

(1981) 09 GUJ CK 0002

In the Gujarat High Court

Case No : Letters Patent Appeal No. 88 of 1978

Malhotra Iron and Steel Industries, Ahmedabad

APPELLANT

Vs

M.M. Gupta and Another

RESPONDENT

Date of Decision : 30-09-1981

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1), 9(2)

Citation : (1988) 33 ELT 344 : (1982) GLH 219 : (1982) 1 GLR 738

Hon'ble Judges : P.D. Desai, J;D.H. Shukla, J

Bench : Division Bench

Advocate : H.B. Shah, for the Appellant; A.P. Ravani, Additional Standing Counsel, for the Respondent

Judgement

P.D. Desai, J.—This appeal is directed against the decision of M.C. Trivedi, J. rendered on Nov. 21, 1977 in First Appeal No. 871 of 1975. By the impugned decision, the decree dated Sept. 20, 1974 passed by the Judge, Sixth Court, City Civil Court at Ahmedabad, declaring that the demand notice dated April 4, 1967 whereunder a sum of Rs. 4,917/- was claimed from the appellant-plaintiff as excise duty, was illegal and unenforceable and restraining the respondents-defendants by a permanent injunction from recovering from the appellant-plaintiff any amount pursuant to the said notice. In the course of this judgment, the parties will be referred to as "the plaintiff" and "the defendants" respectively.

2. Briefly stated, the case of the plaintiff was that it carried on business as re-rollers of iron and steel products out of duty paid materials in combination with old and used re-rollable scrap. The finished product manufactured by the plaintiff is an excisable item under Tariff Item 26AA(ia) of the First Schedule to the Central Excises and Salt Act, 1944, (hereinafter referred to as "the Act"). However, on and with effect from Dec. 1, 1963, by virtue of the Notification No. 206/63, dated Nov. 30, 1963, the products manufactured by the plaintiff were exempt from payment of the whole of the excise duty. The specific case of the plaintiff was that it had purchased second class rejected rails which were offered

by Hindustan Steel Ltd., Bhilai F.O.R. destination and that out of such rails, different products were manufactured and sold in open market. The rails purchased accordingly were old and used re-rollable scrap within the meaning of Notification No. 206/63 and, therefore, the products manufactured by the plaintiff were exempt from the payment of the whole of the excise duty leviable on such products. However, the excise authorities took the view that the products manufactured by the plaintiff were not entitled to any exemption and, therefore, by the impugned demand notice dated April 4, 1967, issued under Rule 9(2) of the Central Excise Rules, 1944 (hereinafter referred to as "the Rules"), the plaintiff was called upon to pay a sum of Rs. 4,917/- as and by way of excise duty on such products. There was an adjudication and an appeal and a revision application to the hierarchy of authorities under the Act, and the demand was confirmed. The plaintiff, therefore, prayed that the demand notice should be declared as ultra vires, illegal, void, arbitrary, discriminatory and actuated with ulterior motives, mala fides and unenforceable at law and that the original adjudication and the appellate and revisional orders should also be declared as ultra vires and illegal and that the defendants should be restrained from enforcing the recovery of the sum of Rs. 4,917/- from the plaintiff.

3. The suit was resisted by the defendants by their Written Statement, Ex. 14, inter alia, on the ground that on a true and correct interpretation of the Notification No. 206/63, the products manufactured by the plaintiff were not entitled to exemption. It was admitted in the Written Statement that the plaintiff had purchased second class rails from Hindustan Steel Ltd., Bhilai, who were the primary manufacturers of rails. Hindustan Steel Ltd. had discharged the liability of payment of excise duty in respect of such rails at the ingot rate only. Since the plaintiff manufactured products out of such second class rails and such products were liable to payment of excise duty under Tariff Item 26AA(ia), the demand notice was legal and valid. The products could not be said to have been manufactured from the material or a combination of materials specified in the Exemption Notification No. 206/63 and, more particularly, from old and used re-rollable scrap and, therefore, the benefit of exemption was not available to such products.

