(1987) 07 BOM CK 0011

In the Bombay High Court

Case No : Writ Petition No. 998 of 1981

Metal Box India Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 01-07-1987

Acts Referred:
Constitution of India, 1950 — Article 14, 19

Citation : (1988) 14 ECR 131

Hon'ble Judges : H. Suresh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H. Suresh, J.—The petitioner company manufactures various kinds of packing materials, containers including tubes popularly known as aluminium collapsible and rigid tubes. These tubes are manufactured by them in a factory situated at Worli, Bombay. The process of manufacturing collapsible tubes consists of forcing slugs or lumps of aluminium through a die under pressure. This operation known as the extrusion operation is carried out in a machine known as the "Extrusion Press". After the tube is delivered from the extrusion press, it is finished, that is, trimmed to a correct length and its nozzle is threaded to the appropriate specification. The petitioner says that the operation of extrusion is complete at this stage and the resultant product known as an extruded tube comes into existence. This item is liable for excise duty under item No. 27(e) of the Tariff as it stood then.

2. The said item 27 also included sub-item (f) relating to containers made of aluminium, and there is an explanation purporting to define the expression containers before enactment of Finance (No. 2) Act, 1980 and it read as under:

Explanation-1:-Containers means containers ordinarily intended for packaging of goods for sale, including casks, drums, cans, boxes, gas cylinders and pressure containers, whether in assembled or unassembled condition and containers known commercially as flattened or folded containers.

Obviously, the explanation did not include the aluminium tubes manufactured by the petitioner.

3, It appears that until April 1, 1970 the excise duty on all aluminium items was charged on the basis of a tariff value determined by the Government. With effect from April 1, 1970, excise duty came to be charged on such products on an ad valorem basis. Some time in 1971-72 the Excise Authorities took up the contention that the assessable value of the said aluminium tubes should be determined by taking into consideration not only the value of the extruded tubes as such but the value of lacquering, coating and printing the same as also the value of the plastic caps which were fitted to the same. The petitioner-company did not agree to this and as a result of which and after some correspondence, the petitioner filed a writ petition in this Court being Misc. Writ petition No. 511 of 1973. The same came to be decided on July 24, 1979 and this Court accepted the contentions advanced by the petitioner and held that the assessable value of the extruded tubes could not, in law, include the cost of coating or printing the said tubes or the costs of the said caps. It appears that as against this judgment, an appeal was preferred by the department but the same was summarily rejected.

4. On or about June 18, 1980 the Government introduced in the Lok Sabha the Finance (No. 2) Bill 1980. The said Bill purported to propose certain amendments to the said Act which are relevant for the purpose herein, and are as follows:

(1) The said Bill purported to insert in Section 2(f) of the said Act an additional sub-clause, viz. Sub-clause (viii) which purported to provide as follows:

in relation to aluminium includes lacquering or printing or both of plain containers.

(2) sub-item (f) of item 27 was substituted as follows:

containers-plain, lacquered or printed or lacquered and printed.

(3) In Explanation-I the words "collapsible tubes" were inserted in the inclusive definition of the expression "containers".

The said Finance (No. 2) Bill also purported to contain a declaration as contemplated under the Provisional Collection of Taxes Act, 1931 and it was declared that it was expedient in the public interest that the aforesaid provisions (inter alia of clause 46) of the said Bill would have immediate effect under the said Act. As a result of the said Bill and the declaration, the excise authorities purported to classify the said collapsible tubes manufactured by the petitioners under item 27 (f) instead of item 27(e) as had been done in the past. The said Finance Bill was passed by the two Houses of Parliament without any changes as far as the aforesaid provisions were concerned, and received the assent of the President on August 25, 1980.

