(1991) 01 BOM CK 0002

In the Bombay High Court

Case No : Appeal No. 1192 of 1987 in Writ Petition No. 1539 of 1981

M.C. Thakur APPELLANT

Vs

Extrusion Processors Pvt. Ltd. RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2, 4

Citation : (1991) ECR 18 : (1991) 54 ELT 16

Hon'ble Judges : S.M. Jhunjhunwala, J;M.L. Pendse, J

Bench : Division Bench

Advocate : Shri C.J. Shah and Mr. R.C. Master, for the Appellant; Shri N.G. Thakkar, Shri R.C. Shah and Shri H.A. Desai, instructed by M/s. Kantilal Underkat and Company, for the Respondent

Judgement

Pendse, J.—This is an appeal preferred by the Government of India to challenge legality of judgment dated July 23, 1987 delivered by learned Single Judge in Writ Petition No. 1539 of 1981. By the impugned judgment, the learned Judge declared that the amendments to Section 2(f) and to Tariff Item No. 27 in the First Schedule to the Central Excises and Salt Act, 1944 made by the Finance Act, 1980 and also Tariff Item 8313.11 in Schedule to the Central Excise Tariff Act, 1985 to the extent to which it purports to authorise the levy of excise duty on the process of lacquering and printing of aluminium containers, and also Chapter Note 2 at the beginning of Chapter 83 of the Schedule to the Central Excise Tariff Act are unconstitutional, ultra vires, null and void. The learned Judge, as a consequence of the declaration, directed the appellants to refund the duty collected to the respondents within three months. The facts giving rise to the passing of this order are required to be stated to appreciate the grievance of the appellants.

2. The respondent No. 1 is a Private Limited Co. engaged in the manufacture of aluminium collapsible tubes and rigid cans in the factory situated at Malad (West), Bombay. The Plain aluminium collapsible tubes and rigid cans are

prepared by feeding aluminium slugs into an Impact Extrusion Press. The aluminium collapsible tubes and rigid cans are thereafter processed and finished on the training machine where tube is subject to the process of threading, greeving, etc. After the manufacture of aluminium collapsible tubes, the further process of printing and lacquering is resorted to. According to the respondents, the process of printing and lacquering the aluminium collapsible tubes is a post-manufacturing process and is undertaking only for the purpose of facilitating the sale of the product and in accordance with the instructions of the customers.

3. The extruded tubes manufactured by the respondents were liable for excise duty under Tariff Item 27 of the First Schedule and prior to April 1, 1970, the excise duty was imposed on tariff value determined by the Government. With effect from April 1, 1970, the method of charging excise duty was altered and ad valorem excise duty was imposed on the value of aluminium extruded tubes. The respondents complained that the Excise authorities purported to include in the assessable value of such aluminium tubes, the cost of charges of coating and printing and that was not permissible. The respondents claimed that excise duty under Tariff Item 27(e) and the value of the article for the purpose of duty has to be the value assessable under the provisions of Section 4 of the Central Excise Act. The respondents claimed that it was not permissible to take into consideration the value of any post-extrusion operations while determining the value of aluminium extruded tubes. The contention raised by the respondents was not accepted by the Excise authorities.

4. The respondents thereupon challenged the action of the Excise authorities by filing Petition before the Gujarat High Court and the contention of the respondents was upheld in the judgment reported in 74 GLR 161 The Gujarat High Court held that since the plain extruded tubes do not require application of any further process for completion of the manufacture, the cost of printing and lacquering cannot be loaded to the assessable value of the tubes for determination of excise duty payable. An identical view was taken by one of us (Pendse, J.) in the judgment dated July 24, 1979 delivered in Miscellaneous Petition No. 510 of 1973, Metal Box Company of India Limited v. Union Of India and Others. It was held that the cost of printing or lacquering cannot be included while determining the assessable value because the cost incurred for printing and lacquering is in the nature of post-manufacturing process. The decision recorded by the Single Judge of this Court was challenged before the Division Bench but the appeal was summarily dismissed.

