our purposes, reads as under:

"Where the specified goods are cleared by or on behalf of a manufacturer from more than one factory and the Collector of Central Excise is satisfied on a representation by or on behalf of such manufacturer that because of power cut, natural calamities such as floods and fires or orders of Government requiring curtailment of production, such manufacturer is not in a position in any year to raise production in one of his factories beyond the base clearances in respect of such factory, then in relation to such manufacturer the clearances from such factory shall not be taken into account and shall be excluded both for the purposes of calculating base clearances and clearances in excess of the base clearances in such year."

By amendment Notification dated 8th February, 1977 the following Clause was inserted:

"Where the specified goods are cleared by or on behalf of a manufacturer from more than one factory and the Collector of Central Excise is satisfied on a representation by or on behalf of such manufacturer that because of power cut natural calamities such as floods and fires or orders of Government requiring curtailment of production, such manufacturer is not in a position in any year to raise production in one of his factories beyond the base clearances in respect of such factory, then in relation to such manufacturer the clearances from such factory shall not be taken into account and shall be excluded both for the purposes of calculating base clearances and clearances in excess of the base clearances in such year."

10. As mentioned above, on application dated 11th February, 1977 although the request of the petitioner for de-linking Madras factory from Goa was allowed, this benefit has been given with effect from 8th February, 1977, i.e., the date of issuing of the amendment Notification. The Appellate Authority in its order dated 6th September, 1978 has held that the exemption can operate only from the date of issuance of Notification dated 8th February, 1977 inasmuch as it will effect only prospectively and not retrospectively unless it is so specified. Same view is taken by the Revisional Authority while dismissing the review application of the petitioner and relying upon the judgment of the Gujarat High Court in the case of Jayant Calendar Factory v. Assistant Collector of Central Excise, Ahmedabad and Ors. (S.C.A. Nos. 151 and 239 of 1969 decided on 4th March, 1971). The reference was also made to the judgment of the Supreme Court in the case of The Cannanore Spinning & Weaving Mills Ltd. v. The Collector of Customs and Central Excise, Cochin and Ors. reported in 1978 (2) E.L.T. (J 375) wherein the Supreme Court held that the authorities are not empowered to issue notifications under the Central Excises and Salt Act or the Rules with retrospective effect and thus the revisional authority held that Notifications issued under Rule 8 cannot be given any retrospective effect.

In view of the aforesaid legal position, this writ petition has no merit which is dismissed accordingly.