5. The petitioner says that the change purported to make and introduce, an artificial definition of the expression "containers", as a result whereof, collapsible tubes, which were not commercially or otherwise known as containers, but were extruded tubes and were known as such, were purported to be classified as containers. The said change therefore resulted in a purported alteration of the classification of collapsible tubes. The said change, further purported to alter the definition of "containers" by providing that printed or lacquered or printed and lacquered containers would be regarded as "containers" and also purported to introduce an artificial definition of the expression "manufacture" by providing that as far as aluminium tubes were concerned, the process of printing or lacquering would be regarded as a process of manufacture. The effect of these changes, as far as the petitioner is concerned, was to increase the assessable value of the said collapsible tubes by including the costs of printing or lacquering which was not permissible prior thereto.

6. The petitioner-company, therefore, contended that the said declaration was not valid, and, therefore, till the President gave his assent to the said Act, on August 25, 1980, it was not open to the excise department to recover any excise duty on the basis of the said purported change. Accordingly, the company preferred an application for refund of excise duty on December 16, 1980 and it claimed a sum of Rs. 9,16,678.01/ being the excise duty amount paid by the petitioners in respect of printing and lacquering cost during the said period i.e. from June 18, 1980 to August 25, 1980. The department negatived this application throughout and that is how the petitioner has filed the present writ petition.

7. In the petition, there are two kinds of challenges. Firstly, there is a challenge to the said Provisional Collection of Taxes Act, 1931 on the ground that the same is ultra vires of articles 14 and 19 of the Constitution of India. Alternatively, there is a contention that in any event, the declaration made by the Government, when the Finance Bill was introduced on June 18, 1980 itself was ultra vires the Provisional Collection of Taxes Act, 1931. After hearing both the advocates on either side, I have come to the conclusion that the declaration is per se ultra vires. It is, therefore, not necessary for me to go into the question of Constitutionality of the provisions of the Collection of Taxes Act, 1931, at all.

8. The relevant Provisions of the Provisional Collection of Taxes Act, 1931 are as follows:

3. Power to make declarations under this Act.-Where a Bill to be introduced in (Parliament) on behalf of Government provides for the imposition on increase of a duty of customs or excise, the (Central Government) may cause to be inserted 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 under this Act.

It is clear in the present case, that all that the said purported changes have done, is to shift by means of an artificial definition, the said tubes from sub-item (e) to sub-item (f), and by applying an artificial definition in the Explanation there to read with Section 2(f) of the said Act, increase the assessable value of the said goods. The said alterations, therefore, are alterations to the assessable value of the said goods and are neither a law providing for the imposition of duty or an increase in the duty. Therefore, it must be held that the said declaration was clearly ineffective in law, as far as the said changes were concerned. If, therefore, the declaration was clearly ineffective in law, certainly the collection of taxes during the said period till the Act received the assent of the President would be without the authority of law and, therefore, the department is bound to refund the said amount to the petitioner. In fact, I find no answer to this contention of the petitioner at all.

9. However, Mr. Nilkantha submitted that by this amendment it could be said that it is an imposition of a new tax on these items. I am not prepared to accept this contention inasmuch as it is clear, as analysed above that such changes have not brought any imposition of any new tax, nor it amounts to any increase in the tax. In view of this, this petition will have to be allowed.

10. I, therefore, pass the following order:

The declaration made by the Government at the time of introducing the Finance (No. 2) Bill, 1980 in so far as it relates to clause 46 and 46B read with item No. 47 of the Tariff as contained in para 1 of the third schedule of the said Bill, item (vi) is ultra vires the Section 3 of the Provisional Collection of Taxes Act, 1931. Consequently the collection of excise duty by virtue of the said declaration is without the authority of law for the period from June 18, 1980 to August 25. 1980. 1, therefore, direct that the respondents should refund the said amount of Rs. 9,16.678.01/- to the petitioners within a period of three months from today.

However, in the event the said amount is not repaid within a period of three months, the respondents would be liable to pay interest at the rate of 12% per annum from today.

In the circumstances of the case, however, there will be no order as to costs.

