

(1986) 02 KAR CK 0022

In the Karnataka High Court

Case No : Writ Petition No's. 11157 and 11158 of 1982

Precision Telecom Products

APPELLANT

Vs

Superintendent of Central Excise and Others

RESPONDENT

Date of Decision : 12-02-1986

Acts Referred:

Central Excise Rules, 1944 — Rule 8, 8 (1)
Constitution of India, 1950 — Article 226

Citation : (1986) 9 ECC 25 : (1986) 24 ELT 235

Hon'ble Judges : R.S. Mahendra, J;K.S. Puttaswamy, J

Bench : Division Bench

Advocate : D. Prakash Rao, By Chander Kumar, for the Appellant; K. Shivashankar Bhat, Senior Central Government Standing Counsel, for the Respondent

Judgement

1. M/s. Precision Telecom Products, Bangalore, which is the petitioner before us, is a partnership firm of partners engaged in the manufacture of transmitters and other components for telephones that are ultimately manufactured by the Indian Telephone Industries Ltd. (ITI). The petitioner is an ancillary unit of the ITI and has that unit in the Industrial Estate of ITI.

2. The ITI that ultimately manufactures telephones entrusts the manufacture of certain components to the petitioner on "job work" basis. The raw materials supplied by the ITI are used in the manufacture of transmitters and components and they are then returned to the ITI, collecting the job charges from the latter. In the payment of excise duty dutiable under the Central Excises and Salt Act, 1944 ("the Act") the petitioner had excluded the raw materials supplied by the ITI and returned to it on job work basis.

3. But in the show cause notices dated 27-11-1980/1-12-1980 and 24-4-1981, issued to the petitioner under the Act (Annexures B and C), the Superintendent of Central Excise, Mahadevapura Range, Bangalore-4 (Superintendent) proposed to levy excise duty against it of the raw materials also supplied by the ITI which

was naturally opposed by it on a large number of grounds. On an examination of the show cause notices, the objections and all other materials, the Assistant Collector of Central Excise, Lalbagh Division, Bangalore (Asst. Collector) made an order on 10-2-1982 (Annexure F) confirming the show cause notices issued by the Superintendent and has levied excise duty on raw materials also supplied by ITI on job work basis. In these petitions under Article 226 of the Constitution, the petitioner has challenged the show cause notices, the order dated 10-2-1982 and Rule 10A of the Central Excise Rules of 1944 ("the Rules").

4. In justification of the show cause notices, the order of the Asstt. Collector and the validity of Rule 10A the respondents have filed their return.

5. We will first examine the validity of the order made by the Asstt. Collector and then Rule 10A if that becomes necessary.

6. Sri G. Chander Kumar, learned Counsel for the petitioner, contends that Raw materials supplied on job work basis and are returned to ITI in the intended manufacture of components only collecting job charges, had to be excluded as provided in Exemption Notification No. 119/75, dated 30-4-1975 issued by Government and the Asstt. Collector in holding to the contrary had acted illegally. In support to his contention Sri Chander Kumar strongly relies on two unreported rulings rendered by Rajasekhara Murthy, J. in W.P. No. 23584 of 1980 decided on 15th October, 1985 and W.P. 17857 of 1983 decided on 15th January 1986 and the rulings of the High Courts of Bombay and Calcutta in Noble Paints and Varnish Company Pvt. Ltd. Vs. Union of India and another, and Associated Pigments Limited v. Collector of Central Excises, Calcutta [1983 E.L.T. 876 (Cal)] relied on and followed in W.P. No. 17857 of 1983.

7. Sri K. Shivashankar Bhat, learned Senior Standing Counsel for the Central Government appearing for the respondents sought to justify the order made by the Assistant Collector.

8. The duty on the goods in issue is chargeable to excise duty under Residuary Tariff Item 68 of the First Schedule to the Act is not in dispute.

9. In exercise of the powers conferred on it by Rule 8 of the Central Excise Rules of 1944 (the Rules), framed under the Act, the Central Government had issued exemption Notification No. 119/75-C.E., dated 30-4-1975 which reads thus -

EXEMPTION TO GOODS PRODUCED ON JOB WORK BASIS

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 Excises and Salt Act, 1944 (1 of 1944) manufactured in a factory as a job work, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work.

Explanation. - For the purposes of this notification, the expression "job work"

shall mean such item of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the worker to the supplier, after the article has undergone the intended manufacturing process on charging only for the job work done by him.

[Notification No. 119.75-C.E., dated 30-4-1975]

In this Notification the Central Government had exempted goods falling under Tariff Item 68 of the First Schedule to the Act manufactured in a factory as a job work, from so much of the duty leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work. The term "job work" has been defined in the explanation appended to the exemption Notification. According to that "job work" means such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier, after the article has undergone the intended manufacturing process on charging only for the job work done by him. When expressed in simple language, the notification exempts the raw material supplied by another as the ITI to the manufacturer on job work basis which is used by him in the intended manufacturing process but is ultimately returned to its owner on executing that job work from payment of excise duty thereon from Tariff Item 68 of the First Schedule to the Act. The object of allowing such exemption is not far to seek. The object of allowing such exemption appears to be on the ground that the property in the goods entrusted on job work basis had not passed to the processor or manufacturer and was also to encourage ancillary industries, which are generally small scale industries.

10. In its reply to the show cause notices, the petitioner has asserted that he obtains raw materials from the ITI on job work basis, uses them for the intended manufacturing goods and then returns them to the ITI collecting "job charges" on the same. In his order as also in the statement of objections filed, the respondents have not denied the same. We must, therefore, necessarily accept this plea of the petitioner.

11. When once the aforesaid plea of the petitioner is accepted, it follows from the same that the cost of raw materials supplied by the ITI on job work basis but utilised in the intended manufacturing process, attracts the aforesaid exemption Notification and the same was not dutiable excise duty under Tariff Item 68 of the First Schedule to the Act. But the Asst. Collector in holding to the contrary, had not kept before him the same and had acted illegally.

12. In W.P. 23584 of 1980 and W.P. 17857 of 1983, Rajasekhara Murthy, J. examining the very question but in relation to different articles had expressed the same view. We are in respectful agreement with the views expressed by Rajasekhara Murthy, J. in W.P. 17857 of 1983 which also means that we concur with the view expressed by the High Courts of Bombay and Calcutta in the cases noticed in that order which are gain relied on by Sri Chander Kumar before us.

13. As the impugned order is liable to be quashed, it is not necessary to examine

and pronounce on the validity of Rule 10A of the Rules and the same is left open.

14. On the foregoing discussion, we hold that the impugned order made by the Asst. Collector is liable to be quashed. We, therefore, quash the impugned order of the Asst. Collector.

15. Rule issued is made absolute. But in the circumstances of the cases, we direct the parties to bear their own costs.