5. To overcome the decision recorded by the Court, the Government of India decided to amend the provisions of the Central Excises and Salt Act and Finance Bill No. 99 of 1980 was introduced in the Lok Sabha on June 18, 1980 to give effect to the financial proposals of the Central Government for the financial year 1980-81. Section 46 in Chapter IV of the Bill provided that in the Central Excises and Salt Act, 1944 :

"(a) in section 2, in clause (f), after sub-clause (vii), the following sub-clause shall be inserted, namely :-

"(viii) in relation to aluminium, includes lacquering or printing or both of plain containers;"

(b) the First Schedule shall be amended in the manner specified in Parts I and II of the Third Schedule."

The Third Schedule refers to the proposed amendment of Item No. 27 in the following terms :

(a) for sub-item (f), the following sub item shall be substituted, namely :-

"(f) containers, plain, lacquered Fifty per cent ad valorem or printed, or lacquered plus two thousand rupees and printed. per metric tone.".

The Finance Bill also made a declaration u/s 3 of the Provisional Collection of Taxes Act, 1931 in the following terms :

"It is hereby declared that it is expedient in the public interest that the provisions of Clauses 45, 46, 47 and 48 of this Bill shall have immediate effect under the Provisional Collection of Taxes Act, 1931."

The Finance Bill became law with effect from August 25, 1980 by passing of Finance (No. 2) Act, 1980.

6. As a result of the amendment, the expression "manufacture" in Section 2(f) of the Central Excises and Salt Act, 1944 provided that manufacture includes any process incidental or ancillary to the completion of the manufactured product and the word ''manufacture'' shall be construed accordingly. Tariff Item No. 27(f) prior to the amendment read : "containers made of aluminium" and subsequent to the amendment reads as "containers, plain, lacquered, or printed or lacquered and printed." After the amendment, the respondents filed price list for aluminium collapsible tubes and rigid cans from time to time and from July 2, 1980 onwards, the prices declared by the respondents were inclusive of cost of lacquering or printing or both. The price lists were approved by the Assistant Collector of Central Excise and the respondents accordingly paid the excise duty. On May 3, 1981, the respondents addressed letter to the Assistant Collector claiming that the amendments to Section 2(f) of the Central Excises and Salt Act and Tariff Item No. 27 were ultra vires the Constitution and null and void. The respondents sought permission to file a fresh price list after deducting the cost of lacquering or printing or both of plain aluminium collapsible tubes and rigid cans for arriving at the assessable value chargeable to duty. The respondents reiterated the demand by letter dated June 8, 1981 and also submitted written submission for the claim that the amendment were unconstitutional. The Assistant Collector by letter dated July 14, 1981 informed and respondents that the claim was totally incorrect and by reason of the amendments, the cost of lacquering and printing of aluminium collapsible tubes shall be included for arriving at the assessable value chargeable to duty under Tariff Item No. 27.

The respondents thereupon filed Writ Petition under Article 226 of the Constitution of India claiming that the amendments were ultra vires to Constitution and recovery of duty by the Assistant Collector was illegal. The learned Judge accepted the contention. Pending the petition, the Excise Act was revised and a new Act being Central Excise Tariff Act, 1985 (Act 5 of 1986) was passed. The new Act substituted for the First Schedule a new Tariff and Tariff Item No. 8312 covered "containers of base metal" and sub-tariff Item 8312.11 reads as under :

"8312.11 - of aluminium, whether plain, lacquered or printed or lacquered and printed --- 20% ad valorem duty."

Further Chapter Note 2 at the beginning of Chapter 83 of the Central Excise Tariff Act states as under :

"In relation to sub-heading No. 8312.11, the process of lacquering or printing or both of plain containers shall amount to ''manufacture''."

The respondents by amendment challenged the provisions of the new Act also on the ground that Tariff Item 8312.11 was ultra vires of the Constitution and this contention was also upheld by the Single Judge by the impugned judgment.

