(1990) 01 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 3100 of 1981

Mafatlal Engineering Ind. Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 24-01-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 10

Citation : (1990) 31 ECR 322

Hon'ble Judges : T.U. Mehta, J;G.T. Nanavati, J

Bench : Division Bench

Judgement

1. The petitioner is engaged in the manufacture of synthetic fibre machinery, textile machinery and component parts thereof. At the relevant time the said products were liable to payment of excise duty under Tariff Item 68 of the First Schedule to the Central Excises & Salt Act, 1944. On 7.8.1979, the Superintendent of Central Excise issued a show cause notice under Rule 10 of the Central Excise Rules, 1944, calling upon the Petitioner to show cause why duly of Rs. 2,33,520/- should not be charged and levied from the petitioner on the ground that the same was short levied for the period from 1.4.1978 to 31.5.1979. Thereafter the adjudication proceedings were -before the Assistant Collector who, by his order dated 17.3.1980 confirmed the demand. Against that order, the petitioner preferred an appeal to the Appellate Collector, Central Excise (Appeals), Bombay. The Collector modified the order in so far it confirmed the demand which was time barred and subject to that modification dismissed the appeal. The petitioner has filed this petition challenging the said two orders on the ground that after Rule 10 came to be omitted from the Central Excise Rules by Notification No. 177/80-CE dated 12th November, 1980, which came into force from 17.11.1980, no proceedings initiated on the basis of the said Rule could have been continued against the petitioner.

2. As stated earlier, pursuant to the show cause notice issued under Rule 10, adjudication proceedings were held by the Assistant Collector and they came to

an end on 17.3.1980 i.e. before Rule 10 came to be omitted. Thus, it cannot be said that the proceedings which were initiated by issuing the show cause notice were invalidly initiated or that the Assistant Collector had confirmed the demand without any authority of law. It is no doubt true that the appeal filed by the petitioner was pending before the Collector when Rule 10 came to be omitted. Even if it is assumed in favour of the petitioner, as contended by the learned Counsel for the petitioner, that an appeal can be said to be continuation of the original proceedings, it is difficult to appreciate how that can help the petitioner, because on his own argument it will have to be held that further proceedings ought to have been dropped as soon as Rule 10 came to be omitted. As a result of the appellate order, the petitioner got certain benefits and if his contention is accepted even those benefits will be lost to the petitioner.

Rule discharged.