

(1970) 01 KL CK 0018
In the High Court Of Kerala
Case No : W.A. No. 820 of 1969

Oriental Timber Industries, Chalakudy	APPELLANT
Vs	
The Range Officer, Central Excise, Irinjalakuda and Another	RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:

Central Excise Rules, 1944 — Rule 49
Central Excises and Salt Act, 1944 — Section 37

Citation : AIR 1970 Ker 271

Hon'ble Judges : T.C. Raghavan, J;P. Unnikrishna Kurup, J

Bench : Division Bench

Advocate : Varghese Kalliath and P.A. Mathew, for the Appellant; Central Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Raghavan, J.—The writ petition which has given rise to this appeal was to quash Ex. P-5 and other documents like Ex. P-2 which led to Ex. P-5. The appellant was the petitioner and he was a manufacturer of plywood circles to be used as component parts of packing materials for wire and cables. He used to be assessed to duty under the Central Excises and Salt Act of 1944 on the basis of the total area of the circles he manufactured, and the duty used to be collected from him when these circles were issued out of the factory premises. Some audit objection appears to have been taken regarding the mode of assessment. The Audit indicated that the levy of excise duty must be on the total area of the blocks or panels of plywood that came out of the press and not on the area of the circles cut out of the blocks. It was also pointed out by the Audit that the cutting of the blocks into circles did not form part of the manufacture of plywood but formed part of the manufacture of the circles --a product of plywood. It was further indicated that by plywood was meant only plywood which had a general market and not plywood circles specially manufactured for a particular purpose or a particular customer.

2. As a consequence of this audit objection, the first respondent issued Ex. P-2 calling upon the appellant to furnish the total area of the plywood he manufactured at the panel stage, for taking clearance of the plywood circles. Ex. P-2 indicated that it was the second respondent that directed course. The appellant then asked for a copy of the order of the second respondent, but that was not furnished to him. Instead, Ex. P-5 was passed, which reiterated the position taken by the first respondent in Ex. P-2: and it also stated that duty-paid plywood panels cleared outside the factory could be brought back for further process of cutting into circles only after obtaining prior permission. The appellant then came to this Court with the writ petition; and when the writ petition came up for hearing, our learned brother Govindan Nair, J., directed the respondents to furnish a copy of the order, on which Exs. P-2 and P-5 were based, to the appellant within a month. This order was passed on 27th March, 1969. However, the respondents did not furnish a copy of the order to the appellant; and his efforts to get a copy resulted in getting a reply from the second respondent which is produced in the appeal as Ex. P-6. The stand of the second respondent appears to be that the order mentioned was only a general instruction or directive issued to departmental officers and that is not meant for the public. In the result, the order was not given; and it was then that the appellant filed this appeal. Just before the hearing, of the appeal the Central Government Pleader produced a copy of the alleged order marked as Ex. K-2 along with a counter-affidavit; and a copy of the same was then given to the appellant too.

3. The contention of the counsel of the appellant is that Govindan Nair, J., was not apprised of the real position and the learned Judge was made to believe that there was an appealable order which was the basis of Ex. P-2 and, now that it has emerged that there is no such order --no such appealable order, this Court may hear the appeal on merits taking into consideration the subsequent events and quash Ex. P-5 and the other documents which led to Ex. P-5. The contention of the Central Government Pleader, on the other hand, is two-fold. Firstly, it is urged that the appellant must file an appeal against the order (may be Ex. R-2 or Ex. R-3, the reply sent by the second respondent to the appellant intimating that the order was a general directive issued to departmental officers) as contemplated by the rules and can approach this Court only after that remedy is exhausted. The second contention is that on merits, Ex. P-5 and the other orders are not liable to be quashed.

4. Ex. R-2, though it refers to the appellant, is a general direction to the departmental officers: in fact, the direction is only extracted in Ex. R-2. From the very nature of the order it is quite doubtful whether this is an appealable order at all. Even if it is an appealable order, since the respondents did not comply with the direction of this Court that the order should be given to the appellant within a month from the date of disposal of the writ petition, we do not think that the respondents can insist that the appellant should file an appeal before the department and come to this Court only if the appeal is not allowed. Again, we feel that the question to be decided is a pure question of law under the Central

Excises and Salt Act and the relevant rules framed thereunder, and there is no point now to direct the appellant to exhaust the departmental remedies before approaching this Court to have that question of law decided. Taking all these circumstances into consideration, we have decided to consider the appeal on merits.

5. The contention, as we have already indicated, of the respondents is that plywood is dutiable or excisable at the panel stage, i.e., when it comes out of the press, whereas the contention of the appellant is that it is dutiable only when it leaves the premises of the factory in the shape of circles, cut, trimmed and sanded. Which of these contentions is correct is the question we have to decide.