4. The trial Court found that the plaintiff had manufactured its products from old and used re-rollable scrap within the meaning of the Exemption Notification No. 206/63 and that, therefore, such products were exempt from the levy of excise duty. The demand notice was, therefore, illegal and invalid. The trial Court, therefore, granted the reliefs claimed by the plaintiff.

5. In appeal, M.C. Trivedi, J. reversed the decision of the trial Court. It was found that the end products manufactured by the plaintiff were iron and steel products within the meaning of Tariff Item 26AA(ia) of the First Schedule. Though such products were manufactured from untested second class rails supplied by Hindustan Steel Ltd., such rails could not be termed as old and used re-rollable scrap within the meaning of the Exemption Notification No. 206/63. In the

opinion of M.C. Trivedi, J., there was no evidence to support such claim on the part of the plaintiff and the rails supplied by Hindustan Steel Ltd. were, in fact, fresh, unused re-rollable scrap. In order to claim exemption where the end product is manufactured out of fresh unused re-rollable scrap, it was necessary for the plaintiff to satisfy that appropriate amount of excise duty was already paid on such scrap, since the plaintiff had failed to satisfy that an appropriate amount of excise duty was already paid on the fresh unused re-rollable scrap utilised by it in the manufacture of its end-product, it was not entitled to exemption under Notification No. 206/63. In the result, the appeal was allowed and the decree passed by the trial Court was set aside.

6. Be it noted at this stage that so far as the present Letters Patent Appeal is concerned, the sole question which was debated before the Court was the applicability or otherwise of the Exemption Notification No. 206/63. Therefore, the narration of facts and the summary of the findings of the Courts have been confined to the issue agitated before the Court.

7. At the hearing of the Letters Patent Appeal, Mr. H.B. Shah, learned advocate appearing on behalf of the plaintiff, did not dispute that the end products manufactured by the plaintiff were liable to excise duty under Tariff Item 26AA(ia). He urged that the plaintiff was claiming the benefit of exemption under Notification No. 206/63 on the strength of the undisputed position that : (a) the plaintiff had purchased from Hindustan Steel Ltd. second class rails which were rejected and/or not accepted by the railways, (b) such unserviceable rails were used for manufacturing the end products of the plaintiff and (c) such rails were "old and used re-rollable scrap" within the meaning of Exemption Notification No. 206/63 and, as such, the end products were exempt from the payment of the whole of the excise duty.

8. Mr. A.P. Ravani, learned Additional Standing Counsel for the Central Government, submitted that by no stretch of imagination, the rails purchased by the plaintiff from Hindustan Steel Ltd. could be called "old and used re-rollable scrap" within the meaning of the exemption notification because the rails were neither old nor used and they were fresh products which were sold to the plaintiff because they were of second class quality.

9. As we shall presently point out, an explanation is to be found in the Exemption Notification No. 206/63 which defines, as it were, the phrase "old and used re-rollable scrap", by creating a fiction. The trial Court relied upon the explanation while holding in favour of the plaintiff. M.C. Trivedi, J. does not appear to have taken into consideration the said explanation. Before us, the plaintiff relied heavily upon the said explanation in order to bring the end products manufactured by it within the ambit of the exemption notification. The attempt of the excise authorities, on the other hand, was to show that the explanation had a limited operation and that it was not attracted on the facts and in the circumstances of the case.

