(1977) 06 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5507/75

Mysore Agarbathi Works APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 15-06-1977

Acts Referred:
Central Excise Rules, 1944 — Rule 8(1)

Citation : (1977) 2 APLJ 162 : (1978) 2 ELT 196

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gangadhara Rao, J.—The interesting question I have to decide in this Writ Petition is whether handmade ''Agarbathis'' are handicraft products to claim exemption from payment of Excise duty under the Central Excises and Salt Act, 1944. ''Agarbathis'' is not a specified item in the Act. Duty was being paid on ''Agarbathis'' under the residuary item 68 of the First Schedule of the Act. While so, under Rule 8 (1) of the Central Excise Rules, 1944, the Government of India exempted handicrafts with effect from 30.4.1975 under Notification No. 114/75 from payment of Central Excise Duty levied under item No. 68 of. the First Schedule to the Act.

2. The petitioner is a manufacturer of ''Agarbathis'' at Secunderebad. They are handmade. No power or machinery is used in their manufacture. On the ground that ''Agarbathis'' is a handicraft he claimed exemption from payment of duty. The Assistant Collector, Central Excise, Hyderabad informed him on 1.10.1975 that ''Agarbathis'' are included in the list of items coming under ''handicrafts'' as approved by the All India Handicraft Board and, therefore, they are attracted by the exemption granted by the Central Government with effect from 30-4-1975. But the Ministry of Finance, Government of India, in their letter dated 1-5-1975, laid down certain guidelines for deciding what handicraft goods are. They observed that-

"the test to decide the eligibility of exemption for a controversial product would, inter alia, be as to how the product is commonly known in commercial parlance, how the goods are advertised and marketed, how the goods are produced, what are its end uses etc. In the case of handicraft goods it may further be added that handicraft industry is a labour intensive industry where the production of goods is mainly done by hand with small tools and equipment requiring little investment. The goods find market mainly because of their attractive designs, craftsmanship and workmanship the value added by skill or labour generally forming the major part of the goods.

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4. Consequently, the Assistant Collector of Central Excise, Hyderabed, Division I, informed the petitioner on 16-10-1975 that ''Agarbathis'' cannot be regarded as handicraft and, therefore, he withdrew the orders passed by him on 1-10-1975. Thereupon, the petitioner has filed this Writ Petition.

5. It is submitted by the learned counsel for the petitioner that handmade ''Agarbathis'' are handicrafts and, therefore, they are exempt from payment of Excise Duty. On the other hand it is submitted by the learned counsel for the Central Government that chemical process is involved in the manufacture of ''Agarbathis'' and, therefore, they are not handicrafts.

6. The question for my consideration is whether handmade ''Agarbathis'' constitute handicrafts. If they are, they are exempt from payment of duty. If they are not, they are not exempt. The word ''handicraft'' is not defined either in the Act or the rules. In Dunlop India Ltd. v. Union of India (AIR 1977 SC.597) the Supreme Court observed in para 31.-

"It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority." In para 36 the learned Judges observed :

"It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject generally treat and understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technical and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry."

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9. In view of these pronouncements, it is obvious that I have to construe the word ''handicraft'' in its popular sense but not in its scientific or technical sense. I must also understand it in a way in which people dealing with it commercially understand it.

10. First, I take up as to what is meant by a ''handicraft''. In Chambers Twentieth Century Dictionary (New Edition) 1972, it is defined as a ''manual craft or trade''. In stroud''s Judicial Dictionary of Words and Phrases, Volume I, 1972 Edition, the meaning of ''handicraft'' is given as follows :-

"Handicrafts'' shall mean any manual labour exercised by way of trade or for purposes of gain in or incidental to the making of any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale, any article. Making straw plait, by a child under the age of 8 years and who is being taught such plaiting, was a ''handicraft'' within this definition."

11. In Legal and Commercial Dictionary by S.D. Mitra, the same meaning is given. In Law Lexicon of British India by Shri P. Ramanatha Aiyer, ''handicraft'' is defined as ''Manual skill manual art or trade''. Going by these definitions, there can be no doubt that the ''Agarbathis'' manufactured by hand by the petitioner are handicraft

12. Now I will turn to the meaning given by persons who deal in handicrafts. The All India Handicrafts Board (Co-operative Section), New Delhi, have published a book called ''Guide Book for Handicrafts Co-operative''. It gives information regarding credit facilities for handicraft Co-operatives, marketing assistance, training, raw materials, design, services, etc. In Annexure No. 1 of that book the list of handicrafts is given incense, is shown as handicraft. Here, it may be remembered that All India Handicrafts Board is a Government Organisation under the Ministry of Commerce.

