(1986) 07 BOM CK 0031

In the Bombay High Court

Case No : Writ Petition No. 947 of 1982

Pentax Engineering Pvt. Limited and another APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 04-07-1986

Acts Referred:

Citation : (1986) 10 ECC 171 : (1989) 20 ECR 480 : (1986) 25 ELT 510

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioner No. 1 is a Company registered under the Companies Act and is engaged in the manufacture of the engineering goods. The goods are manufactured by the Company out of raw-material purchased by it or on job work basis out of raw-material supplied free of cost by its customers to it. In respect of job work, the Company charges its customers only the labour charges including its manufacturing profit. In exercise of powers conferred by Rule 8 of the Central Excise Rules, the Government of India published Notification No. 105/80 dated June 19, 1980 exempting goods falling under Item 68 of the First Schedule to the Central Excises and Salt Act, 1944, in respect of the first clearances of the goods for home consumption by or on behalf of a manufacturer from one or more factories upto a value not exceeding Rs. 30,00,000/- cleared on or after the 1st day of April in any financial year from the whole of the duty of excise leviable thereon. The exemption is available subject to the conditions set out in the Notification.

2. The petitioner No. 1 Company by Classification List No. 1 dated May 11, 1981 filed under Rule 173B of the Rules claimed benefit of exemption under the Notification. The petitioners were permitted to clear the goods without payment of duty and the Classification List was approved on February 15, 1982. Subsequently, the value of the clearance of the goods of the petitioners crossed the limit of Rs. 30,00,000/-, and accordingly, by letter dated October 31, 1981, the Company informed the respondents of that fact. The Company claimed that

in respect of the goods manufactured from raw-materials, excise duty would be paid by calculating the value of labour charges without including the cost of the raw-material. The Superintendent of Central Excise rejected the claim of the petitioner holding that where the raw material has been received and undergoes manufacture and where the goods are entering directly in the market, the raw material value plus a reasonable margin of profit plus the labour charges must be taken into account.

On November 6, 1981, the Division Bench of this Court in the case of Narendra Engineering Works v. Union reported in 1981 E L T 859 held that what must be accounted for in determining the real value of the rods processed on job work by the petitioners is the manufacturing cost and the manufacturing profit. The assessable value cannot include the cost of raw materials. In pursuance of the judgment, the petitioners addressed letter to the Assistant Collector suggesting that the value of the goods for the purpose of levy of excise duty should be calculated only on the labour charges and should not include the cost of raw material. The respondent No. 2 - Assistant Collector - by order dated February 8, 1982 rejected the claim. The respondent No. 2 by another order dated March 27, 1982 reiterated his earlier decision and this action on the part of the respondents has given rise to the filing of the present petition on April 29, 1982 under Article 226 of the Constitution of India.

3. Shri Ganesh, learned counsel appearing on behalf of the petitioners, submitted that in view of the decision recorded by the Division Bench of this Court in the case of Narendra Engineering Works v. Union of India (1981 Excise Law Times 859), it is necessary for the respondents while computing the value of the clearance of a job work to take into account only the cost which was incurred and has to ignore the value of the raw material. It is undoubtedly true that the judgment of the Division Bench supports the claim of the petitioners, but Shri Sethna, learned counsel appearing on behalf of the respondents, points out that against the decision recorded by the Division Bench of this Court, the Department has approached the Supreme Court and Special leave has already been granted and the appeal is pending for hearing. Shri Sethna submitted that in case, the decision of Division Bench of this Court is followed, the Department will have to file further appeal before the Division Bench of this Court and then to Supreme Court and that would lead to multiplicity of proceedings and the parties would be required to incur large expenses. Shri Ganesh also submitted that the decision in this case will also be required to be carried upto the Supreme Court in view of the pendency of appeal in the case of Union of India v. M/s. Narender Engineering Works. In these circumstances, I suggested to both the counsel that the parties should agree to abide by the decision of the Supreme Court and avoid multiplicity of litigation and large expenses. Both the counsel, after taking instructions, accepted the suggestion and it is agreed that the Bank guarantee furnished by the petitioners would be kept alive till the decision of the Supreme Court and in case of success of the Department, not only the Bank guarantee will be enforced, but the petitioners undertake to pay the additional amount which

would be due from the petitioners.

4. Shri Ganesh also submitted that if the petitioners are doing job work, the value for the purpose of assessment should only be job charges and not the value of the processed material. The submission of the learned counsel cannot be accepted in view of the decision of the Division Bench of this Court and to which I was the party, in the case of New Shakti Dye Works Pvt. Ltd. and Mahalakshmi Dyeing & Printing Works and others v. Union of India and another reported in 1983 ELT 1736 . The Division Bench while considering the claim of the processors of grey fabrics held that while processors get grey cloth on which the duty is already paid, they are required to pay excise duty on the basis of the value of the manufactured article which also includes the value of the grey cloth and that amounts to double levy of excise duty held that under sub-rule (2) of Rule 56A of the Rules, the manufacturer will get credit for the duty which is already paid and, therefore, the contention of payment of levy of double excise duty is not correct. The decision of the Division Bench of this Court was approved by the Supreme Court in the case of Empire Industries Limited and Others Vs. Union of India and Others, . (The relevant observations are in paragraphs 47, 48 and 49).

5. In view of this finding, the following order is passed :-

1. The impugned orders dated October 31, 1981, February 8, 1982, March 27, 1982, January 30, 1982 and April 1, 1982 (being Exhibits E, G, I, J, and K respectively to the petition) are hereby set aside and quashed to the extent that they relate to the determination of the value of clearances for allowance of the benefit of the Exemption Notification No. 105/80.

2. For the purpose of allowing the benefit of the said Exemption Notification No. 105/80, the value of the clearances shall be determined by taking into consideration only the amount of job work charges received by the petitioners.

3. After the limit of duty free clearances under Notification No. 105/80 has been crossed, the assessable value of the manufactured goods shall be determined in accordance with Section 4 of the Central Excise Act, and after including therein the value of the raw materials supplied to the petitioners to pay the full amount of excise duty on such excess clearances.

4. Petitioners to keep alive their existing Bank guarantee under the order of this Hon''ble Court dated June 29, 1982, until the disposal by the Supreme Court of India of Civil Appeal No. 1822 of 1982 in the case of Union of India v. Narendra Engineering Works. In the even of the Union of India succeeding in the said Appeal No. 1822 of 1982, and the judgment of this Court in the case of Narendra Engineering Works being reversed by the Supreme Court, the respondents shall be at liberty to enforce the said bank guarantee, after giving one week''s notice to the petitioners. In the event of the said Appeal No. 1822 of 1982 being dismissed by the Supreme Court, the said Bank guarantee to stand discharged forthwith.

5. The petitioners to furnish within eight weeks from today to the Excise authorities all relevant information and particulars to enable the Excise authorities to compute the value of the clearances effected by the petitioners, in respect of which the benefit of Notification No. 105/80 has been claimed.

6. The petitioners agree that in the event of the Union of India succeeding in the said case of Union of India v. Narendra Engineering Works (Civil Appeal No. 1822 of 1982), the petitioners shall, within 8 weeks of being informed to that effect by the Excise authorities, recalculate the exemption limit in the light of the judgment of the Supreme Court, and pay the balance or differential duty with 8 weeks thereof.

7. Petition disposed of accordingly.

8. No order as to costs.