

(1978) 11 AHC CK 0064

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 450 etc. of 1976, 317 etc. of 1977 and 1745 etc. of 1978

Naresh Refrigeration Industries

APPELLANT

Vs

Supdt. of Central Excise, M.O.R.I and Others

RESPONDENT

Date of Decision : 24-11-1978

Acts Referred:

Central Excises and Salt Act, 1944 — Item 29A(3)

Citation : (1979) CENCUS 283

Hon'ble Judges : Satish Chandra, C.J;A. Banerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Chandra, C.J.—This group of 19 Writ Petitions has been filed by cold storage owners. The facts and the points of law raised in each are the same. We shall take the facts from Civil Miscellaneous writ No. 450 of 1976. In this case, the petitioner installed and assembled the cold storage plant in 1965. Part of the plant consisted of erecting locally what are called cooling coils and condensers. Generally cooling coils and condensers contain a very long length of pipes made in a particular shape. The petitioner, however, bought pipes of various lengths, erected them one after the other and joined one with the other with an "U" shape bend. These bends were welded. The result was that the various pipes constituted an unit in designing the plant. This part of the plant was necessary in order to pass the cooling gas through it and thereby cool the chambers of the storage. The petitioner bought the pipes and the bends from the market and got them placed at the factory site and got them welded himself.

2. The petitioner received a notice dated April 22, 1970, from the Superintendent of Central Excise stating that the petitioner had manufactured parts of refrigerating and air-conditioning machinery and appliances covered by Item No. 29-A (3) of the First Schedule to the Central Excises and Salt Act, 1944, namely, condensers and cooling coils. On the estimated value of these coils and

condensers, a duty in the sum of Rs. 32,000/- was payable which the petitioner was required to pay or to show cause.

3. The petitioner filed objections which were dismissed by the Assistant Collector of Central Excise by an order dated June 22, 1973. The petitioner filed an appeal. The Appellate Collector of Central Excise and Customs dismissed the appeal on June 29, 1976. The petitioner then filed a revision before the Central Government. The same was pending when the present writ petition was filed.

4. Similar was the case with other petitioners. They also went up in appeal and then in revision. In some of those cases the revision was decided by the Government of India. It was held that the conglomeration of pipes manufactured by the petitioner constitutes manufacture of a cooling coil as used in refrigeration technology. The arrangement of coils in the manner done by the petitioner answered the term "cooling coils and condensers" adequately. It was also held that it was not necessary that for a person to be licensed he should be in the trade or profession of manufacture of components parts of refrigerating machinery. The petitioner did manufacture these parts to carry on the business of cold storage. It was also found that the plea based upon the tariff advice relating to the entire refrigeration plant being assembled at site was not maintainable. Tariff advice was not applicable to components or parts of such refrigeration unit. The parts, namely, the cooling coils and condensers erected by the petitioner in his own cold storage were liable to duty under Item No. 29-A (3) of the Central Excises and Salt Act, 1944. The judgment of the Gujarat High Court relied upon by the petitioner was held distinguishable. On these findings the revision was dismissed.

5. We are not disposed to decide the petition on a technical plea of alternative remedy because we now know the views of the Central Government. They have decided revisions in many cases. It will hence not be right to ask such of the petitioners who have filed revisions to await the decision.

6. All the authorities below have concurrently found that the things erected or installed by the petitioner by laying pipes and joining them by welded bend was manufacture of cooling coils and condensers as known to refrigeration technology. This is a finding on facts and we have not been persuaded that the finding suffers from any manifest error of law. The basic method of erection of these pipes and the purpose of their use was nothing else than that of cooling coils and condensers as they are technically called. We shall hence proceed on the basis that the petitioner while erecting or installing the cold storage plant did manufacture cooling coils and condensers which are parts of refrigeration plant or unit. The authorities below have held that these installations were within the purview of Entry 29-A (3) of the Act. This Entry runs as follows:

Refrigerating and Air-Conditioning Appliances--"Refrigerating and Air-Conditioning Appliances and Machinery, All Sorts and parts thereof:

(1) Refrigerator and other refrigerating appliances, which are ordinarily sold or

offered for sale as ready assembled units, such as ice makers, bottle coolers, display cabinets and water coolers.

...75% ad valorem

(2) Air-conditioners and other air-conditioning appliances, which are ordinarily sold or offered for sale as ready assembled units, including package type air-conditioners and evaporative type of coolers.

...100% ad valorem

(3) Parts of refrigerating and air-conditioning appliances and machinery, all sorts.

...125% ad valorem

7. This entry finds place in the Schedule which is part of the Act. It has as much statutory force as the provisions of the Act itself.

