(1986) 06 BOM CK 0010

In the Bombay High Court

Case No : Writ Petition No. 835 of 1982

Mahendra Electricals Ltd. APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 26-06-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8

Citation : (1986) 10 ECC 63 : (1992) 42 ECR 787 : (1986) 26 ELT 882

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

Bench : Single Bench

Judgement

1. The petitioners carry on the business of manufacturing P.V.C. underground and over ground telephone cables in their factory situated at Nadiad in the State of Gujarat. The factory was established in the year 1962 after obtaining the requisite industrial licence in May-October of the year 1960. The industrial licence granted to the petitioners is for the manufacture of P.V.C. insulated cables. The petitioners manufacture diverse kinds of P.V.C. insulated cables including cables, both for over ground and underground use in the telecommunications and for the purpose of telephones. The petitioners have supplied the cables not only to the Government of India Undertakings such as Indian Drugs and Pharmaceuticals Ltd., the Indian Ordnance Factories at Kirkee, Bhabha Atomic Research Centre, but also to other manufacturers.

2. The Government of India, Ministry of Finance, in exercise of powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 issued exemption Notification No. 50 of 1968 dated March 23, 1968 exempting wires and cables falling under Item No. 33-B of the first Schedule of the Central Excises and Salt Act, 1944 from so much of the duty of excise leviable thereon as is in excess of that specified in Column (3) of the Table annexed to the Notification. The duty of 5% ad valorem was fixed in respect of (a) underground telecommunication wires and cables, and (b) over ground (laid on the ground) telecommunication wires and cables supplied on specific demands for telecommunication purposes. The

exemption Notification was amended from time to time, but the amendments only referred to the variations of duty payable and the duty was raised from 5% ad valorem to 10% ad valorem from time to time.

3. On May 31, 1968, the petitioners filed classification list claiming exemption in respect of manufacture of P.V.C. cables. The Superintendent of Central Excise rejected the classification list holding that the claim of the petitioners that the manufactured goods fall under Serial No. 2(ii) and (iii) which are the items set out at (a) and (b) above is not correct but the goods manufactured by the petitioners fall under Serial No. 3 of the Notification and attracts duty of 12% ad valorem. Serial No. 3 of the Notification reads as under:-

"All electric wires and cables, excluding those specified against Serial No. 1 and Serial No. 2 of this table manufactured by an industrial undertaking to which the industries (Development and Regulation) Act, 1951 does not apply."

The petitioners challenged the order by filing an appeal before the Appellate Collector, but the appeal ended in dismissal by an order dated May 20, 1970. The petitioners filed Revision Application before the Government of India but that application also ended in dismissal by an order dated May 30, 1977. In the meanwhile, on June 25, 1973, the petitioners filed refund claim for Rs. 99,175.60 for cables cleared between March 28, 1968 and May 29, 1973. Against the order of the Central Government rejecting the Revision Petition, the petitioners approached Gujarat High Court by filing Writ Petition being Special Civil Application No. 315 of 1978 and the Gujarat High Court by order dated August 25, 1980 set aside the order of the revisional authority and remitted the matter back to the Appellate Collector for de novo adjudication. After the matter was remitted back to the appellate authority, the Collector, Central Excise (Appeals), Bombay, by order dated February 27, 1982 dismissed the appeal of the petitioner holding that the cables and wires described in the classification list were not eligible to concessional rate of duty of 5% ad valorem. The order of the Collector, Central Excise (Appeals), Bombay, is under challenge in this petition.

4. Shri Shroff, learned counsel appearing on behalf of the petitioners, submitted that the impugned order suffers from serious infirmity as the Collector, Central Excise (Appeals) has proceeded to dispose of the claim of the petitioner by relying solely upon two extracts from letters written by Director General, Posts and Telegraphs, New Delhi and Directorate General of Technical Development. Shri Shroff complains that the Appellate Collector did not apply his mind to the claim of the petitioner, but proceeded to hold that the cables manufactured by the petitioners are not underground or over ground telecommunication wires and cables for misreading of these extracts. The learned counsel urged that the petitioners are clearly entitled to the advantage of the exemption Notification and the goods manufactured clearly fall within Serial No. 2(ii) and (iii) of the Exemption Notification. The submission of the learned counsel is correct and deserves acceptance. The perusal of the order of the Appellate Collector clearly indicates that reliance is placed solely on the two extracts to reach the conclusion

