(1997) 10 DEL CK 0028

In the Delhi High Court

Case No : Civil Writ Petition No. 2325 of 1997

Maruti Udyog Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-10-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11B
Constitution of India, 1950 — Article 14

Citation : (1997) 6 AD 720 : (1997) 70 DLT 467 : (1997) 43 DRJ 615 : (1998) 1 ILR Delhi 105

Hon'ble Judges : R.C. Lahoti, J;J.K. Mehra, J

Bench : Division Bench

Advocate : V. Sridharan and Sarabjeet Sharma, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) The petitioners are engaged in the manufacture of various types of motor vehicles. One of the type of motor vehicles manufactured by the petitioners is saloon motors specifiable under head 87.03 of the schedule to the Central Excise Tariff Act, 1985, attracting a tariff rate of excise duty @ 40% ad valorem.

(2) The petitioners have appointed their dealers in various cities of the country. They sell their saloon cars through these dealers to customers who may get the saloon card registered with the regional State Transport Authority as taxi for being used as taxi. Such saloon cars used as taxies and so registered are liable to concessional rate of duty of excise as per notification issued from time to time.

(3) As it cannot be ascertained by the manufacturers as to which saloon car would be sold for taxi purpose they are required to pay duty on all the cars at full effective rates and claim refund and excise duty paid after complying with the provisions of the relevant notification. Refund cannot be claimed by or made to the individual customer who ultimately utilises the saloon car as taxi. The claim for refund can be made only by the manufacturer.

(4) Notification No. 4/97 provides for concessional rates of duty on motor vehicles registered for use as taxi or ambulance subject to the following conditions :

(A)The manufacturer at the time of clearance of motor vehicle mentioned against S. No. 195 in column (3) of the said Table (hereinafter in this condition referred to as the said motor vehicle) has paid excise duty calculated as the rate of 40% ad valorem; b) The Manufacturer furnishes to the Assistant Commissioner of Central Excise a certificate from an officer authorised by the concerned State Transport Authority, to the effect that the said motor vehicle has been registered for use solely as a taxi or ambulance as the case may be within three months of the clearance of the said motor vehicle from the factory of manufacturer or such extended period as the said Assistant Commissioner may allow; c) The manufacturer had not collected from the person, group of persons, any body or organisation, as the case may be, in whose name the said motor vehicle has been registered as a taxi or ambulance, as the case may be, or in case had collected, has refunded to such person group of person, any body or organisation, the amount equivalent of such exemption of duty; d) The exemption in case of ambulance is only applicable for registered hospitals, nursing homes and sanitariums and such other organisations as the Central Government may notify, in this behalf, in the Official Gazette, and e) The manufacturer files a claim for refund of duty paid in excess of that specified against S. No. 195 in column (4) of the said Table, in terms of Section 11B of the Central Excise Act, 1944 (1 of 1944).

(5) The petitioners have laid challenge to the following expression occurring in condition No. (c) above said.

"or in case had collected has refunded to such person, group of person, any body or organisation, the amount equivalent of such exemption of duty;" as being unreasonable and arbitrary and hence being hit by Article 14 of the Constitution.

(6) It is submitted that the petitioners cannot afford to sell a car without collecting the amount of excise duty. Collecting the excise duty from customers in the event of their claim being disallowed would be an uphill task. Same would be the position if they must first refund the amount of duty to the customer and then alone make a claim for refund. If the Assistant Collector of Excise, who is competent authority for entertaining and adjudicating upon the claim for refund and granting the refund is not satisfied for any reason of sustainability of the claim/s of the petitioner then the claims are rejected then the result is that voluminous money of the petitioners is looked up in view of the same having been actually and already refunded to the customers but the corresponding refund to the manufacturer being disallowed by the Department. Some times the amount is being lost to the petitioners inasmuch as they may not succeed in securing a reimbursement from the customer on the claim for refund being rejected by the Department. It is further submitted on behalf of the petitioners that as reflected by the letter dated 1.12.1993 (Annexure-7) (page 51-52 of the

paperbook) the following procedure was at one point of time agreed to between the department and the petitioners.

1.EXCISE Department (Asstt. Collector, Central Excise) will issue provisional approval mentioning that all documents are in order except compliance with condition No. (iii) of the notification. 2. After receipt of above provisional approval, Mul will issue A/c payee cheque in favor of the person in whose name such saloon car has been registered as a taxi. 3. Mul will submit application for issuance of final refund order enclosing photocopy of cheque as referred in point No. 2. 4. Excise Deptt will give final refund order after receipt of above application with photocopy of cheque as mentioned in para 3. However, the above procedure is not acceptable to the department and can certainly not be accepted obviously in view of the Notification No. 4/97.