8. Under Entry 29-A, refrigerating or air-conditioning appliances are covered. The sub-heading, which is equally important refers to refrigerating and air-conditioning appliances and machinery, all sorts, and parts thereof. These things are elaborated in the specific sub-items (1), (2) and (3). It is apparent that refrigerating and air-conditioning appliances which answer the description given in sub-entries (1) and (2) alone are liable to duty. The heading is general but the ambit of that heading has been restricted by the elaboration made in the sub-items (1) and (2). Under both the sub-items refrigerating and air-conditioning appliances which are ordinarily sold or offered for sale as ready assembled units are liable to duty. This is a restrictive condition with the result that refrigerator and other refrigerating appliances mentioned in item (1) or air-conditioners or other air-conditioning appliances mentioned in item (2) are not liable to duty unless it is further established that they are ordinarily sold or offered for sale as ready assembled units. If a person erects a refrigerating plant from his own indigenous efforts and creates a refrigerating machinery or refrigerating unit, it will not be within the entry and hence will not be liable to duty because the duty is leviable only on such of the mentioned appliances as are ready assembled units and are sold and offered for sale as such. Disputes arose in respect of this under the Customs Act. The Central Board of Excise and Customs issued a classificatory tariff ruling. It states that in view of the wordings of the sub-items (1) and (2) of Item 29 of Central Excise Tariff, duty appears to be attached only on refrigerators, refrigerating appliances, air-conditioners and air-conditioning appliances which are ordinarily sold or offered for sale as ready assembled units. The Phrase "ready assembled units" mentioned in Item 29-A supports this. Air-conditioning plants, cold storage plants and ice-making plants, etc. consist of series of machines and other equipments which are situated at different places and connected with each other to form the complete equipment. Such plant may be sold completely but are not ordinarily sold or offered for sale as ready assembled units. These are erected at site and many of the equipments would have to be tailored to individual requirements. Such plants would not, therefore,

be classified under sub-items (1) and (2) of Item 29-A of the Central Excise Tariff. Further the aforesaid interpretation of the tariff items was not considered and if refrigerating and air-conditioning plants are also taken as covered by the sub-items (1) and (2). then the expression "which are ordinarily sold or offered for sale as ready assembled units" occurring in the sub-item would be redundant. This, therefore, would not be a proper interpretation."

Sub-item (3) of Item 29-A refers to parts of machinery and appliances; complete plants cannot be considered as "parts of machinery" and so would not be classifiable under sub-item (3) to Item 29-A also.

9. The Board accordingly considered that complete refrigerating and air-conditioning plants which are not ordinarily sold as ready assembled units but have to be erected at site would be outside the purview of Item 29-A and that no countervailing duty would be leviable on them. This is in accord with the interpretation that has appealed to us that the central idea underlying Entry 29-A is that the dutiable article must be an assembled unit" which is ordinarily sold or offered For sale. If a person erects a unit with his own ingenuity, that is not liable to duty. It is further clear that component parts erected at the site are equally outside the purview of Entry 29-A as they are not assembled units It is thus clear that erection of a complete plant at the site is outside the purview of sub-entries (1), (2) as well as (3).

10. The question then arises whether assembly or erection of a part of the refrigerating unit, namely, the erection of cooling coils and condensers at the site of the factory would be within the purview of Entry 29-A. It is obvious that it is outside the purview of items (1) and (2). The heading of Entry 29-A makes it clear that only parts of such refrigerating and air-conditioning appliances and machinery as are covered by sub-entries (1) and (2) alone arc liable to duty. In other words, the parts in question should be such as are ordinarily sold or offered for sale as ready assembled units. On any other interpretation the word "thereof occurring in the heading 29-A will be redundant. An interpretation which makes any part of a statute redundant has to be discarded.

11. Mr. Tewari appearing for the Department submitted that the duty leviable under the Excise Act is on the event of manufacture. The purpose of the object of manufacture is irrelevant. It is immaterial whether the article is manufactured for the purpose of sale or consumption. It may even be destroyed. Yet the event of manufacture attracts the levy of excise duty. There is no quarrel with this proposition which is generally true under the Excise Act. But when an entry in the schedule specifically refers to and restricts the applicability of duty to goods which are assembled units and which are generally; offered for sale, the concept of sale is necessarily brought in. As already seen, sub-entry (3) takes its colour from sub-entries (1) and (2) because of the specific directive of the heading by using the words "parts thereof" We are hence unable to agree with the authorities below that the tariff advice in relation to their refrigeration plants which are assembled at site was not relevant for determining the issue with

regard to the parts which are assembled at site. In our opinion, these parts, though they may be called cooling coils and condensers, were not liable to excise duty within the meaning of Item 29-A (3) of the Tariff Schedule.

12. In the result, the petitions succeed and are allowed. The orders passed by the authorities below are quashed, and the demand notices issued to the petitioners are set aside. The petitioners will be entitled to costs.