(1981) 01 MAD CK 0016

In the Madras High Court

Case No : Writ Petition No''s. 2185 etc. of 1977

P.M. Abdul Latif and Others — APPELLANT

Vs

Assistant Collector of Central Excise, Trichirapalli and Others — RESPONDENT

Date of Decision : 06-01-1981

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 2, 3

Citation : (1984) 2 ECC 350 : (1983) 3 ECR 55 : (1985) 22 ELT 758

Hon'ble Judges : M.M. Ismail, C.J;Sethuraman, J

Bench : Division Bench

Advocate : P. Chaidambaram, for the Appellant; U.N.R. Rao, Senior Central Government Standing Counsel and B.T. Seshadri, for the Respondent

Judgement

Ismail, C.J.—This batch of writ petitions involves the interpretation of a notification of the Government of India dated 18th June, 1977,

issued in the Department of Revenue and Banking, New Delhi, bearing G.S.R. No. 176/77-C.E. The said notification reads as follows :

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods

falling under Item No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944), and cleared for home consumption on or

after the first day of April in any financial year, by or on behalf of a manufacturer from one or more factories from the whole of the duty of excise

leviable therein, if an officer not below the rank of an Assistant Collector of Central Excise is satisfied that the sum total of the value of the capital

investment made from time to time on plant and machinery installed in the industrial unit in which the goods, under clearances, are manufactured, is not more than rupees ten lakhs :

Provided that this exemption shall not be applicable to manufacturer if the total value of all excisable goods cleared by him or on his behalf in the

preceding financial year had exceeded rupees thirty lakhs :

Provided further that the exemption contained in this notification shall apply to the first clearance for home consumption by, or on behalf of, the

manufacturer referred to in this notification, from one or more factories, up to a value not exceeding rupees thirty lakhs during a financial year

subsequent to 1977-78, and up to a value not exceeding rupees twenty-four lakhs during the period commencing on the 18th day of June, 1977,

and ending on 31st day of March, 1978.

Explanation. - For the purpose of determining the value of any capital investment, only the face value of such investment at the time when such

investment was made shall be taken into account.

2. The petitioners have prayed in these writ petitions, for the issue of writs of mandamus forbearing the Assistant Collector of Central Excise,

Tiruchy-1, and the Union of India represented by the Secretary to Government, Ministry of Finance, Department of Revenue and Banking, New

Delhi, from interfering with the manufacture of goods in and the issue of finished goods from the petitioners'' factories in various places in

Thiruverambur and Thuvakudi near Tiruchy.

3. The facts are not in controversy. The petitioners herein are small-scale industries located in one or the other of the developed plots of the

Developed Plots Estate in Tiruchy. The petitioners herein are engaged in structural fabrications and supply of certain articles to large consumers

like Bharat Heavy Electricals Limited, Tiruchy. The further admitted case of the parties is that the raw materials are supplied to the petitioners by

the said large consumers and the petitioners manufacture the products according to the specifications given by the said large consumers on receipt

of certain conversion charges. The question for consideration is whether the exemption given as per the notification of the Government of India

extracted above applies to the petitioners herein or cost. It is not in dispute that the value of the plants and machinery installed in the industrial units

of the petitioners does not in each case exceed rupees ten lakhs as provided for in the notification. Equally, it is not in dispute that the value of the goods cleared for home consumption from the industrial units of the petitioners herein did not exceed rupees 30 lakhs during the preceding financial

year. Again it is not disputed that the petitioners herein are manufacturers as defined in Section 2(f) of the Central Excises and Salt Act. This

position has been conceded by the respondents in the counter-affidavit filed by them. In paragraph 9 of the common counter-affidavit filed in the

batch of the writ petitions, it is stated that applying the definition contained in Section 2(f) of the Central Excises and Salt Act, 1944, the ancillary

unit it also a manufacturer who manufactures components for the completion of manufacture of boilers by Messrs Bharat Heavy Electricals

Limited. Again in paragraph 13 of the common counter-affidavit it is conceded that the petitioners will satisfy the definition of a ""manufacturer"" u/s

2(f) of the Central Excises and Salt Act, 1944. Consequently, we are of the opinion that the goods manufactured by the petitioners will fall within

the scope of the notification of the Government of India dated 18th June, 1977.