6. Section 3 of the Central Excises and Salt Act is the charging section; and Item 16-B in the First Schedule is the relevant item for the purpose of this appeal. The said item reads:

"16-B. Plywood, Block board, Laminboard, Batten board, Hard or Soft Wall Boards or Insulating Hoard and Veneered Panels; whether or not containing any material other than wood; cellular wood panels; building boards of wood pulp or of vegetable fibre, whether or not bonded with natural or artificial resins or with similar binders; and artificial or re-constituted wood being wood shavings, wood chips, saw dust, wood flour or other ligneous waste agglomerated with natural or artificial resins or other organic binding substances, in sheets, blocks, board or the like --

(i) Plywood for Tea-chests when cut to size in panels or shocks and packed in sets.

Ten per cent ad valorem.

(ii) All others

Fifteen per cent ad valorem."

And the relevant rule is Rule 49 (1) of the Central Excise Rules framed under the Act. The sub-rule provides that payment of duty shall not be required in respect of exisable goods made in factory until they are about to be issued out of place or premises specified under Rule 9 or are about to be removed from a store-room or other place of storage approved by the Collector under Rule 47,

7. The argument of the Central Government Pleader is on the lines indicated in the audit objections: firstly, that the cutting of the plywood blocks or panels into circles does not form part of the manufacture of plywood and it forms part of the manufacture of some other article, probably, "cable spools", for which the circles are used; and secondly, that there is no general market for the circles manufactured by the appellant, and plywood in the relevant item in the First Schedule is only plywood for which there is a general market.

8. Item 16-B itself, in our opinion, throws considerable light on this question. Plywood and other articles mentioned in the body of the Item may be in sheets,

blocks, boards or the like, which means that the plywood or other articles may be in the shape of circles as well. Moreover the articles are classed into two. Sub-item (i) makes plywood for tea-chests, when cut to size in panels or shooks and packed in sets, excisable at 10 per cent ad valorem; and sub-item (ii) makes "all others" dutiable at 15 per cent ad valorem. Evidently, the articles mentioned in the body of Item 16-B must be exhausted by these two classes under sub-items (i) and (ii). If plywood is dutiable at the stage when it comes out of the press (hydraulic press or handpress), Sub-item (i) becomes meaningless. This item indicates that the plywood which comes out of the press can be cut to size in panels or shooks-suitable for making tea-chests and duty is leviable only on such cut pieces. If so, the argument that the cutting of the panels into circles is not a process in or part of manufacturing plywood loses all significance, because the cutting of the bigger sheets emerging from the press into smaller panels or shooks is equally not part of the process of manufacture of plywood but is a part of making tea-chests. Sub-item (ii) includes "all Others", which evidently means that all the rest excluding the cut panels or shooks suitable for making tea-chests mentioned in Sub-item (i): this means that all the rest of the plywood cut into any other shape or not cut.

9. If the contention of the Central Government Pleader that plywood circles are not really plywood and are only a product of plywood is correct, we doubt very much whether the respondents can levy duty at all on the article, because Rule 49 states that the payment of duty shall be required only when plywood is issued out of the place or premises specified under Rule 9 or are about to be removed from the store-room or other place of storage approved by the Collector under Rule 47. If what is issued out of the factory premises is not plywood and only a product of plywood, no duty can be levied since the duty is on plywood and not on plywood products. The procedure or the process of manufacture of the appellant is indicated in his affidavit; and this is not denied in the counter-affidavit of the respondents. Plywood square panels are made in hand presses and they are not trimmed or sanded after they come out of the press. Before that, circles are cut out from these blocks or panels by inserting the panels in another machine; and it is only these circles that are sanded or sized. And after this last process is over, the circles are taken to the Store-room and then entries are made in the R.O. 1 Register maintained under Rule 47. Thereafter, when these circles are removed from the premises, permission from the department is obtained and duty is also paid. From this accepted procedure also it is clear that the process of manufacture contemplated by the Act ends only when the articles are ready to be taken out of the premises or store-room. Again, the blocks or panels from which the appellant cuts out circles are an unfinished product, because they will become a finished product only when they are trimmed and their edges are sanded. Therefore, the argument that the manufacture of plywood is over the moment the product comes out of the press cannot be correct. Even in the audit objection it is indicated that if larger sheets of plywood are cut into smaller sheets the objection does not apply. If so, we wonder why

the cutting of the larger blocks or panels into circles or into any other shape should make any difference. Thus, this contention has no force in view of the language of Item 16-B in the First Schedule of the Act and Rule 49 of the Central Excise Rules.

10. The second contention that plywood is only plywood which has a general market cannot also stand serious scrutiny. The panels or shooks cut to size for making tea-chests do not have a general market in that sense, so that they stand on the same position as the circles cut out, finished and sent out of the factory by the appellant. Moreover, this line of reasoning is not warranted by the Act or the Rules.

11. The appeal is consequently allowed, the writ petition is also allowed and Ex. P-5 and the earlier documents leading to Ex. P-5 are quashed. In other words, the respondents are restrained from enforcing Ex. P-5 or other similar orders. The appellant will get his costs in the appeal; but, in the writ petition the parties will suffer their respective costs.