10. From what has been stated above, it would be apparent that the sole question which arises for consideration is whether the end products manufactured by the plaintiff out of the rails purchased from Hindustan Steel Ltd. were exempt from the payment of the whole of the excise duty leviable under Tariff Item 26AA(ia) by virtue of the Exemption Notification No. 206/63. The answer to the question depends upon the true and proper interpretation of the Exemption Notification No. 206/63, dated Nov. 30, 1963 (Ex. 49) read in the light of the evidence on record. The exemption notification is set out in extenso hereunder :

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules 1944 and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 131/62, Central Excise, dated 13th June, 1962, the Central Government thereby exempts Iron or Steel Products falling under sub-item (ia) of Item No. 26AA of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) made from any of the following materials or combination thereof, namely :-

(i) Fresh unused re-rollable scrap on which the appropriate amount of duty of excise has already been paid;

(ii) Semi-finished steel including blooms, billets, slabs, sheet bars, tin bars and hoe bars, on which the appropriate amount of duty of excise has already been paid;

(iii) Old and used re-rollable scrap,

from the whole of the duty of excise leviable on such products.

2. This notification shall come into force on the first day on December 1963."

11. An explanation was added to the above exemption notification by Notification No. 123/65, dated August 14, 1965 (Ex. 53) which is in the following terms :-

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendment in the notification of the Government of India in the Ministry of Finance (Deptt. of Revenue) No. 206/63, Central Excise, dated the 30th November, 1963, namely :

In the said notification the following explanation shall be inserted at the end, namely :-

"Explanation. - For the purposes of this notification, scrap, obsolete, second hand and unserviceable rails whether heavy, medium or light and by whatever name called, shall, irrespective of their lengths be deemed to be old and used re-rollable scrap."

12. Before we turn to the question of construction of the exemption notification, it would be convenient to deal with the factual aspect. In para 3 of the plaint, the

plaintiff averred that Hindustan Steel Ltd. has offered second class rejected rails F.O.R. destination to the re-rolling mills of India through the Steel Re-rolling Mills Association of India, Calcutta and that the plaintiff, in due course of business, had purchased such second class rejected rails in the years 1964 and 1965 which were offered F.O.R., destination, Ahmedabad. In para 6 of the Written Statement, Ex. 14, the fact that the plaintiff purchased second class rails from Hindustan Steel Ltd., the primary manufacturers of rails is admitted. Ramgopal Atmaram, Ex. 42, an employee of the plaintiff's firm during the relevant period, deposed that the material which was utilized for producing the end products of the plaintiff consisted of second class rails which the railway had not accepted. There is no cross-examination of the witness, so far as this aspect of his testimony is concerned. The trial Court, on the basis of the pleading and evidence aforesaid, reached the conclusion that having regard to the explanation, the material used by the plaintiff could be termed as "old and used re-rollable scrap" and that, therefore, the end products were entitled to exemption from the payment of the whole of the excise duty.

13. Turning now to the question of the construction of the exemption notification, it is not in dispute between the parties that at the material time, the exemption notification together with the explanation as stated above was in force. Therefore, for the purpose of construing the phrase "old and used re-rollable scrap" used in the exemption notification, it would be permissible to invoke the aid of the explanation which is a part and parcel for the exemption notification. It hardly needs to be mentioned that an explanation is sometimes added to include something within, or to exclude something from, the ambit of the main enactment or to add to or detract from the connotation of some word occurring in the main enactment.

14. The exemption notification exempts from the payment of the whole of the excise duty leviable on iron and steel products, which are otherwise excisable under Tariff Item 26AA(ia), provided such products were made from materials or combination of materials specified in the exemption notification.

Three types of materials are specified in the notification in three different clauses. We are not concerned herein with the materials specified in clauses (i) and (ii) because the plaintiff does not claim benefit of those clauses. The only clause which requires to be noticed is clause (iii) which specifies "old and used re-rollable scrap" as the material from which the iron and steel product should have been manufactured in order to earn the exemption. If the words "old and used re-rollable scrap" had stood by themselves, there might have been considerable difficulty in the way of the plaintiff in claiming exemption. However, the explanation, which is obviously enacted for the purpose of explaining the meaning of the words "old and used re-rollable scrap" creates a fiction and includes within the meaning of those words "scrap, obsolete, second hand and unserviceable rails". Therefore, even if scrap, obsolete, second hand and unserviceable rails may not ordinarily be comprehended within the meaning of