4. The only argument that was advanced on behalf of the respondents herein to deny the benefit of exemption given under the notification to the

petitioners herein is that the petitioners are not manufacturing the goods in question on their own account but they are manufacturing them on behalf

of Messrs Bharat Heavy Electricals Limited. We are of the opinion that that has no relevance to the construction of the notification in question. As

we pointed out already, it is conceded that the petitioners are manufacturers and the goods manufactured by them are the goods falling under Item

68 of the First Schedule to the Central Excises and Salt Act, 1944. We have already pointed out the fact that it was further admitted that the total

value of the capital investment made from time to time on plant and machinery installed in the industrial units of the petitioners herein is not more

than rupees ten lakhs and the total value of the excisable goods cleared from the industrial units did not exceed rupees thirty lakhs.

5. Mr. U. N. R. Rao, the learned Counsel for the respondents laid great stress on the use of the words ""by or on behalf of a manufacturer

occurring in the main part of the notification as well as in the proviso to the notification and contended that the clearance in the present case was

not by the petitioners themselves but by Messrs Bharat Heavy Electricals Limited, and consequently, the notification will not apply. We have some difficulty in understanding this argument. The expression ""by or on behalf of manufacturer"" occurring in the notification does not present any

difficulty. What is contemplated by that expression is that the clearance for home consumption can be made by the manufacturer himself or by

somebody else on behalf of the said manufacturer. In these cases, the goods in question being goods fabricated by the petitioners and falling under

Item 68 of the First Schedule to the Central Excises and Salt Act, 1944, for the purpose of attract in the applicability of the notification, it is

immaterial whether they are cleared for home consumption by the petitioners themselves or on behalf of the petitioners by Messrs Bharat Heavy

Electricals Limited. What is necessary to point out us that Mr. U. N. R. Rao contended that the notification will apply only to such cases where the

manufacturer himself purchases raw materials, manufactures the finished goods and sells the finished goods to third parties. We do not find any

language in the notification imposing any such restriction on the eligibility for exemption. In fact, Mr. U. N. R. Rao contended that the crux of the

department''s case has been set out in paragraph 6 of the counter-affidavit. The said paragraph reads as follows :

Regarding Para 2, the facts are true except for the interpretation if Notification No. 176/77 . The department held the view that as per proviso (1)

to the said notification, any manufacture done for or on behalf of the main manufacturer are also incidental and ancillary to the manufacture as per

Section 2(f) of the Central Excises and Salt Act, 1944, and is not exempted when the main manufacturer is not exempt as per the notification.

6. Here again we find some difficulty in understanding the contents of this paragraph. Apart from that, the learned Counsel has not been able to

draw our attention to any use of ""main manufacturer"" or ""some other manufacturer"" occurring either in the Central Excises and Salt Act, 1944, or

the Central Excises Rules, 1944, or even in the notification itself. Therefore, there is absolutely no warrant for making a classification as a main

manufacturer and a manufacturer other than a main manufacturer and on that basis putting forward a contention that the exemption was intended to

benefit only a main manufacturer and not manufacturers other than main manufacturers.

7. Having regard to these circumstances, we are clearly of the opinion that the notification in question giving the exemption from excise duty to the

goods referred to above is applicable to the goods manufactured by the petitioners. Consequently, we allow these writ petitions and issue a

direction to the respondents herein not to demand excise duty on the goods manufactured by the petitioners herein in terms of the notification

concerned, in the context of the admitted facts to which we have drawn attention. There will be no order as to costs.