7. The learned Judge struck down the amendments to the Central Excise Act and the provisions of the Central Excise Tariff Act on the ground that the amendments were ultra vires of Entry No. 84 in List I of Schedule VII to the Constitution of India. The learned Judge held that the Parliament was not competent to legislate and amend the law by resort to Entry No. 84. The learned Judge held that the process of lacquering or printing does not become ''manufacture'' merely by including the same in the expression ''manufacture'' u/s 2(f) of the Act and in Tariff Item No. 27(f). The Single Judge felt that in face of the decisions recorded by the Gujarat High Court and the Bombay High Court, the Parliament was incompetent to amend the provisions of the Act for want of legislative competency.

Shri Shah, learned Counsel appearing on behalf of the appellants, submitted that the decision of the Single Judge cannot be sustained and we are in agreement with this submission. Indeed, the question is no longer res-integra in view of the decision of the Supreme Court in the case of Ujagar Prints Vs. Union of India (UOI), . The Supreme Court examined the challenge to the amendment of the term ''manufacture'' in Central Excises and Salt Act, 1944 and held that the amendment was not illegal and was covered by Entry 84. The Supreme Court further held that even assuming that the amendment was not covered by Entry No. 84, the same could be supported by reference to Entry 97 in List I of Schedule VII to the Constitution of India. The Supreme Court pointed out that the entries in the legislative list are to be construed liberally and widest possible amplitude should be given. The Supreme Court pointed out that an identical argument was raised in the case of Empire Industries Limited and Others Vs. Union of India and Others, but without success and where it was laid down that the entries to legislative list are not sources of the legislative power but are merely topics or fields of legislation and must receive a liberal construction inspired by the broad and generous spirit and not in the narrow pedantic sense. The Supreme Court then held that even if the impost on process is not one under Entry 84, List I, but is an impost on processing distinct from ''manufacture'' the levy could yet be supported by Entry 97, List I, even without the aid of the wider principle recognised and adopted in Union of India v. Harbhajan Singh Dhillon, (1972) 83 ITR 582 (SC) . In view of the decision of the Supreme Court, the conclusion of the Single Judge that the amendments to the Central Excise Act and further Tariff Item No. 8312.11 in Schedule to the Central Excise Tariff Act, 1985 and Chapter Note 2 at the beginning of Chapter 83 of the Central Excise Tariff Act are unconstitutional and ultra vires be sustained.

8. Shri Thakkar, learned Counsel appearing on behalf of the respondents, submitted that if the amendment to the Central Excises and Salt Act, 1944 is found to be intra virus, still the respondents should be granted relief claimed under prayer d(1) which is an alternative prayer made by amending petition. By this alternative prayer, the respondents claimed refund of the excise duty recovered in respect of process of printing and lacquering of aluminium collapsible tubes and rigid cans from June 18, 1980 to August 25, 1980. Shri Thakkar submitted that the Finance Bill was introduced in Parliament on June 18, 1980 and the Bill became law on passing of Finance (No. 2) Act, 1980 with effect from August 25, 1980. The learned Counsel urged that though a declaration as prescribed by Section 3 of the Provisional Collection of Taxes Act, 1931 was made by the Government of India while introducing Finance Bill in the Parliament, that declaration cannot enable the Excise authorities to recover duty on the basis of the cost of printing and lacquering is to be included in the assessable value of aluminium collapsible tubes and rigid cans, for determining excise duty. The submission is that Section 3 has no application and cannot authorise the Excise authorities to recover additional duty from June 18, 1980. The submission is not correct. The Provisional Collection of Taxes Act, 1931 was enacted for providing for the immediate effect for a limited period of provisions in Bills relating to the imposition or increase of duties of customs or excise. Section 3, inter alia, provides that where a Bill to be introduced in Parliament provides for the imposition or increase of a duty of excise, then the Government may insert in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have immediate effect. As mentioned hereinabove such a declaration was inserted in the Finance Bill while presenting it to the Parliament on June 18, 1980. Shri Thakkar submits that, by the Finance Bill, the amendment was effected in Section 2(f) providing that in relation to aluminium, the expression "manufacture" would include lacquering or printing or both of plain containers. The Finance Bill also provided for substitution of sub-item (f) of Item 27 in the First Schedule providing for payment of 50% ad valorem plus two thousand rupees per metric tonne for containers, plain, lacqured, or printed or lacquered and printed. Shri Thakkar urges that what was