"old and used re-rollable scrap", they are to be treated as covered within the ambit of the said phrase for the purposes of the notification and any product manufactured out of such rails would earn the exemption. Each of the words "scrap, obsolete, second-hand and unserviceable" is used in conjunction with rails but each is used disjunctively. In other words, scrap rails, obsolete rails, second hand rails and unserviceable rails will each be deemed to be old and used re-rollable scrap for the purposes of exemption notification and any product manufactured out of any variety of such rails would be exempt from the payment of the whole of the excise duty. Needless to say that the relevant words are used in the widest amplitude in view of the fact that rails of those varieties are deemed to be "old and used re-rollable scrap", irrespective of whether they are heavy, medium or light and irrespective of their length and irrespective of the name by which they are called. Once the purpose for which the fiction is created is ascertained, it must be allowed to operate fully. As earlier pointed out, the purpose of the enactment of the explanation containing the fiction is to define the words "old and used re-rollable scrap". Full effect must be given to such fiction and it should be carried to its logical conclusion. Whether or not such varieties of rails would ordinarily be comprehended within the meaning of the words "old and used re-rollable scrap", they would be treated as having been comprised within the same.

15. Next, we must consider what is meant by "unserviceable rails". The word "unserviceable" occurs in the notification which is issued under a taxing statute. The word is not defined either in the At or the rules or the notification itself. However, it is a word of every day use and it must be construed in its popular sense, that is to say, that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." (see Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, . We shall presently deal with the question as to when persons dealing in rails would consider them unserviceable. However, we may also at this state consider the technical or etymological meaning of the word "unserviceable".

16. In order to understand the true import of the word "unserviceable", it would be necessary to ascertain the true meaning of the word "serviceable". The said word has many meanings. The appropriate meaning in the context must be found out. In the Oxford English Dictionary, Vol. IX, page 518, the meaning of the word "Serviceable" when used in the context of things is given as follows :-

"Capable of being applied to an appropriate purpose, or to the performance of a proper function".

In Webster's New Twentieth Century Dictionary, Second Edition, four meanings are assigned to the word "serviceable" at page 1659 and out of those four meanings, two are appropriate, which are quoted below :

"(1) that can be of service; ready for use; useful; usable.

(2) that will give good service, especially in long, hard use; durable; as, a

serviceable fabric."

It would thus appear that when used in the context of things or materials, the word "serviceable" denotes a thing or material which is capable of being applied to an appropriate purpose or to the performance of a proper function. The thing or material, in other words, must be capable of rendering service and it must be useful or usable. The material or thing which does not satisfy this test can be regarded as unserviceable. Therefore, if the thing or material is not capable of rendering service which is expected of it, or is incapable of performing the function which is expected of it, or is incapable of performing the function which it is intended to discharge, or is not usable or useful as such, it will have to be treated as unserviceable. This is the dictionary meaning required to be assigned in the context to the word "unserviceable".

17. Now, we are herein concerned with the use of the word "unserviceable" in conjunction with the word "rails". It is apparent that any person dealing in rails would consider second class rails, which have been rejected by the railway, as unserviceable. If rails are found wanting or defective in quality and they are rejected by the railway for whom they were manufactured, how else would they be classified except as unserviceable by those dealing in rails ? Even if we were to take the dictionary meaning of the word "unserviceable" as explained above, the same result will follow. If the rails are not capable of rendering the service expected of them, or performing the function which they are intended to discharge, or are found to be not usable or useful as such, they would be "unserviceable" within the meaning of the said word in its etymological sense. Be it stated at this stage that there is sufficient material on record to reach the conclusion that the rails purchased by the plaintiff and used in the manufacture of its end products were, in fact, unserviceable. The only legitimate inference which can be drawn on the basis of the pleadings of the parties and the logical effect of the evidence led at the trial is that the materials in the shape of second class rails, which were rejected by the railway and purchased by the plaintiff and which were used in the manufacture of its end products, were unserviceable rails. Such unserviceable rails would, therefore, be "old and used re-rollable scrap" within the meaning of the exemption notification. Since such unserviceable rails were used by the plaintiff in the manufacture of its end products, the products were exempt from the payment of the whole of the excise duty leviable on them.