13. The Assistant Director in the Marketing and Service Extension Centre of All India Handicrafts Board at Warangal. Andhra Pradesh, has sent to the petitioner a list of items coming under ''handicrafts'' as approved by the All India Handicrafts Board. Item No. 138 in the list of items under ''handicrafts'' is shown as ''Agarbathis.'' The Managing Director, Karnalaka State Handicrafts Development Corporation Limited. Bangalore, wrote a letter to the Mysore Agarbathis Manufacturers'' Association, Bangalore on 15-5-1975 stating,

"We are of the opinion that Agarbathi work will come under handicrafts since the process of manufacturing from the beginning to the end in the Agarbathi industry involved hand work only.

We are of the opinion that Agarbathi work comes under ''Essence and perfumery'' articles which has been accepted by the All India Handicrafts Board, Government of India, as Handicraft articles."

14. Thus the All India Handicrafts Board and the Handicrafts Development Corporation Limited of Karnataka State, have treated ''Agarbathis'' as handicraft. It is not disputed that these organisations are formed to manufacture, market and export handicrafts. They promote co-operatives for making handicrafts. Therefore their opinion is entitled to great weight. They have treated

''Agarbathis'' as a handicraft. In fact, the Assistant Collector of Central Excise, Hyderabad in his letter dated 1-10-1975 to the petitioner has also treated ''Agarbathis'' as a handicraft. Thus going by the popular meaning and the commercial meaning, I have no hesitation in holding that ''Agyrbathis'' made by hand are handicrafts.

15. But the learned counsel for the Central Government, relying upon the Ministry''s letter dated 19-9-1975 and the Standing Order of the Collector of Central Excise, Hyderabad dated 4-10-1975, has contended that ''Agarbatnis'' is not a handicraft because chemical process is involved in their manufacture. I have already referred to the Ministry''s letter dated 19-9-1975. Even applying the test propounded by them, I have no hesitation in holding that ''Agarbathis'' are handicrafts.

16. In the Standing Order of the Collector of Central Excise, Hyderabad, it is stated that "the Ministry of Commerce and Administrative Ministry looking after the development of handicrafts has intimated that no specific skill is required in Agarbathi Industry. In fact, manufacture of ''Agarbathis'' is stated to be a chemical process based upon use of chemicals due to which Agarbathis are classified under chemicals being akin to perfumery products, It is, therefore, considered that ''Agarbathis'' cannot be regarded as handicrafts and they are therefore, not exempted under the aforesaid notification". As stated by me already, when it is not a specified item, we must understand it in the common parlance and in the commercial sense. Apart from that, even assuming that some chemical process is involved in manufacturing ''Agarbathis''. I do not see how it ceases to be a handicraft. Supposing a man '' paints on a piece of cloth by mixing up different colours. Definitely colours are chemicals. Does it mean that his work is not a handicraft ? Similarly, we have ''Bidriware'', and statutory in metal. Sometimes they involving chemicals. Does it mean that they are not handicraft ? I think they are. I therefore, hold that ''Agarbathis'' made by hand are ''handicrafts''.

17. It was also submitted by the learned counsel for the respondents that the petitioner has an alternative remedy by way of an appeal and revision under the Act, and since he has filed this Writ Petition without exhausting them, this Writ Petition is not maintainable. I do not agree. When the Ministry of Finance, Government of India, have given an opinion that ''Agarbathis'' are not handicrafts and when the Collector of Central Excise, Hyderabad, has also expressed the same opinion, I do not see any point in saying that the petitioner has an alternative remedy. I do not understand what useful purpose would be served by driving the petitioner to file an appeal or a revision. That will be an appeal from caesar to caesar. On the facts of this case, I am of the opinion that the alternative remedy is rendered nugatory.

18. Consequently, I hold that ''Agarbathis'' fall under the Item ''handicrafts'' and, therefore, they are exempt from payment of Excise Duty. The Writ Petition is allowed, but in the circumstances of the case I direct each party to bear his costs.

