(1985) 04 DEL CK 0014

In the Delhi High Court

Case No : C.W.P. 2/30/81 and C.M.P. 1168 of 1985

Modi Prints and Varnish Works, Modinagar — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 11-04-1985

Acts Referred:

Citation : (1987) 11 ECC 106 : (1987) 12 ECR 615 : (1985) 21 ELT 35

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Judgement

S.S. Chadha, J.—This petition under Article 226 of the Constitution of India seeks the quashing of the orders of respondents 2 and 3 dated January 24, 1981.

2. The case of the petitioners is that they are manufacturing colours of different shades, a mixture of calcium carbonate to the extent of 98.50% and pigment dye stuff to the extent of 1.50%. According to the petitioners, they have been classifying the goods under item No. 14-I(5) of the Central Excise Tariff read with Notification No. 23/55 dated April 29, 1955 along with notification dated December 3, 1955. The classification under item No. 14-I(5) reads as "pigment colours, paints and enamels not otherwise specified". The petitioners have produced in Court the original classifications as approved by Assistant Collector under Rule 173-B framed under the Central Excises and Salt Act, 1944. The assessed under Rule 173-B has to file list of goods for approval of the proper officer in such form as the Collector may direct. He has to show item number and sub-item of the First Schedule to the Act under which each such goods fall. The prescribed form is form No. I for filing classification list. Item No. 3 requires the specification of the tariff item number and sub-item. In the classification list filed by the petitioner and as approval by the Assistant Collector, the classification is under item No. 14-I(5). The exemption Notification No. 23/55 is also reproduced in column No. VII of those classification lists. At present item No. 14 i.e. pigments and colours is mentioned in item No. 14-I(ii) and the mixture of pigments and limestone are exempted under Notification No. 114/73, dated April

30, 1973.

3. The Assistant Collector by his order dated March 25, 1977 assessed the goods produced by the petitioners to duty as "Lake Colours" falling under tariff item No. 14-D of the Central Excise Tariff. The petitioner filed and appeal against the order of the Assistant Collector dated March 25, 1977. The appellate Collector accepted the appeal by order dated November 5, 1977. He observed that Lake Colour is an organic pigment, which is obtained by precipitating organic soluble dye-stuff as an insoluble compounds on a mineral base like Alumina, China clay, etc. The subject item is not obtained by the above precipitation process but it is made by manual mixing of calcite and coloring matter, which includes an organic colour, namely, Pathalocyanine. He found that the method of manufacture of the subject product is not the same as of Lake Colour. He also recorded a finding that as a synthetic organic dye-stuff, the lake colours must be used for dyeing. From the material on the record, he observed that it nowhere indicates that the subject item is used for the above purposes (dye). He also noticed that the petitioner had described the item as Lake Colour in one of the classification lists but found that in his monthly returns in Form R.T. 3 the subject product has been described as "Lime Colour". The Explanation given by the petitioner in describing the product as Lime Colour at some stage was accepted. He ultimately held that the subject matter rightly falls under Tariff Item No. 14-I(5) of the Central Excise Tariff and it enjoys exemption from payment of duty under Notification No. 23/55 , dated April 29, 1955.

4. The Central Government issued a notice of suo motu review of order of appeal dated November 5, 1977. After receiving the answer to the show cause notice, the impugned order dated January 24, 1981 was passed by the Central Government. The Central Government observed that the petitioners have made their own declaration of the product Lake Colour before April 30, 1975. The Central Government, however, do not specify the document in which this declaration is made by the petitioner. Item 14-D was added in the Central Excise Tariff with effect from March 1, 1961 as a result of which the Lake Colours came within the purview of item 14-D. The classification lists filed by the petitioner and approved by the Assistant Collector under Rule 173-B mention the item and sub-item of the Central Excise Tariff as 14-1(5). The Central Government does not meet the reasoning of the Appellate Collector that the petitioner by mistake described the item as Lake Colour in one of the classification lists but in their monthly returns in Form R.T. 3, the subject product has been described as Lime Colour. Therefore, no weight could have been attached on a solitary declaration in one of the classification lists when the petitioner mentioned its product as Lake Colour when the classification was mentioned under item 14-I(5) and not 14-D.

5. There is a clear-cut finding of the Appellate Collector that subject item could fall under Tariff Item 14-D if the subject item is used for dye. The Appellate Collector finds that the subject item is not used for dyeing purposes. The tariff description under item 14-D is ''synthetic organic dyestuff (including pigment dye

stuff) and synthetic organic derivatives used in any dyeing process''. Levy under Tariff Item 14-D could be sustained only when the subject product is commercially recognised and used in any dyeing process. The Central Government, except merely stating that both pigment and Lake Colours are used for identification purposes, did not record a finding that the subject item is used for dyeing purposes. The finding recorded by the Appellate Collector in that regard is not noticed or reversed.

6. Apart from it, the petitioners have made allegations of discrimination. They have placed on record the photo copies of the orders granting exemption from payment of excise duty to several other manufacturers manufacturing identical goods. These have also not been considered by the Central Government.

7. Accordingly, I quash the impugned order dated January 24, 1981 and direct that the suo motu review be decided afresh by Customs, Excise and Gold (Control) Appellate Tribunal after granting a hearing to the petitioners. If the suo motu review is dismissed, the Tribunal shall direct the payment of the duty paid by the petitioners. The bank guarantees already given by the petitioners shall be kept alive till the disposal of the suo motu review. The petitioner would, however, be entitled to the exemption for the future clearances, if otherwise admissible. On the facts and circumstances, I make no order as to costs.