

(1980) 04 BOM CK 0049

In the Bombay High Court

Case No : Misc. Petition No. 1036 of 1976

Radhakrishna Ramnarain Limited

APPELLANT

Vs

R. Parthasarathi and Others

RESPONDENT

Date of Decision : 09-04-1980

Acts Referred:

Citation : (1980) CENCUS 278

Hon'ble Judges : Modi, J

Bench : Single Bench

Judgement

Modi, J.—The Petitioners are the manufacturers of P.V.C. Leather Clothes also known as artificial Leather Clothes of Rexins. Uptil 29th February 1968, the said item was assessed to excise duty under tariff item No. 19 of the First Schedule to the Central Excises and Salt Act 1944, the rate being 25 paise per square metre. Pursuant to Finance Bill of 1968, a new item 22B was introduced in the schedule which item covered the item manufactured by the Petitioner and the rate was 25 per cent ad valorem. A declaration was made under the Provisional Collection of Taxes Act 1931. Accordingly the new rate prescribed in respect of the said item came into effect from mid-night between 29th February 1968 and 1st March 1968. As required the petitioners declared to the Excise Officer concerned the stock of manufactured goods lying in the factory at that time which consisted of 5510 rolls of the material measuring 1,32,989 linear metres and cut-pieces weighing 4,519.75 kgs.

2. The Inspector of Central Excise concerned, issued a demand notice dated 19th March 1968 calling upon the petitioner to pay duty on the said goods in the sum of Rs. 39,617.00. Even before the goods were removed or sought to be removed from the factory a further notice of demand dated 17th April, 1968 for Rs. 2,317.75 was also issued in similar circumstance. Amounts in both the notices were calculated on the basis of rates prescribed in item No. 19 and not 22B. The said notices purport to be notices under Rule 10A of the Central Excise Rules, 1944. The petitioner objected to the said demand contained in the notice dated

19th March 1968, by its letter dated 27th March 1968, on the ground that the goods did not fall within item No. 19 but were covered by the new item 22B. This contention was negated by the 1st respondent as per his letter dated 17th February 1969.

3. During this period between 21st March 1968 and 27th May 1968, the petitioners removed goods from the factory in accordance with the provisions of the Central Excise Act and Rules, after filing necessary ARL forms and submitting the same to the Officer concerned. The officer assessed the duty as Nil and allowed the clearance of goods.

4. After the said order of the 1st respondent, a letter was addressed to the petitioner by the 1st respondent dated 28th August 1970, whereby it was slated that the demand made under demand notice dated 19th March 1968 and which was confirmed was ordered not to be enforced till final orders in the matter were received from the Government of India. It is not known under what circumstances this letter was addressed and who applied for this final orders from the Government. This petition continued till about December 1974, In the meantime, in respect of some other goods demand notices were issued on the basis of change in approved price list and the said notices were sought to be challenged by the petitioner by writ petition in this Court, which was rejected in limine. The 2nd respondent sought to connect the demand notice herein with the said demand notices alleging that the issues involved in all the demand notices were common and called upon the petitioner by his letter dated 10th December 1974 to pay the amount covered by the demand notices which are the subject matter of this petition. The correspondence thereafter ensued and the present petition came to be filed.

5. Mr. Phadnis for the petitioner has contended that the aforesaid two demand notices are clearly invalid because, firstly no demand can be made for payment of duty except at the time of removal of the goods and since these notices were issued even before the goods were sought to be removed they were premature and without jurisdiction. The second contention was that the rate of duty chargeable would be the rate applicable at the time of removal and not at the time of manufacture and accordingly the goods will attract Excise Duty prescribed against item No. 22B and not against item No. 19. The demand notices being based on the rate prescribed in item No. 19 were invalid.

6. Though it may be in doubt in the year 1968 as to whether the contentions raised by Mr. Phadnis are correct or not in view of the judgment of this Court in *The Union of India (UOI) and Others Vs. The Elphinstone Spinning and Weaving Mills Co. Ltd.*, , it is now beyond dispute that the duty payable is at rate applicable on the date of removal, even though the goods may have been manufactured earlier. It is further held in the said judgment that the taxable event is the removal of the goods and not the manufacture. This was so held by accepting the contention raised on behalf of the Union of India that the stage of point of time at which the duty is to be levied, by reason of the provisions of the

said Act and the rules, is not the point of time of manufacture or production of goods but at a subsequent stage when the goods are sought to be removed from the factory concerned. It is therefore clear that no demand for payment of duty can be made before the goods are removed or sought to be removed. It is also clear that the rate applicable is the rate prevailing at the time of removal. In view of this position the demand notices are clearly bad.

7. Mr. Manjarekar on behalf of the respondents, however, contended that it is admitted by the petitioner that the said goods are liable to duty under item 22B and the said duty was payable at the time of removal. He further contends that in view of this admission the demand notice cannot be set aside or struck down but the petitioner should be made to pay duty in accordance with the rates prescribed against item No. 22B. To this contention Mr. Phadnis replied that there is no demand against him made at any time for payment of excise duty, at the rate prescribed by item No. 22B. He further contends that in respect of the said goods the excise officer concerned has passed final assessment orders on ARI form submitted by the petitioner assessing the amount of duty as Nil. He says that this being the final assessment no duty can be claimed from the petitioner unless the said assessment is reopened. To this Mr. Manjarekar rejoins that the assessment order passed by the concerned officer when there were three possible positions and, it was doubtful as to which position was correct as set out in the affidavit of the 1st respondent. The said positions were (a) whether the duty was payable at all (b) whether it was payable at the rate specified against Item No. 22B and (c) whether it was payable at the rate specified against item No. 19. It is contended that in view of this, matter was referred to the Central Board of Excise on 8th July 1968 with instructions to make assessments without payment of duty under Nil duty ARI and simultaneously issue demands for duty and not to enforce the said demands. He contends that it is in these circumstances, that the demand notices were issued and the goods allowed to be cleared on the assessment of duty payable nil and that this assessment should be treated as a provisional or no assessment at all. Relying on the Supreme Court decision in Assistant Collector of Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., , Mr. Manjarekar contends that the determination of duty as nil was done without the judicial application of mind and therefore the assessment is null and void. Prima face I am not inclined to accept the contention. I do not propose to go into the same as I have held the impugned demand notice as invalid on other grounds.

8. In the circumstances, the said demand notices are set aside and the respondents are directed not to enforce the same as threatened in the letter dated 25th June 1976.

9. Rule made absolute accordingly. Respondents to pay the costs of the petition to the petitioners. The petitioners to be at liberty to withdraw the amount deposit and accrued interest if any. The Prothonotary and Senior Master to act on the minutes on the advocate for the petitioners undertaking to draw up the order

within twelve weeks from today.

No order as to costs.