that the manufacture of the cables by the petitioners does not fall under Serial No. 2(ii) and (iii). Now, it is difficult to appreciate how the Appellate Collector could have relied upon these extracts, copies of which were furnished to the petitioners at the time of hearing. The copy of the extracts from the letter of Director General, Posts and Telegraphs, New Delhi is annexed as Ex. K to the Petition and the perusal of the same indicates that possibly the extract is from the letter dated April 26, 1976. The petitioners had earlier filed Revision Petition before the Central Government on July 15, 1970 and that Revision Petition was disposed of on May 30, 1977. There is no material on record to indicate as to who forwarded the samples to the Director General, Posts and Telegraphs, New Delhi and at what juncture. Shri Bulchandani was unable to throw any light on this aspect of the matter. I also enquired from the learned counsel for the respondents as to why only the extract was supplied to the petitioner and not the entire letter and the learned counsel has no answer to give. It is impossible for any quasi judicial authority to rely upon an extract torn out of a letter and base the conclusion on such material. It is necessary that the petitioners against whom such material is used while passing quasi judicial order is made fully aware of all the aspects of the matter and it is unfair to tell a party that opinion of an alleged expert will be relied upon to pass adverse order. The perusal of Ex. K to the petition indicates that the gentleman who gave opinion had visually examined the cables supplied to him. Shri Bulchandani was unable to throw light as to who forwarded the samples and which samples were forwarded. It is possible to place any reliance on such extracts when it is not known as to who forwarded the samples, when they were forwarded and how the samples were obtained. It is also not known as to who gave the opinion. The extract relied upon from the letter of Director General, Posts and Telegraphs, New Delhi merely recites that from a visual examination, it is seen that the samples could perhaps be termed as switch-board cable, if it conforms to ITD specification. It further states that as regards other sample i.e. wire armoured telephone cable could be used though it is not used by the Telegraph Department. It further stated:

"In the absence of information about the specification according to which this sample has been manufactured, further comments in respect of this cable cannot be offered."

These observations are enough to discard the opinion of Director-General.

The second extract is from the letter of Directorate General of Technical Development, New Delhi and copy of which is annexed as Ex. "L" to the petition. The perusal of the same indicates that it is an extract from the letter dated May 14, 1976 and the only relevant portion of this extract is that the underground telephone cables are being manufactured only by two Public Sectors (1) M/s. Hindustan Cables Limited, and (2) M/s. Traco Cables, and no unit in the Private Sector is manufacturing underground telephone cables. In this case also, reliance on the extract suffers from same infirmities which are set out in respect of earlier extract. In my judgment, it was totally erroneous on the part of the Appellate

Collector to rely on such extract and pass adverse order against the petitioner. In this connection, it cannot be overlooked that the petitioners sought cross-examination of persons who had made such report but that opportunity was denied by the appellate authority. In my judgment, the reliance on these extracts were entirely irregular and the order based on such extracts cannot be sustained.

5. Shri Shroff submitted that the cables manufactured by the petitioners are approved by Directorate General of Technical Development (Heavy Electrical Directorate), New Delhi, and in support of this submission, reliance was placed on letter dated April 24, 1971 from the Assistant Development Officer to the General Manager, Indian Ordnance Factories and a copy of which is annexed as Exhibit ''C'' to the petition. The letter recites that the request of Indian Ordnance Factory, Kirkee has been examined and an approval is given to the manufacture of cables to be specifically used for underground cables. The manufacture was to be carried out by the petitioners and, therefore, the copy of the letter was forwarded to the manufacturer. Reliance was placed on this letter to indicate that not only the petitioner/manufactured underground telephone cables but manufactured goods are approved by the Directorate General of Technical Development and sold to public Sector authorities like Indian Ordnance Factories. In my judgment, this letter clearly indicates that the claim of the petitioners that they are manufacturing over-ground and underground telecommunication wires and cables is correct and they are entitled to the advantage of the exemption Notification dated March 23, 1968 and which was subsequently amended from time to time. The goods manufactured by the petitioners clearly fall within Serial No. 2(ii) and (iii) of Notification No. 50 of 1968 and the authorities below were clearly in error in not accepting the claim of the petitioners and not approving the classification list accordingly. The petitioners are entitled to the refund for the excess duty paid on mis-construction of application of Notification by the Department.

6. Accordingly, petition succeeds and the rule is made absolute in terms of prayer (a). It is declared that the goods manufactured by the petitioners are over ground and underground telecommunication wires and cables and in accordance with Notification No. 50 of 1968, the excise duty payable was only 5% ad valorem. The respondents are directed to calculate the amount of refund due to the petitioners and award this refund claim within a period of three months from today. In the circumstances of the case, these will be no order as to costs.

