
(1974) 03 AHC CK 0010
In the Allahabad High Court
Case No : Civil Miscellaneous Writ No. 2358/73

Nagrat Paints

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 28-03-1974

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10(A), 56A(3), 56H(3), 9
Central Excises and Salt Act, 1944 — Section 35, 36
Constitution of India, 1950 — Article 226

Citation : (1978) 2 ELT 39

Hon'ble Judges : Satish Chandra, J; Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Gulati, J.

1. The petitioner is private limited company carrying on the business of manufacture and sale of paints and varnishes at Kanpur. The paints and varnishes manufactured by the petitioner company are liable to excise duty under Central Excises and Salt Act, 1944 (hereinafter referred to as the Act), under Item No. 14 of the Central Excise Schedule. In the manufacture of these articles the petitioner uses processed vegetable non-essential linseed oil (hereinafter referred to as V.N.E. Oil). This oil is also liable to Central Excise Duty under Item No. 12 of the Central Excise Schedule. The oil is first converted into Alkyd Resin (Synthetic Resin) which, in its turn, is utilised for manufacturing paints and varnishes. This Alkyd Resin is also an excisable article. Under Rule 56A of the Central Excise Rules if duty paid material or component parts are brought in for the manufacture of finished excisable goods, a pro forma credit is granted to the extent the duty has already been paid on such material or component parts and it is adjusted against the excise duty leviable on the finished product. Obviously this Rule has been inserted to avoid double taxation, once on the component parts and again on the finished products. In order to avail of this concession, an

application has to be made to the Collector, Central Excise, The petitioner company made such an Application in respect of the duty paid V.N.E. Oil to the Collector, Central Excise, Kanpur, who by this order dated 25-3-63 granted the exemption, which was communicated to the petitioner in the following words :?

"Please be advised that the Collector of Central Excise, Kanpur, has been pleased to accord his permission to avail of the concession permitted under Rule 56A. of Central Excise Rules, 1944, to you."

Since then the petitioner has been availing of the concession in respect of V.N.E. Oil used in the manufacture of paints and varnishes suddenly without any warning or notice the petitioner company was served with two notices of demand dated 1-12-1969 and 31st March, 1970 for Rs.7,957.98 and Rs. 7.849.45 respectively. The notice of demand dated 31st March, 1970 was for the period from 1963-64 to 1965-66 and the other Notice of demand dated 1-12-1969 was for the period 23-9-1965 upto the date of the issue of the notice of demand, namely, 1-12-1969.

2. On receiving these two notices of demand the petitioner made two representations to the Assistant Collector, Central Excise, Kanpur, those Representations were forwarded to the Superintendent, Central Excise, S.R.P. IV. Kanpur. for adjudication. That authority without giving any notice to the petitioner or affording any opportunity to explain its case, rejected the representations by the following order dated 18th June, 1970 :

"The demand was raised when it was discovered that they have availed of pro forma credit on quantities of processed V.N.E. Oil used in the manufacture of synthetic resins without proper permission from the competent authority. The factory was permitted to avail of pro forma credit on materials used in the manufacture of paints and varnishes, but they do not possess any such permission for synthetic resin for the manufacture of which the party holds a separate licence". The party, therefore, is not entitled to avail of pro forma credit on the processed V.N.E. Oil used in the manufacture of Synthetic resins."

3. Against these order the petitioner filed two Appeals as provided in Section 35 of the Act. The period of limitation for an Appeal u/s 35 is 180 days from the date of the receipt of the order. The Appeals were filed on 5th of July, 1971, after the expiry of the period of limitation. The Deputy Collector, Central Excise, Kanpur dismissed the Appeals on the ground that they were barred by time. The appellate authority also did not send any notice of hearing to the petitioner. Thereafter the petitioner filed two revision petitions to the Central Government u/s 36 of the Act. In the revision petitions the petitioner explained the reason for filing the appeals late. It was stated that the matter of excise duty was being dealt with by their General Manager and power of Attorney-holder, Shri Krishna Kapoor, who had the relevant file with him. On 15th September, 1970 the said Shri Kapoor got a sudden attack of myocordic in faction and remained in bed from 15th September, 1970 to 31st December, 1970. A medical certificate to this

effect was also enclosed. The Joint Secretary to the Government of India in the Ministry of Finance, dismissed the two revision petitions by a consolidated order dated 9th February, 1973, on the ground that the Appeals were filed late and the "Petitioners have not adduced any evidence as to why the Appeal was not filed within the prescribed Time". This Order was also passed without any notice to the petitioner. The petitioner has now approached this Court under Article 226 of the Constitution.

4. Two contentions have been raised on behalf of the petitioner, (1) that the levy of the impugned excise duty is wholly unauthorised under the law and (2) that the demand of excise duty is time-barred. The authority which raised the demands did not pass any order. It merely issued two notices of demand. On the representations of the petitioner the Superintendent, Central Excise, Kanpur, passed an order which has already been extracted above. This order also does not indicate the provision under which the same has been passed. But in the Counter-Affidavit the order is sought to be justified under Rule 56H(3)(a) read with Rule 10A and Rule 56A(3) as it stood at the material time read":?

