
(1968) 12 CAL CK 0010

In the Calcutta High Court

Case No : Civil Rules No's. 2 (W) and 12 (W) of 1965

Orissa Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-12-1968

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3

Citation : (1979) 4 ELT 457

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Judgement

A.K. Sinha, J.—In these the petitioners pray for quashing certain orders levying excise duty on certain goods, viz., China and porcelainwares" and "glass and glass-wares" under the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act).

2. The petitioner, Shree Durga Glass Works, carry on business manufacture of glass and glasswares and the petitioner, Orissa Industries Ltd. manufacturers china and porcelainware. These manufactured goods were free from all excise duties by the Finance Act, 1961, for the first time these goods were incorporated under the First Schedule of the Act for levying and collection of excise duties. The excise duties were imposed from the date when the Finance Act came into force, that is, from April 20, 1961. According to the direction given by cretin Excise Officers the petitioner made a declaration of the existing goods as it stood on the mid-night of February 28, 1961 and 1st March, 1.961 in the prescribed form. The petitioners were informed that goods which remained unsold up to January 25, 1962 would be liable for duty with effect from January 25, 1962 - although, they are lying in stock for delivery since February 28, 1961. In spite of the representation before the authorities namely, the respondent No. 6, the said factory officer made a demand for realization of the excise duty on these goods and a sum of Rs. 1200/- by the Shree Durga Glass Works and a sum of Rs. 2,500/- by the Orissa Industries Ltd. respectively were deposited with the

authorities.

3. The petitioners, however, preferred an appeal to the respondent No. 4 who dismissed the said appeal on the view that these goods could not be treated as fully manufactured as they were not packed and ready for delivery out of factory on the relevant date. As against this order the petitioners preferred an appeal before the Collector, the respondent No. 3. He upheld the views taken by the Assistant Collector and dismissed the appeal. The petitioners then preferred an application for revision before the Central Board of Revenue which also in its turn rejected the application. That is how the petitioners felt aggrieved and obtained the present Rules.

4. Upon these facts several grounds were taken but the only contention of Mr. S.K. Acharya on behalf of the, petitioners was that the impugned order were bad in law as packing could not be regarded as part of the process for completion of manufacture of these goods. It was submitted that the only reason given by the successive authorities" was that the disputed goods were liable to excise duties as they were not in a fully packed condition and ready for delivery on the date in question. The only question, therefore, that arises for consideration in these cases is whether packing is a process incidental or ancillary to the completion of manufactured product. It is undisputed that the excise duty is leviable on all excisable goods u/s 3 of the Act which are produced and manufactured. The word "manufacture" has been defined u/s 2(f) which includes any process incidental or ancillary to the completion of all manufactured product. It also includes in relation to Tobacco and Salt and several other components or products as enumerated in Sub-clauses (i) and (ii) of said Clause (f) with which I am not concerned. The word "manufacture" on the basis of this definition under the Act has been explained by the Supreme Court in a decision reported in Union of India (UOI) Vs. Delhi Cloth and General Mills, . While dealing with the difference between the processing and manufacture K C. Das Gupta, J. observed at page 795 paragraph 18 as follows :

"This consideration of the meaning of the word "goods" provides strong support for the view that "manufacture" which is liable to excise duty under the Central Excises and Salt Act, 1944 must be the "bringing into existence of a new substance known to the market". "But", says the learned Counsel, look at the definition of "manufacture" in the definition clause of the Act and you will find that "manufacture" is defined thus :

"Manufacture" includes any process incidental or ancillary to the completion of a manufactured product"

We are unable to agree with the learned Counsel :

"That by inserting this definition of the word "manufacture" in Section 2(f) the legislature intended to equate "processing" to "manufacture" and intended to make mere "processing" as distinct from "manufacture" in the sense of bringing into existence of a new substance known to the market, liable to duty".

5. In the instant case, it true, that "packing" is claimed as processing and not "manufacture". But, bearing the principles indicated in the above decision of the Supreme Court can it be said that manufacture of the disputed goods were not complete in the sense of "bringing into existence of a new substance known to the market" unless they were packed and made ready for delivery to the customers. The only answer, in my opinion, is in the negative. Packing cannot be equated with processing or treated as ancillary to the completion of the manufactured goods on completion of which alone it may be said that the goods are said to be manufactured "in the sense of bringing into existence a new substance known to the market and liable of duty". For, cases may be visualised where China and procelainwares, glass or glasswares may be delivered to the customers even in wholesale without packing. It is true in usual course of commercial practice these goods are packed by the manufacturer for delivery to the customers but that fact by itself cannot constitute such packing into a process Which may be incidental or ancillary to the completion to such manufactured goods. Similar view was taken in a decision of the Bombay High Court (Amur Day Chem. Limited and Anr. v. The Union of India and Ors). (Special Civil application No. 2070 of 1963 under Articles 226 and 227 of the Constitution - Unreported) where Chainani, C.J. while dealing with the indential question though under different set of circumstances inter alia observed : -

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"Packing, however, cannot be regarded as part of the process of manufacture because the goods could have been delivered to the customers in their own containers. In fact it appears from the order of the Collector that the petitioners had stated before him that at certain times when there was shortage of containers they had delivered dyes in the containers brought by the customers. Consequently, it would be difficult to hold that these goods were not fully manufactured merely because they remained to be packed...".

6. Such being the position in law the only reason given by the Successive Authorities justifying levying and collection of excise duties on the disputed goods for the period in question cannot be accepted as valid and the impugned orders must be quashed.

7. A point raised on behalf of the respondents was not challenged in the instant Rules. It was contended that the trade notice was issued in exercise of the powers conferred under Rule 233 of the Central Excise Rules, 1944, but the validity of this trade notice was not challenged. Therefore, even if the impugned orders are quashed the remedy that may be available to the petitioners will not be effective or complete. I do not think that this point is at all relevant. After the demand of the excise duties the petitioners in accordance with the provisions of the Act preferred successive appeals as also revision and ultimately this imposition of excise duties merged into the order passed by the Central Board of Revenue. So, if these orders are quashed nothing remains. This point, therefore, is without any substance.

8. The result is, the petitions succeed. The impugned orders are quashed. The Rules are made absolute. But there will be no order as to costs.

9. Let a writ in the nature of Certiorari and mandamus issue accordingly.

10. I direct, a plain copy of the certified copy of the judgment of the Bombay High Court be kept with the record.