18. M.C. Trivedi, J., with respect, failed to consider the effect of the explanation, and, he, therefore, took the view that untested rails supplied by Hindustan Steel Ltd. to the plaintiff could never be said to be "old and re-rollable scrap". In his opinion, those rails were "fresh unused re-rollable scrap and since the plaintiff had failed to satisfy the excise authorities that an appropriate amount of duty of excise had already been paid on such rails, the products manufactured by the plaintiff were not entitled to exemption. As earlier pointed out, the explanation has been enacted specifically with the end in view of including, inter alia,

unserviceable rails within the ambit of the phrase "old and used re-rollable scrap" occurring in the main part of the exemption notification. Since the plaintiff has succeeded in establishing that the rails purchased by it from Hindustan Steel Ltd. were unserviceable, they would squarely answer the description "old and used re-rollable scrap" and the products manufactured from such rails would, therefore, be entitled to exemption from the payment of the whole of the excise duty leviable on such products.

19. Strong reliance was placed on behalf of the Excise authorities on the decision of the Division Bench consisting of J.B. Mehta and A.N. Surti, JJ. in Special Civil Application No. 43 of 1971 decided on November 18, 1972 in support of their contention that the end products manufactured with the aid of second class rails are not entitled to exemption from excise duty under the exemption notification in question. The facts of that case were very similar to the facts in the instant case. The petitioners there were manufacturers of iron rolled bars from untested second class rails purchased by them from Hindustan Steel Products Ltd. On the basis of the exemption notification in question, the petitioners contended that the iron rolled bars manufactured by them were exempt from the payment of the whole of the excise duty. Specific reliance was placed upon the explanation appended to the exemption notification. The Division Bench rejected the claim of the petitioners in the following words :-

"We have carefully applied our minds to the submissions made by Mr. Vyas. As stated above as a matter of fact on reading Ex. "A" produced by the petitioner to the main petition, goods, described as "Rails 2nd Class" were sold by M/s. Hindustan Steel Products Ltd., Bhilai and excise duty was also paid by the said Company before the goods were consigned by the said Company in favour of the petitioners. In that view of the matter, it is difficult for us to agree with the submission made by Mr. Vyas that the materials which the petitioners received from the said Company were old and scarp materials. Under the circumstances it is not possible for us to accept the submission made by Mr. Vyas".

The decision is clearly distinguishable on two grounds. First, there was no evidence in that case to show that besides the rails being of second class quality, they were rejected by the railway. Secondly, the Court's mind was there applied apparently only to the word "scrap" occurring in the explanation. In other words, the Court was considering only whether the second class rails could be said to be "scrap rails" and, with respect, it rightly reached the conclusion that such rails could not be treated as scrap. The Court was not called upon to consider whether such rails, if they were rejected by the railway, could be considered to be "unserviceable rails". This is the precise question which we are required to consider on the facts and in the circumstances of the case. We do not, therefore, think that the decision can be of any assistance to the excise authorities.

20. As a result of the foregoing discussion, we are of the view that M.C. Trivedi, J. was, with respect, in error in reversing the decree of the trial Court and in holding that the decision of the excise authorities to levy excise duty on the end

products manufactured by the plaintiff from the second class rejected rails supplied by Hindustan Steel Ltd. was in accordance with law.

21. The appeal is, therefore, allowed and the decree passed by M.C. Trivedi, J. is set aside and the decree of the trial Court which was set aside in First Appeal No. 871 of 1975 is restored with costs throughout.