* * * *

5. Rule 56A(3)(a) applies obviously to a case where a person after obtaining a credit for excise duty paid on any material or component parts fails to account for such material or component parts as having been disposed of in an authorised manner. Now, the petitioner obtained a credit in respect of V.N.E. Oil to be used in the manufacture of paints and varnishes. That the petitioner did use such V.N.E. Oil in the manufacture of paints and varnishes is not disputed as is evident from paragraph 5 of the Counter-Affidavit which contains the following averments :

"5. That in reply to the content of paragraph 3 of the Writ Petition it is stated that the petitioner uses Vegetable Non-essential Linseed Oil (V.N.E. Oil) for the manufacture of Alkyd Resin (Synthetic Resin) which is in its turn utilised by the petitioner company for manufacturing paints and varnishes."

6. There can be no doubt, therefore, that V.N.E. Oil is ultimately utilised in the manufacture of paints and varnishes. But what the Department seems to think is that since in the production of paints and varnishes V.N.E. Oil gets converted into Alkyd Resin at an intermediary stage, the petitioner is not entitled to avail of the credit unless he obtains permission for the use of V.N.E. Oil. Resin is a excisable article, but under Rule 9 a duty is leviable only if the excisable article is removed from the place where it is manufactured or produced for consumption, export or manufacture of any other commodity. In the instant case there is no finding that Alkyd Resin was removed from the place where it was produced for consumption, export or manufacture of any other commodity. On the other hand, it is admitted that the conversion of V.N.E. Oil into Alkyd is only an intermediary stage in the manufacture of the paints and varnishes. As such no duty was leviable on Alkyd Resin and the credit allowed for the use of V.N.E. Oil in the manufacture of paints

and varnishes was properly available to the petitioner.

7. Learned Counsel for the respondents has asserted that duty is leviable even on excisable article which is produced at an intermediary stage for the production of other article and it is not necessary that such an article should be put in the market for sale. He has relied upon *Union of India v. Delhi Cloth and General Mills* 1917 L.L.J.199. There the question arose as to whether excise duty was leviable on refined oil when it was produced at an intermediary the production of Vanaspati. In that connection the Supreme Court did observe that excise duty is on manufacture of goods and not on sale. The fact, therefore, that the substance produced by the manufacturer at an intermediary stage is not put in the market would not make any difference to the chargeability of the substance to excise duty, if it is covered by an Item in Schedule I of the Act. In that case the Supreme Court ultimately found that refined oil as known to the market was not produced after the hydrogenation of the raw ground-nut oil. No question arose before the Supreme Court with regard to the interpretation of Rule 9 according to which the excisable event is the removal of the excisable article from its place of manufacture of consumption, sale, export, etc. In the circumstances it was not necessary for the petitioner to obtain a separate permission for using V.N.E. Oil for the manufacture of Alkyd Resin. Indeed this position has since been clarified by the Government of India through Instruction No. 96/71 (V.N.E Oil/1-71), dated 12th July, 1971 in the following words :?

"...It should clearly be understood that processed Linseed Oil (Processed V.N.E. Oil) used in the manufacture of paints, enamels or varnishes even through the intermediate stage of Alkyd Resin is fully exempted from payment of Excise duty and leviable thereon."

In view of this clarification it is not open to the respondents to say that the petitioner was not entitled to the credit in respect of V.N.E. Oil, merely because the same was converted at an intermediary stage into Alkyd Resin

8. Now we pass on the alternative contention, namely, that the impugned duty was barred by time. Rule 10 deals with recovery of duties or charges short-levied or erroneously refunded and runs as under :?

* * * *

To us it appears that the instant case is clearly covered by Rule 10. It is a case of short levy of duty through inadvertence or error. The levy of duty under Rule 10 is permissible only if the demand is made within three months from the date on which the duty was charged or paid or adjusted in the owner's account or from the date of making the refund. The notice of demand dated 31st March, 1970 was for the period 1963-64 to 1965-66 which is obviously beyond three months and the other period 23rd September, 1965 upto the date of the issue of the notice of demand. The second notice of demand would be valid in respect of the duty leviable for the immediately three preceding months and the demand for any period prior to that would be time barred. Rule 10A relied upon by the

Department, in our opinion, is not applicable at all. This Rule obviously applies if there is no provision elsewhere in the Rules. We have already shown that rule 10 squarely applies to the facts of the case. This view finds full support from the decision of the Supreme Court in N.B. Sarjhana v. E.S. and W. Mills AIR 1971 S.C. 2059.

9. For the reasons states above, we allow this petition. The two orders of the Superintendent, Central Excise, Kanpur, dated 18th June, 1970, copies whereof are Annexures A-2 and A-3 to the writ Petition are quashed. For the same reasons the orders passed by the Appellate Authority dated 30th August, 1971, and the Central Government dated 9th February, 1973, on appeal and revision, copies whereof are Annexures A-5 and A-8 respectively, are also quashed. The respondents, are further directed not to recover from the petitioner any amount in pursuance of the impugned notices of demand dated 1.12.1969 and 31st March, 1970.

10. The petitioner is entitled to its costs.