(1988) 01 MAD CK 0025

In the Madras High Court

Match House APPELLANT

Vs

Superintendent of Central Excise and Another RESPONDENT

Date of Decision : 01-01-1988

Acts Referred:
Central Excise Rules, 1944 — Rule 8, 8(1)
Central Excises and Salt Act, 1944 — Section 2

Citation : (1989) 22 ECC 224 : (1988) 35 ELT 290

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

1. In the writ petition, the petitioner impugnes the exemption Notification No. 41/81 - C.E. dated 1 - 3 - 1981 issued by the second respondent

pursuant to powers under Rule 8(1) of the Central Excise Rules, 1944, hereinafter referred to as the Rules, the said notification as amended by a

subsequent Notification No. 41/81 - C.E. dated 2 - 7 - 1981 in relation to clauses (i), (v) and (vi) found therein. These clauses relate to the

processes of box making, labelling and handrolling and packaging. The only point urged by Mr. K.P. Jagadeesan, learned counsel for the

petitioner, is that the power of exemption under Rule 8(1) of the rules could be exercised only with reference to the process of manufacturing as

stated in the impugned Notification No. 41/81 - C.E. dated 1 - 3 - 1981, and the above processes could not come within the ambit of process of

manufacturing and hence the power of exemption was lacking, and on this ground, learned counsel wants this Court to frown upon the said clauses

under Article 226 of the Constitution of India. Learned Counsel does not question the constitutional validity of Rule 8(1) in view of the decision of

the Supreme Court in Orient Weaving Mills (P) Ltd. Vs. The Union of India

(UOI), . Learned counsel for the petitioner would contend that the

power to exempt must relate to the process of manufacturing and this is exactly re - counted in the impugned Notification No. 41/81 - C.E. dated

1 - 3 - 1981. This construction on Rule 8(1) of the Rules put forth by the learned counsel for the petitioner could not have the support of the

explicit language of the rule. Rule 8(1) of the Rules reads as follows :-

The Central Government, may, from time to time, by notification in the Official Gazette, exempt, (subject to such conditions as many be specified

in the notification) any excisable goods from the whole or any part of duty leviable on such goods"".

The rule by itself, as we could see from the above extract, does not prescribe any such qualification. It could be with reference to the process of

manufacturing and it could also be with reference to very many other contingencies and factors provided the power of exemption is exercised with

reference to excisable goods. In the instant case, matches with which alone we are concerned are admittedly excisable goods. Merely because the

impugned Notification No. 41/81 - C.E. dated 1 - 3 - 1981 refers to these processes as having relation to the manufacture of matches, the

exercise of power of exemption cannot be struck down on a reasoning that these processes would not amount to manufacturing processes, there

could be an exercise of power of exemption under Rule 8(1) of the Rules. Rule 8(1) of the Rules confers wide discretionary powers on the Central

Government in the matter of granting exemption. Any particular order of exemption could be questioned only when it is contrary to the provisions

of the Central Excises and Salt Act (1 of 1944), hereinafter referred to as the Act, or that the conditions imposed thereunder for getting the

concessions are either not germane or foreign to the particular item in respect of which the conditions are imposed or that the conditions are not

consistent with the operative provisions of the Act itself. The above is also the view expressed by a Bench of this Court, after adverting to the case

law on the question of exemption under the Act and the Rules in Jayaprakash Match Works, Kovilpatti and Others v. Union of India and Others

1983 E.L.T. 58 (Mad). Assuming that the processes referred to in the relevant clauses in the impugned Notification No. 41/81 - C.E. dated 1 - 3

- 1981 would amount to manufacturing processes as in relation to matches, as re

- counted in the said notification, yet they could be processes

enjoined by the other rules to be adopted for disposal of finished matches, and hence they could not be stated to be wholly not germane or foreign

to the excisable item, namely, matches.

2. Mr. T. Somasundaram, learned Additional Central Government Standing Counsel appearing for the respondents, would submit the processes

referred to in clauses (i), (v) and (vi) of the impugned Notification No. 41/81 - C.E. dated 1 - 3 - 1981 could only amount to manufacturing

processes, and in support of this submission, learned counsel places reliance on the ratio of Bench of this Court in Jayaprakash Match Works,

Kovilpatti and Others v. Union of India and Others 1983 E.L.T. 58 (Mad). Since, I have held that Rule 8 of the Rules has not limited the power of

exemption as relatable to the process of manufacturing only, I do not feel impelled to go into this aspect. This writ petition deserves dismissal and

accordingly the same is dismissed. No costs.

