

(2015) 03 SC CK 0123

In the Supreme Court Of India

Case No : Civil Appeal No. 8333 of 2003 with C.A. Nos. 8353 and 9007 of 2003.

**Ralson (India) Ltd. - Appellant @HASH Commissioner of C. Ex.,
Chandigarh-I**

Date of Decision : 13-03-2015

Acts Referred:

Citation : (2015) 319 ELT 234 : (2015) 14 SCC 679

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, L. Charanaya, Aditya Bhattacharya, Prashanth S. Shivadass, R. Ramachandran, Advocates, for the Appellants; S/Shri K. Radhakrishnan, Sr. Advocate, Rajiv Nanda, Rupesh Kumar, Aruna Gupta and B. Krishna Prasad, Advocates, for the Respondents

Final Decision : Partly Allowed

Judgement

1. These three appeals arise from a common order dated 19-6-2003 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (CESTAT) [2003 (160) E.L.T. 846 (Tribunal)]. By the said order the three appeals preferred by the appellants herein were taken up for consideration. Those appeals were filed against the Orders-in-Original passed by the Commissioner of Central Excise, Chandigarh, imposing the tax liability of Rs. 46,97,428/-, Rs. 46,77,469/- and Rs. 54,21,524/- respectively against the three appellants herein. The Tribunal vide the impugned judgment has sustained the aforesaid duty demand.

2. To recapitulate the facts in brief - the appellants are engaged in the manufacture of tyre and tube of rubber for bicycles and cycle rikshaws. The dispute pertains to the manufacture of "compounded rubber" which comes under Heading No. 40.05 of the Central Excise Tariff Schedule and is used captively by the appellant in the manufacture of tyre and tubes. It is a matter of record that the said "compounded rubber" was totally exempt from payment of excise duty under a notification that was issued way back on 25-5-1987. There were various other products which were similarly exempted from payment of excise duty by

issuing various notifications from time to time. It so happened that the Government rescinded 389 such notifications by issuing Notification No. 64/94-C.E., dated 1-3-1994. By this Notification exemption in respect of 389 products granted earlier was withdrawn. It also included Notification No. 152/1987 C.E., dated 25-5-1987 which pertains to compounded rubber. Thus exemption qua this product was also withdrawn. However, within few days thereof i.e. 28-3-1994, fresh Notification No. 74/94-C.E., dated 28-3-1994 was issued, resuscitating the earlier Notification No. 152/87-C.E., dated 25-5-1987. As a result in respect of compounded rubber excise duty was again exempted. The effect of the aforesaid Notification was that only for a principal period from 1-3-94 to 27-3-94, there was no exemption duty in respect of "compounded rubber". In these appeals, we are concerned with this very period from 1-3-94 to 27-3-94.

3. Notwithstanding the aforesaid position that there was no exemption from 1-3-94 to 27-3-94, the appellant did not pay excise duty on the compounded rubber cleared for captive consumption during the aforesaid period. This led the Department to issue show cause notices against the appellant and passing of the orders for payment of duty, as indicated earlier.

4. The record reveals that in reply to show cause notice the appellants had taken two defences. First defence was that the Notification No. 64/94-C.E., dated 1-3-94 by which the exemption was withdrawn was erroneously issued insofar as compounded rubber is concerned, and after realising this mistake, the remedial step was taken by the Government by restoring the exemption vide Notification dated 28-3-1994. On that basis it was argued that the Notification No. 74/94-C.E., dated 28-3-1994 was merely clarificatory in nature and should be applied retrospectively. In nutshell, the submission was that the exemption continued throughout and covered even the period from 1-3-94 to 27-3-94 and therefore no duty was payable.

5. The second defence was on merits and the position taken by the appellants was that the aforesaid compounded rubber which was meant for captive consumption was not marketable and therefore, no duty was payable.

6. The Commissioner in his Orders-in-Original, rejected both the contentions and confirmed the demands of duty as was reflected in the show cause notices, as mentioned above. The order was challenged before the Tribunal and the Tribunal has also upheld the order of the Commissioner.

7. Though Mr. Lakshmikumaran, learned counsel appearing for the appellants, has advanced his submission on the merits of the case as well, we are of the opinion that it is not necessary to deal with the merits of the case, inasmuch as these appeals are liable to succeed on the first defence, as noted above, raised by the appellants.

8. We may point out here that the issue has not come up before this Court for the first time. In the case of *W.P.I.L. Ltd. v. Commissioner of Central Excise, Meerut, U.P.* - 2005 (181) E.L.T. 359 (S.C.) this Court was concerned with almost

identical fact situation, albeit in relation to the product known as "Part of Power Driven Pumps". The power driven pumps also were similarly exempted which exemption was available to the manufacturers since 1978. In the Notification No. 64/94-C.E., dated 1-3-94 whereby exemption qua 389 earlier notifications were rescinded, the Notification in respect of the part of power driven pumps was also included as rescinded. Thereafter, the same item was again exempted by Notification No. 95/94-C.E. issued on April 25, 1994. In this manner, insofar as parts of power driven pumps are concerned, there was no exemption in respect thereof for the period from 1-3-94 to 24-4-1994.

9. The assessee in the aforesaid case took the same plea by arguing that since the decision of the exemption vide Notification dated 1-3-94 was an inadvertent error and the Government realising this mistake had reintroduced the exemption it will be treated as only corrective and clarificatory in nature. This contention was accepted by this Court in the aforesaid judgment holding that even during the period from 1-3-94 to 24-4-94, the manufacturers of part of power driven pumps shall continue to get the exemption. The relevant part of the said judgment which squarely applies to the present case as well is reproduced below in Paras 16-17 :

"16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilised by the factory within the factory premises, it could not be said that while issuing Notification No. 46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory Notification No. 95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

17. For the foregoing reasons, in our opinion, the appeals deserve to be allowed and are allowed accordingly. Deposit, if any, made by the appellant in pursuance of the order passed by the authorities below will be refunded to it. In the facts and circumstances of the case, however, there shall be no order as to costs."

10. As we find that the compounded rubber was also rescinded by the same Notification dated 1-3-94 and reintroduced in the same manner vide another Notification issued on 28-3-1994, ratio of W.P. I.L. Ltd. case shall squarely apply to the present case as well. As a result, only on this ground, these appeals are allowed and the demand raised against the appellants is quashed.

11. By an interim order passed in this case the respondents were called upon to make deposit of Rs. 22 lakhs, 24 lakhs and 22 lakhs respectively, with the excise Department. The aforesaid amount shall be refunded to the appellants within a

period of three months from today.