done by the Finance Bill which subsequently became an Act is not imposition or increase of the duty of excise and, therefore, the provisions of Section 3 of the Provisional Collection of Taxes Act, 1931 are not applicable to the facts of the case. The learned Counsel also relied upon the decision of Single Judge of this Court in the case of Metal Box India Ltd. v. Union of India and Others reported in 1987 (31) Exc LT 696 in support of his submission. We are unable to accede to the submission of the learned Counsel. It is now well-settled that the nature of the excise duty is not to be confused or tested in reference to the measure by which the tax is assessed. Shri Justice Ranganathan concurring with the main judgment delivered by Shri Justice Venkatachaliah in the decision reported in Ujagar Prints Vs. Union of India (UOI), and to which reference is made hereinabove examined the contention in a slightly different context as to whether the amendment attracts only the procedural aspect or imposes special duty or increases existing duty. Examining the provisions of the Central Excises and Salt Act, 1944 and the Amending Act, the learned Judge observed that having regard to the nature and content of the levy, it is obvious that the effect is of attracting not only the purely procedural and machinery provisions but also some of the charging provisions. The Supreme Court observed that the language of the Amending Act should be given a wider meaning and the provisions are self-contained and completely specified the scope of the charge either as a percentage of the Excise Duty normally chargeable under the Central Excises and Salt Act or as a percentage of the ''assessable value'' determined u/s 4 of the 1944 Act. In our judgment, the amendment carried out by the Finance Bill does not merely widen the meaning of expression ''manufacture'' u/s 2 of the Central Excises and Salt Act but it was also made for the purpose of valid levy on the activity of printing and lacquering. In view of the decisions of the Gujarat and Bombay High Courts that the process of printing and lacquering is a post-manufacturing process and, therefore, the cost for the said purpose cannot be loaded in the assessable value of the aluminium collapsible tubes, the Central Government decided to amend the provisions of Section 2(f) and substitute sub-item (f) of Tariff Item No. 27 - First Schedule of the Act so as to bring in its sweep the process of printing and lacquering of aluminium collapsible tubes. The intention of the Government was to impose fresh duty on the process of printing and lacquering by treating it as a process of manufacture of aluminium collapsible tubes. The expression "manufacture" also includes the process which is incidental to the manufacture of finished goods. In our judgment, the amendments were introduced by the Finance Bill with a view to imposition of increase of duty of excise by providing inclusion of cost of printing and lacquering in the assessable value of the collapsible tubes and consequently, the cost of printing and lacquering is to be included in the assessable value from the date of introduction of the Bill in accordance with the declaration made u/s 3 of the Provisional Collection of Taxes Act, 1931.

Shri Thakkar relied upon the decision of the Single Judge in 1987 (31) Excise Law Times 696 where the learned Judge held that the provisions of Section 3 are not attracted because the amendment merely mean alteration of the assessable value and did not provide for imposition of duty or an increase in the duty. The learned Judge felt that all that the purported changes have done is to shift by means of an artificial definition, the tubes from sub-item (e) to sub-item (f) of Tariff Item No. 27 and by applying the artificial definition read with Section 2(f) of the Act, an attempt is made to increase the assessable value of the goods. The learned Judge felt that this does not amount to increase in the duty or imposition of the duty and, therefore, Section 3 is not attracted. With respect, we are unable to share the view of the learned Judge. In our judgment, the amendment clearly amounts to imposition of duty or increase in the duty and, therefore, the inclusion of cost of printing and lacquering in the assessable value from June 18, 1990, i.e. the date on which the Finance Bill was introduced in Parliament is perfectly justified. In our judgment, the respondents are not entitled to any relief and the original Petition is required to be dismissed.

9. Accordingly, appeal is allowed and the impugned judgment dated July 23, 1987 in Writ Petition No. 1539 of 1981 is set aside and the petition is dismissed. The respondents shall pay costs of the petition throughout.

