
(2001) 03 DEL CK 0075

In the Delhi High Court

Case No : LPA No. 41/84

M/s. Travancore Rayons Ltd

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Citation : (2001) 4 AD 302 : (2001) 59 DRJ 184

Hon'ble Judges : M.S.A. Siddiqui, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. Janesh Baweja and Mr Alok Yadav, for the Appellant;

Judgement

Khan, (J).

1. Appellant was charged of manufacturing nitro-cellulose lacquer, an excisable commodity, without taking any license. As show cause notice dt.16.8.63 was served on the company in this regard to which it replied on 27.8.63 claiming that it was producing surface coating composition and not nitro-cellulose lacquer. The Assistant Collector, however, overruled this and passed order dt.13.10.63 holding that company had manufactured and removed nitro-cellulose lacquer from 11.10.55 to 19.9.62 without payment of duty and in contravention of Rule 9(1), Excisable Rules, 1944. He accordingly raised a demand for (SIC) against it.
2. Appellant took appeal against this which was dismissed vide order dt.5.8.64. The company filed a revision which was also dismissed on 16.6.66 and thereafter filed an SLP against this which was allowed and matter was finally to Government of India (Revisional Authority) which once again dismissed the revision petition by order dt.16.12.70.
3. Appellant then filed CWP 352/71 on 23.3.71 and contended that the surface coating composition produced by it was not a nitro-cellulose lacquer and was not covered by Item 14.III(1) of First Schedule and that it was not a marketable product and was never removed from the premises of the factory. It further claimed that the demand raised against it was time barred under Rule 10(1) of

Rules.

4. This petition was resisted by revenue on a variety of ground., leading the writ court to undertake an exercise of tracing true meanings and meanings and connotation of word "lacquer" to conclude that a nitro-cellulose "lacquer" was a surface coating composition which dries up rapidly by evaporation of volatile constituents forming a film on the substance on which it was coated and contained a substantial quantity of nitro-cellulose. The Court also found on fact that the composition in question was admittedly a surface coating composition used for coating cellulose film to make it moisture free and heat proof and held that "lacquer" was to be given a meaning as it generally received in trading and commercial circles and not how it was interpreted by (SIC). It eventually referred to various relevant revisions of the Rules and the Act to conclude that the product was excisable and that the demand was not time barred.

5. Appellant has filed this Appeal and its counsel wanted us to take a contrary view in the matter. L/C was at pains to show that the disputed product was a surface coating composition used for coating the cellulose film and that it could not be charged for excise duty because it was neither a "lacquer" nor marketable. He pointed out that it was not the case of Revenue that it was clandestinely removed by the company to attract infraction of Rule 9(1). He placed reliance on 1978 ELT 399 and Union of India and others Vs. Garware Nylons Ltd. etc., to argue that the demand raised was time barred and that onus was on the revenue to prove the classification of a product and to show that it was dutiable.

6. Record shows that appellant had satisfied the demand rendering the matter as good as infructuous but L/C for appellant still wanted us to test the validity of impugned judgment because the company had paid the duty under protest and subject to outcome of this Appeal. That is how we are undertaking this exercise.

7. We have gone through the impugned judgment which is a reasoned and elaborate one. In fact the writ court had taken pains in undertaking an in-depth analysis of the matter to ascertain the true meaning of word "lacquer" and how Appellant had got away with it on the specious plea that it was providing a surface coating composition. The Court finally concluded that the product fell within the relevant classification and was excisable. It also referred to Rule 10(1) and rejected the contention that the impugned demand was time barred.

8. The repeated insistence of L/C for Appellant that the product was a surface coated composition does not merit any acceptance because nothing new has been produced or brought to our notice in this regard to persuade us to take a contrary view. Moreover, all forums/courts below have concurred in their finding that Appellant was manufacturing a nitro-cellulose lacquer and that it has removed it without license. We have no reason or scope to disturb it in the present LPA.

9. There is no dispute with the proposition that the onus is on the revenue to

prove the classification of a product as held by the Apex Court in Union of India and others Vs. Garware Nylons Ltd. etc., . But we fail to appreciate how Appellant draws any support from it, because revenue had discharged its onus anyway to the required extent. As regards limitation plea, we deem it appropriate not to dig in it further in view of the latest liberal approach of the Supreme Court on such matters and considering that public revenue was involved in the matter.

10. Therefore, all told and considering that Appellant had satisfied the demand, we feel that now it was too late in the day for Appellant to press into service any technicalities and to seek to reopen the controversy. We accordingly affirm the impugned judgment of writ court to dismiss this Appeal.