(7) On behalf of the respondents it is submitted that the procedure laid down by the Notification is very reasonable and fair. It was pointed out that the order of adjudication to be made by the Assistant Collector is a judicial function which cannot be made to depend on any factor short of actual refund by the manufacturer to the customer using the saloon car as taxi. It was also pointed out that any departure from the impugned condition may result into unjust enrichment of the manufacturer who may succeed in securing refund from the Department without passing on the same to the customers.

(8) We have heard the learned counsel for the parties. We are satisfied that unjust enrichment has to be avoided but at the same time it is equally important that unjust impoverishment is also avoided. Such procedure has to be devised as is fair and reasonable to everybody. The petitioners pay the excise duty at the full effective rate to the Revenue. They are entitled to claim a refund only on their being able to satisfy the Revenue of the car having been actually registered with Sta for taxi and of the other conditions contemplated by the notification also having been fulfilled. In our opinion, insistence on actual refund by the petitioners to the customer even before their entitlement to refund has been adjudicated upon by the Revenue is unreasonable and arbitrary. It would be very reasonable if the petitioners while making a claim for refund give an undertaking in writing that in the event of their claim being allowed they shall actually refund the amount to the customer before collecting the same from the Department. Such a procedure would avoid the possibility of unjust enrichment as also the possibility of the amount being lost by the petitioners sandwiched between the Department and the customer. The petitioners have brought material on record to show how they have been faced with a flood of complaints by several customers approaching the consumer grievance redressal for a on failure of the petitioners to give them a refund of the excise duty on their registering the saloon cars as taxies.

(9) In Supreme Court Employees Welfare Association vs . Uoi, , their Lordships have held : @SUBPARA = "The true position thus appears to be that, just as in the case of an administrative action, so also in the case of subordinate legislation

(whether made directly under the constitution or a statute) its validity is open to question if it is ultra virus the constitution or the governing act or repugnant to the general principles of the laws of the land or it is so arbitrary or unreasonable that no fair minded authority could ever have made it."

(10) In Berium Chemicals Ltd vs Company Law Board, 1967 Sc 795, their Lordships have held that an order passed in exercise of power under a statute could be challenged inter alias if it is passed on grounds extraneous to the legislation or if there was no grounds at all for passing on or if the grounds are such that no one could reasonably arrive at the opinion or satisfaction requisite under the legislation.

(11) In the case at hand the parent act does not contain any such provision on which the impugned condition may be founded. The purpose sought to be achieved is to avoid unjust enrichment by the manufacturers and at the same time to benefit the actual consumer which can very well be achieved even otherwise then by insisting on actual refund by the manufacturer to the customer as a condition precedent to the maintainability of the claim. To be reasonable, a scheme or procedure devised under an Act should not work oppression to the subject.

(12) In our opinion, the condition of the notification No. 4/97 insisting on actual refund of the excise duty by the manufacturers to the customers even before preferring a claim for refund is unreasonable and arbitrary and hence deserves to be struck down.

(13) However, the respondents should be allowed liberty of devising a reasonable procedure to ensure that the benefit of refund reaches the customer on whom the burden of excise duty has already passed on and the manufacturers do not unjustly enrich themselves. The procedure may provide for the petitioner being entitled to maintain a claim for refund, also seeking adjudication thereon subject to furnishing an undertaking that they would actually refund the amount to the customer immediately on the claim being adjudicated upon and then only shall be entitled to receive the amount of refund from the Department, apart from satisfying the adjudicating authority of compliance with other conditions of the exemption notification.

(14) For the foregoing reasons the petition is allowed. Following part of the notification as occurring in Clause (c) thereof is held to be unreasonable and arbitrary and vocative of Article 14 of the Constitution and is hereby directed to be struck down ;

"..or in a case had collected, has refunded to such person group of person, and body or organisation, the amount equivalent of such exemption of duty;"

(15) As already observed, the respondents shall be at liberty to devise an alternative procedure consistently with the observations made hereinabove and till then to continue to dispose off petitioner''s pending claims for refund again

consistently with the observations made hereinabove. Needless to say that the refunds must be allowed by the respondents within a reasonable time calculated from the date of actual refund by the manufacturers to their customers, preferably by adopting a time-bound programme.

