(1983) 04 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 22626

Mysore Acetate and Chemical Co. Ltd. APPELLANT

Vs

Assistant Collector, Central Excise, Mysore RESPONDENT

Date of Decision : 12-04-1983

Acts Referred:

Central Excise Rules, 1944 — Rule 8 (1)
Constitution of India, 1950 — Article 226

Citation : (1989) 22 ECR 209 : (1984) 17 ELT 319

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : H.B. Datar, for Bhopalam Associates, for the Appellant; Shivashankar Bhat, Central Government Standing Counsel, for the Respondent

Judgement

1. M/s. The Mysore Acetate and Chemical Co. Ltd., a Public Limited Company incorporated under the Companies Act, which is the petitioner before this Court, is inter alia engaged in the business of manufacturing a Chemical called "acetic anhydride" in its factory situated near Mandya City of District Mandya, which is used as a drug intermediate by the drug manufacturers of the country. "Acetic anhydride" as a Chemical is eligible to excise duty under tariff Item No. 68 of the Central Excises and Salt Act, 1944 (Central Act 1 of 1944).

2. In exercise of the powers conferred on it by sub-rule (1) of rule 8 of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) the Government of India in its Notification No. 62/78-C.E., dated 1st March, 1978 (annexure B), has exempted all drugs, medicines, pharmaceuticals and drug intermediates not elsewhere specified from payment of excise duty under the Act. Ever since then, acetic anhydride manufactured by the petitioner and supplied to the drug manufacturers as a drug intermediate had been treated by the excise authorities as exempted from payment of excise duty under the Act.

3. Notwithstanding the above, the Superintendent of Central Excise M. O. R. Mandya (hereinafter referred to as the Superintendent) by his Notice No.

OC2193/81 dated 13th October, 1981 (annexure C), followed up show cause notice No. OC2741/81 dated 10th December, 1981 (annexure D), and revised show cause notice No. OC21/82 dated 1st January, 1982 (annexure F), has called upon the petitioner to pay excise duty on "acetic anhydride" manufactured and supplied to the drug manufacturers as a drug intermediate taking the view that it was a chemical and its supply as a drug intermediate does not entitle it for exemption from excise duty under the notification dated 1st March, 1978 (annexure B). In this petition under article 226 of the Constitution, the petitioner has challenged the aforesaid show cause notices issued by the Superintendent.

4. The petitioner has urged that on a true construction of the notification dated 1-3-1978 (Annexure B) interpreted by Government itself so much of ''Acetic Anhydride'' manufactured by the petitioner and supplied to the drug manufacturers as a drug intermediate was entitled for exemption from payment of excise duty and the impugned show cause notices issued by the Superintendent are without jurisdiction and illegal.

5. Sri H. B. Datar, learned counsel for the petitioner contends that ''Acetic Anhydride'' a chemical but manufactured and supplied as a drug intermediate to drug manufacturers was entitled for exemption from payment of excise duty as interpreted by Government, on 14th September 1981 in the case of M/s. Hindustan Organic Chemicals Ltd. (Annexure H) reiterated in a later decision rendered on 10-9-1981 in the case of Shasum Chemicals (Madras) Pvt. Ltd. since reported in 1982 E.L.T. 796 (G.O.I.) and the demands made by the Superintendent in the show cause notices is without jurisdiction and illegal.

6. Sri K. Shivashankar Bhat, learned Senior Standing Counsel appearing for the Revenue in justifying the notices, urged that it was open to the petitioner to appear before the Superintendent and urge the very contentions in this petition and such other contentions as are available to it before him who is bound to examine and decide them and then work out, its remedies under the Act and even before this Court and therefore this is not a fit case in which this Court should exercise its extraordinary jurisdiction at this stage.

7. What is challenged are show cause notices and therefore it is open to the petitioner to appear before the Superintendent and urge the very case pleaded before this Court who is bound to examine and decide the same and that decision can be challenged in appeals or other remedies can hardly be doubted.

8. The fact that the notices are show cause notices and the petitioner has an opportunity to appear and urge its case does not touch on the jurisdiction of this Court to examine them and decide the question at the threshold itself.

9. But the excise duty is payable on the manufactured goods by the manufacturer in the first instance though it may happen that he may pass on the same to the buyer of goods or consumer. On the very terms of the show cause notices, the petitioner is bound to pay the excise duty which it has not been paying from 1-3-1978. In all probability the Superintendent is likely to stick to

his view expressed in the show cause notices. In the circumstances, I consider it proper to examine the validity of the show cause notices and decide the questions finally.

10. Acetic Anhydride manufactured by it is a chemical is not disputed by the petitioner also. But what is claimed or disputed by the petitioner is that chemical when manufactured and supplied as a drug intermediate to a drug manufacturer is entitled for exemption from payment of excise duty under the Notification dated 1-3-1978.

