

(2005) 09 KL CK 0061
In the High Court Of Kerala
Case No : C.E.A. No. 35 of 2005

Malanad Co-operative Tea Factory

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Central Excise Rules, 1944 — Rule 173F, 173G(1), 173Q, 9(1)
Central Excises and Salt Act, 1944 — Section 3, 5A(1)

Citation : (2006) 1 KLT 507

Hon'ble Judges : K.T. Sankaran, J; K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Joseph Kodianthara and Mithun Markos, for the Appellant; John Varghese, Addl. Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Appellant is engaged in the manufacture of tea and was availing of exemption under notification No. 41/99 CE dated 26-11-1999 during the financial year 2000-2001. Appellant was served with a show cause notice dated 28-5-2001 by the Superintendent of Central Excise to show cause why penalty under Rule 173 Q of the Central Excise Rules 1944 should not be imposed on it for the contravention of Rule 9(1) read with Rule 173G(1)(a) and 173F of the Central Excise Rules. It was pointed out that an amount of Rs. 1,78,558/- being the duty of excise called CENVAT payable on 89,279 kgs. of tea cleared by the appellant during the period from 1-4-2000 to 28-5-2001 has not been levied and that it has violated the provisions of Rule 9(1) read with Rule 173G(1)(a) and 173F of the Central Excise Rules 1944 by failing to assess the duty payable correctly and by clearing excisable goods without paying the duty payable on the grounds.

2. Appellant filed objection to the show cause notice. Later Deputy Commissioner confirmed the demand made in the show cause notice, however did not impose any penalty since there was no wilful violation of any of the provisions of the

Central Excise Rules. Aggrieved by the said order, appellant took up the matter in appeal before the Commissioner of Central Excise. Appeal was rejected. Appellant then preferred appeal before the Tribunal. Same was also dismissed against, which this appeal has been preferred.

3. Sri. Joseph Kodianthara, counsel appearing for the appellant, submitted that the authorities have committed an error in understanding the scope of the notification. Counsel submitted considering the fact that the appellant being a co-operative society a liberal interpretation is warranted. Reference was made to the decision of the apex court in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, and Maschmelier Aromatics v. C.C.E. (1990) 45 ELT 395. Counsel highlighted the distinction between the provisions of a statute which are of substantial in character and procedural. Counsel submitted considering the fact that the notification was issued in public interest and since the appellant has substantially complied with the provisions the Society should have been given the benefit. Counsel submitted the mere fact that there was delay in submitting the declaration would not take away the benefit of the notification to the appellant which is a co-operative society.

4. The short question that falls for consideration in this case is whether appellant is eligible to get exemption under notification No. 41/99 CE dated 26-11-1999 when the appellant had filed the undertaking with the Deputy Commissioner on 29-5-2001. In this connection it is necessary to refer to the notification as contained in Section No. IV. Relevant Portion of the notification is extracted below for easy reference.

II. Tea cleared by a factory belonging to a co-operative society during any financial year subsequent to 1999-2000 (a) The benefit of exemption from duty will commence from the date of the undertaking with the Asst. Commissioner/ Deputy Commissioner of Central Excise as specified in condition (b):- (b) The manufacturer filed an undertaking that:- (i) the green leaf used by the factory during the period, from the date of the aforesaid undertaking till the end of the financial year shall not be purchased from any grower who has a holding exceeding ten hectares under tea cultivation. (ii) The co-operative society owning the factory is registered with the Registrar of Co-operative Societies in the concerned State Govt. (iii) No member of the co-operative society owns a holding exceeding ten hectares under tea cultivation. (c) In the first week of each succeeding financial year, the manufacturer shall submit a statement of accounts, in a format to be prescribed by the Jurisdictional Commissioner of Central Excise, as proof of having fulfilled the undertaking. (d) In the event of his failure to satisfy the undertaking, the manufacturer shall be liable to pay duty of excise specified in the First Schedule to the said Central Excise Tariff Act for the period referred to in condition (b). Clause IV of the above mentioned notification states that the benefit of exemption from duty will commence from the date of filing of the undertaking. Sub-clause (ii) of Clause IV states that the undertaking shall contain that the factory has been working for at least six

months during the year preceding the year in which the undertaking referred to in condition (b) is required to be filed. A reading of the provisions in Clauses (a) and (b) would clearly show that the undertaking should contain the statement that the factory was working for at least six months during the preceding year. We are of the view, if the undertaking is to be given only once, as contained by the appellant, and not in the subsequent year, then the requirement under Clause (b)(ii) cannot be fulfilled. Therefore the requirement can only be fulfilled only if the undertaking is given at the beginning of every financial year. The above mentioned notification has been issued in exercise of the power conferred under Sub-section (1) of Section 5A of the Central Excise Act, 1944 by the Central Government in public interest exempting co-operative societies from payment of duty of excise leviable u/s 3 of the Central Excise Act, 1944 but it has to satisfy the conditions specified in column (3) of the table attached to the said notification. It is categorically stated that the benefit of exemption from duty will commence from the date of the undertaking with the Assistant Commissioner/Deputy Commissioner of Central Excise as specified in condition (b). It has been specifically stated that green leaf used by the factory during the period, from the date of the aforesaid undertaking till the end of the financial year, shall not be purchased from any grower who has a holding exceeding ten hectares under tea cultivation. However, it is also stated that in the first week of each succeeding financial year, the manufacturer shall submit a statement of accounts. In the format to be prescribed by the Jurisdictional Commissioner of Central Excise, as proof of having fulfilled the undertaking. It is also stated that in the event of failure to satisfy the undertaking the manufacturer shall be liable to pay duty of excise specified in the first Schedule to the Central Excise Tariff Act

5. We may in this connection refer to the decision of the apex Court in *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, wherein the apex court held that the conditions prescribed in the statute shall be strictly construed. The question came up for consideration in the above case was whether the requirement of the declaration under the proviso to Section 5(2)(a) (ii) of the Bengal Finance (Salestax) Act, 1941 could be established by evidence aliunde. The apex court held that the intention of the Legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. The court further opined as follows:

The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder, is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent, fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well-nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the two fold object, namely, prevention of fraud and facilitating administrative efficiency,

the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid.

The decision in *Kedarnath Jute Manufacturing Co. Vs. Commercial Tax Officer, Calcutta and Others*, was later followed by the Apex Court in *Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others*, and held that a person who claims an exemption has to establish his case. The court held that the choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the Legislature manifest on the statutory language. We are of the view, from a reading of the notification there is no ambiguity. Notification is clear that exemption would be available only from the date of filing of the undertaking and in the event of failure to satisfy the undertaking, the manufacturer shall be liable to pay duty of excise specified in the First Schedule to the Central Excise Tariff Act. The statutes has given emphasis "on the date of undertaking". Further it is stated in the first week of each succeeding financial year, the manufacturer shall submit a statement of accounts, in a format to be prescribed by the Jurisdictional Commissioner of Central Excise as proof of having fulfilled the undertaking. Only if the above mentioned condition are satisfied, appellant would get the benefit of exemption. Apex court in a recent decision in *State of Punjab and Others Vs. Punjab Fibres Ltd. and Others*, held that to avail of the benefits of a notification the party must strictly comply with the conditions of the notification. It was also held that the notification has to be interpreted in terms of its wording. Where the language is very clear and unambiguous, benefit cannot be granted merely on the ground of sympathy.

6. We find no ambiguity in the terms of the notification warranting any interpretation. In such circumstances, we are in agreement with the reasoning of the authorities below that the benefit would be available only from the date of undertaking. Appeal therefore lacks merits and the same would stand dismissed.