(1988) 03 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 567 of 1986

Mahavir Metal Convertors and another — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 07-03-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 49, 9
Central Excises and Salt Act, 1944 — Section 11C, 3

Citation : (1988) 17 ECR 80 : (1988) 36 ELT 81

Hon'ble Judges : S.P. Kurdukar, J

Bench : Single Bench

Judgement

1. The entire controversy raised in this petition, in my opinion, is set at naught by virtue of Notification No. 291/86-C.E., dated 12th May, 1986. The 1st petitioner is a Firm having their factory and place of business at Bassein Taluka Industrial Cooperative Estates Ltd. Bassein. The 2nd petitioner is the ex-partner of the 1st petitioner. The petitioners firm, inter alia, manufacture aluminium circles (also convert such circles into utensils) which are excisable under Traffic Item 27, but exempt from excise duty. The petitioners sought the benefit of Notification No. 43/75, dated 1st March, 1975 which was issued by the Central Government under the Central Excise and Salt Act, 1944 granting total exemption to such manufacture of a particular gage as mentioned in the said notification. According to the petitioners they fall under the exempted category. The 3rd respondent vide his letters dated September 29, 1980 accepted that the petitioners are totally exempted from payment of any excise duty. On May 21, 1981 certain aluminium sheets from the factory of the petitioners were seized and since that time the petitioners appear to have landed into some difficulty. On June 29, 1981 the Central Board of Excise and Customs issued a tariff advice No. 62/81 to levy the excise on the petitioners product. Pursuant to this tariff advice dated 18-11-1981 the department issued a show cause notice to the petitioners. The department also issued three more show cause notices which are dated 22-7-1981, 12-2-1983 and 16-5-1983. The petitioners appeared before the

Authority and filed their detailed reply. They retired their contention, that they are entitled for total exemption under Notification No. 43/75, dated 1-3-1975. The Authority by its order dated 27-9-1984 however rejected the said explanation and levied the excise on the petitioners'' product. The petitioners approached this Court by filing a writ petition but, however, this court vide order dated January 15, 1985 directed the petitioners to follow the alternate remedy available under the Act. The petitioners thereafter filed the appeal to the Appellate Tribunal. By this time the appeal was time-barred. The Appellate Tribunal, however, by its order dated 20th December, 1985 dismissed the appeal, on the ground of limitation. It is this order which is sought to be challenged in this writ petition.

2. As pointed out earlier, in my opinion, in view of the Notification No. 291/86-C.E., dated 12th May, 1986, the entire controversy must come to an end in favour of the petitioners. The notification reads as under.

"Tariff Item 27 - Exemption to Aluminium sheets :- whereas the Central Government is satisfied that according to a practice that was generally prevalent regarding levy of duty of excise (including non-levy thereof) u/s 3 of the Central Excises and Salt Act, 1944 (1 of 1944), the duty of excise on aluminium sheets falling under Item 27 of the first schedule of the said Act, as it existed prior to the 28th February, 1986, and arising at an intermediate stage in the factory of production in the manufacture of -

(i) aluminium circles of thickness of and above 0.56 millimeters but not above 1.22 millimeters, during the period commencing on the 1st March, 1975 and ending with the 30th November, 1980, or

(ii) aluminium circles thickness of and above 0.56 millimeters but not above 2 millimeters, during the period commencing on the 1st December, 1980 and end with the 31st July, 1984, was not being levied under the Section 3 read with any notification issued by the Central Government in relation to duty of excise so chargeable during the said periods;

And whereas the special duty of excise on such aluminium sheets was also not being levied under the relevant law relating to the levy of such duty during the periods aforesaid;

Now, therefore, in exercise of the powers conferred by Section 11C of the said Act, the Central Government hereby directs that the whole of the duty excise and the special duty of excise payable under the said Act, or under the said law, on such aluminium sheets, but for the said practice, shall not be required to be paid in respect of such aluminium sheets on which the said duty of excise or the special duty of excise were not being levied during the periods aforesaid, in accordance with the said practice."

The notification is taken on record and marked ''X'' for identification.

3. Dr. Kantawala learned counsel appearing for the petitioners urged that in view

of the notification there can hardly be any doubt that the Central Government intended to give the benefit of total exemption to the manufacturers like petitioners. He further urged that the purport of the notification clearly indicates that it is to be applied retrospectively and not prospectively. Mr. Sethana learned counsel appearing for the respondents urged that this notification would be applicable firstly prospectively and not to the intermediary product in view of the amended rules 9 and 49 of the Central Excise Rules. He therefore urged that the petitioners are not entitled to the total exemption as claimed in this writ petition. In my opinion, the submission of Dr. Kantawala is well founded. If one reads the notification carefully it is quite clear that the exemption is also available to intermediary stage in the factory of production in the manufacture of sub-items 1 and 2 therein. This intermediary stage is an intermediary product and in my opinion, the notification leaves no manner of doubt that this intermediary product is also exempt from payment of excise duty under this notification. The notification is quite clear and needs no further elaborate discussion. All that the notification has done is that the practice that was followed till then is changed to a law by issuing the notification. This conclusion is quite clear from the last two lines of the notification.

4. In the result, the writ petition succeeds and the rules is made absolute in terms of prayers (a) and (b). In the circumstances of the case, there shall be no order as to costs.