11. Under the Notification dated 1-3-1978 all drugs, medicines, pharmaceuticals and drug intermediates not elsewhere specified are exempted from payment of excise duty under the Act. An article though a chemical, when supplied as a drug intermediate, is exempted from payment of excise duty. The fact that the chemical is a chemical is not relevant to decide the claim of the manufacturer for exemption if that chemical is supplied as a drug intermediate to the drug manufacturers.

12. The fact that Acetic Anhydride manufactured by the petitioner is sold as drug intermediate to drug manufacturer is not disputed by the respondents. Even otherwise, the evidence placed by the petitioner before this Court establishes its case without shadow of doubt.

13. On the construction of the notification dated 1-3-1978 the claim of the petitioner for exemption from payment of excise duty on ''Acetic Anhydride'' manufactured and supplied as a drug intermediate to drug manufacturers is well founded.

14. In the case of Hindustan Organic Chemicals Ltd. a similar question arose before the Government but with reference to another chemical. In accepting the case of that manufacturer, reversing the decision of the Excise Authorities of Bombay, Government by its Order dated 14th September, 1981 (Annexure H) expressed thus :

"Government have considered all the written and oral submissions. Government find considerable force in the contention that the view taken by the lower authorities tends to defeat the object of the exemption notification. The interpretation on the scope of the term ''Drug Intermediate'' put by the lower authorities is not warranted on a plain reading of the notification. Government observe that the notification does not specify the state of use of the item claimed as drug intermediate as the penultimate state i.e., immediately prior to the obtaining of the drug in the process of its manufacture. The petitioners have produced enough evidence to show that the three items are used in the manufacture of drugs. The petitioners have enclosed copies of the certificates issued of by the National Chemical Laboratory, Pune and the Central Drug Research Institute, Lucknow, certifying that Aniline, Para Nitro Chloro Benzene and Acetenilide find vide application as intermediate for drug among other things. The National Chemical Laboratory, Pune have certified that the above mentioned chemicals are drug intermediates to the extent they are used in the manufacture of drugs. Government accordingly set the order in appeal and hold that the petitioners should get the benefit of the exemption notification for the three items to the extent that they are actually used in the manufacture of drugs. In the Government''s view, this requirement of end-use though not built into the exemption notification is not only implied but also becomes imperative in a situation where the produce has uses other than as drug intermediate whereas the exemption is limited only to drug intermediate that is only when the product is used as a drug intermediate."

In the case of Shasum Chemicals (Madras) Pvt. Ltd., also [1982 E.L.T. 796] Government has again reiterated the same principle.

15. Without any doubt, the construction placed by Government which is also the author of the Notification, in Hindustan Organic Chemicals and Shasum Chemicals cases which are also correct, were binding on the Superintendent though not on this Court.

16. In K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, the Supreme Court, dealing with a circular issued by the Central Board of Direct Taxes under the Income Tax Act, 1961, has enunciated that the meaning ascribed by that very authority should be accepted as correct applying the principle of contemporanea expositio or contemporaneous exposition. Therein the Court observed thus :

"These two circulars of the Central Board of Direct Taxes are, as we shall presently point out, binding on the Tax Department in administering or executing the provision enacted in sub-section (2), but quite apart from their binding character, they are clearly in the nature of contemporanea expositio furnishing legitimate aid in the construction of sub-section (2). The rule of construction by reference to contemporanea expositio is a well established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. This rule has been succinctly and felicitiously expressed in Crawford on Statutory Construction (1940 ed) where it is stated in para 219 that ''administrative construction (i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight, it is highly persuasive.'' The validity of this rule was also recognised in Baleshwar Bagarti v. Bhagirathi Dass (ILR 1908 Cal. 701) where Mookerjee, J. stated the rule in these terms :

''It is a well-settled principle of interpretation that courts in construing a state will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it.''

and this statement of the rule was quoted with approval by this Court in Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd., It is clear from these two circulars that the Central Board of Direct Taxes, which is highest authority entrusted with the execution of the provisions of the Act, understood sub-section (2) as limited to cases where the consideration for the transfer has been understated by the assessee and this must be regarded as a strong circumstance supporting the construction which we are placing on that sub-section."

On the application of this principle also, it is proper to accept the view expressed by Government in Hindustan Organic and Shasum Chemicals cases, which are also otherwise correct.

17. On the above discussions, it follows that the action of the Superintendent is manifestly illegal and the same justifies the interference by this Court.

18. In the light of the above discussion, I quash impugned show cause notices, prohibit the respondents from collecting excise duty from the petitioner on ''Acetic Anhydride'' manufactured and supplied as a drug intermediate to the drug manufacturers in terms of the Notification M.F. (D.R.) No. 62/78-C.E., dated 1-3-1978 (annexure ''B'').

19. Rule issued is made absolute. But, in the circumstances of the case, I direct the parties to bear their own costs.

