

(1983) 08 KAR CK 0039
In the Karnataka High Court
Case No : Writ Petition No. 7131 of 1978

Mysore Vinyl Industries

APPELLANT

Vs

Assistant Collector of Central Excise, Bangalore and Another

RESPONDENT

Date of Decision : 31-08-1983

Acts Referred:

Central Excise Act, 1944 — Section 6
Central Excise Rules, 1944 — Rule 8 (1)

Citation : (1984) 15 ELT 322

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

Bench : Single Bench

Advocate : K. Lakshminarayana Rao, for B. Gopalaiah, for the Appellant; K. Shivashankar Bhat, Central Government Advocate, for the Respondent

Judgement

1. Admittedly during the period from 9-5-1977 to 9-8-1977 with which period only we are concerned, the petitioner was manufacturer of footwear at the place licensed by the competent authority u/s 6 of the Central Excises and Salt Act, 1944 (Central Act No. 1 of 1944) (hereinafter referred to as the Act) employing not more than 49 persons and power not exceeding 2 horse power. Even during this period, the petitioner has manufactured and sold footwear to its buyers directly under the brand names "MYSHU" and "VIKING", and to another company called Bata India Limited affixing the brand name "BATA".

2. The notification issued by Central Government from time to time under Rule 8(1) of the Central Excise Rules framed under the Act (hereinafter referred to as the Rules) prior to 9-5-1977 exempted manufacturers of footwear that employed not more than 49 persons and utilised power not exceeding 2 horse power for payment of excise duties without any other stipulation.

3. But, Government in its notification No. 88/77-C.E., dated 9-5-1977 issued under the same Rule, did not follow the earlier pattern and appended an Explanation deeming the manufacturer as a non-manufacturer and the non-manufacturer as a manufacturer. The same reads thus :

"Copy of G.O.I. (D.R. & S.) Notification No. 88/77-C.E., dt. 9-5-1977.

Notification - Central Excise

G.S.R : In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Govt. of India in the Department of Revenue and Banking No. 103/76-Central Excise, dated the 16th March, 1976, the Central Government hereby exempts footwear falling under sub-item (1) of item No. 36 of the First Schedule to the Central Excises and Salt Act, 1944(1 of 1944) from the whole of the duty of excise leviable thereon :

Provided that -

- (i) Such footwear is produced by or on behalf of the manufacturer in one or more factories, including the precincts thereof, where not more than 49 workers are working, or were working on any day of the preceding 12 months; and
- (ii) the total equivalent of power used in the manufacture of such footwear by or on behalf of a manufacturer in one or more factories does not exceed 2 horse power.

Explanation. - Where footwear, manufactured by a manufacturer is affixed with the Brand of Trade name, registered or not, of another manufacturer or is purchased by another manufacturer, it shall be deemed to have been manufactured by or on behalf of such other manufacturer."

On the basis of this notification the Assistant Collector of Central Excise, Bangalore-1 Division, Bangalore (hereinafter referred to as the A.C.) by his order C. No. V/36/3/37/77, dated 6-6-1978 (Exhibit F) has found that the petitioner had remitted a short levy of Rs. 32,976.80 towards excise duty for the aforesaid period and has issued a consequent demand notice on 14-6-1978 (Exhibit G). In this petition under Articles 226 of the Constitution, the petitioner has challenged the validity of the Explanation appended to the notification dated 9-5-1977, the assessment order made by the A.C. on 6-6-1978 (Exhibit F) and the consequent demand notice dated 14-6-1978 (Exhibit G)."

4. At the forefront, the petitioner has urged that the Explanation added to the notification dated 9-5-1977, treating the manufacturer as a non-manufacturer and a non-manufacturer as a manufacturer, thus denying the exemptions to small scale footwear manufacturers was violative of Rule 8 of the Rules and the Act. In the view I propose to take on this very ground, it is not necessary to notice the other grounds urged by the petitioner.

5. The respondents have resisted this petition.

6. Sri. K. Lakshminarayana Rao, learned counsel for the petitioner contends that the Explanation appended to the notification dated 9-5-1977 was violative of the Act and the Rules. In support of his contention, Sri Rao strongly relies on a Division Bench ruling of the Patna High Court in Bata India Limited v. Assistant

Collector of Central Excise Patna [1978 E.L.T. 211].

7. Sri K. Shivashankar Bhat, learned Central Government Senior Standing Counsel, appearing for the respondents, urged that it was open to Central Government to impose such terms and conditions on which exemption from payment of excise duties should be allowed the Explanation was really a condition imposed in conformity with the Act and the Rules.

8. Excise duties under the Act are levied on manufactured goods and on the manufacturer and this is settled by several rulings of the Supreme Court, Privy Council and the Federal Court.

9. Rule 8 of the Rules empowers Government to grant exemptions from excise duties on such terms and conditions as it may impose. But that Rule does not empower Government to treat a manufacturer as a non-manufacturer and a non-manufacturer as a manufacturer.

10. The Explanation appended to the notification both in law and fact treats a manufacturer as a non-manufacturer and a non-manufacturer as a manufacturer. Without any doubt, the Explanation runs counter to the scheme and object of the Act and the Rules and destroys the concept of, manufactured goods and manufacturer on whom only excise duties are levied under the Act. On any legal principle, it is not possible to hold that the Explanation is a term and condition that subserves the Act and the Rules. The power to grant exemption under Rule 8 cannot be exercised de hors the Act and the Rules as has been done by Government. In this view, the Explanation is liable to be struck down.

11. In Bata India Limited's case the petitioner who had been treated as a manufacturer though it was not a manufacturer on the basis of the Explanation and was called upon to pay the excise duties under the Act had challenged the same on this very ground. In that case, a Division Bench of the Patna High Court has taken a similar view and struck down the Explanation. With respect, I am in complete agreement with the views expressed by their Lordships of the Patna High Court in Bata India Limited's case.

12. Even the Notification No. G.S.R. 564(E), dated 9-8-1977 (Exhibit C), very rightly accepts the case of small manufacturers, though it is true that the same cannot affect the validity of the impugned provision.

13. On the foregoing discussion, it follows that the Explanation appended to the notification dated 9-5-1977 is liable to be struck down. When the said Explanation is struck down, it follows that the assessment order and the demand notice issued by the Assistant Collector based on that Explanation are liable to be quashed.

14. In the light of my above discussion, I make the following orders and directions :

(a) I strike down the Explanation appended to the notification No. 88/77-C.E.,

dated 9-5-1977 only issued by the Central Government (Annexure B);

(b) I quash the order C. No. V/36/3/37/77, dated 6-6-1978 (Annexure F) of the Assistant Collector of Central Excise, Bangalore and the consequent demand notice No. nil dated 14-6-1978 (Annexure G).

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