

(1990) 03 MP CK 0001
In the Madhya Pradesh High Court
Case No : M.P. No. 415/89

Ramchand Sharma and Others

APPELLANT

Vs

Collector, Customs and Central Excise and Others

RESPONDENT

Date of Decision : 14-03-1990

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1991) 33 ECR 95

Hon'ble Judges : Y.B. Suryavanshi, J;A.G. Qureshi, J

Bench : Division Bench

Judgement

A.G. Qureshi, J.—This is a petition filed by two petitioners jointly. Petitioner No. 1 carries on the business of stitching HDPE woven sacks and petitioner No. 2 carries on the business of printing HOPE woven sacks. According to the petitioners, on receiving orders from their customers they receive HDPE fabrics from the Manufacturers/dealers directed by the customers. The petitioners only do the job work of stitching and printing the sacks. In case the customers desire delivery outside Indore, then as per their instructions the sacks are despatched through the transport as directed by them. The Central Government in exercise of its powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules 1944, has exempted woven sacks of polymers of ethylene or propylene or its combination thereof, falling under heading No. 46.01 or 63.01 of the Schedule from the whole of the duty of Excise specified in that Schedule vide notification No. 223/86-CE, dated 3.4.1986. The aforesaid notification was again amended by notification No. 453/86-CE dated 20.11.1986. In the earlier notification dated 3.4.1986, the Government has exempted woven sacks of polymers of ethylene or propylene or a combination thereof from the whole of the duty of Excise leviable thereon but by the latter notification dated 20.11.1986 the exemption was made applicable if only such woven sacks of polymers of ethylene or propylene or as the case may be, a combination thereof, are manufactured on flat knitting looms. Thereafter, the Central Government again issued a notification No. 3/87, C.E. dated 7.1.1987 further amending notifications dated 3.4.1986 and 20.11.1986,

wherein it was provided that woven sacks of polymers of ethylene or propylene or a combination thereof were exempted falling under heading No. 46.01 or 63.01 of the Schedule to the Central Excise Tariff Act, 1985 from the whole of the duty of Excise leviable thereon, which is specified in the said Schedule, but the exemption was applicable only if the aforesaid sacks were not manufactured on circular looms. As such, the HDPE woven sacks manufactured on circular looms are not exempt from the Excise duty but the other HDPE woven sacks which are not manufactured on the circular looms are subject to the excise duty (sic).

2. The case of the petitioners is that petitioner No. 1 works only on stitching machine and does the job work of stitching HDPE woven sacks on the orders of the customers. He is not manufacturing the aforesaid sacks on circular looms and he is also not in possession of any circular looms. Similarly petitioner No. 2 is only doing the job of printing the HDPE woven sacks. A raid was conducted by the Central Excise authority on the premises of the petitioners and a seizure memo was prepared of the seizure of HDPE woven sacks from both the petitioners. Thereupon the petitioner No. 1 sent a letter dated 2.8.1988 to the Collector, Central Excise, Indore, stating that he is not in possession of any circular looms. Therefore, HDPE woven sacks seized by respondent Nos. 3 and 4 are not liable to Excise duty vide the aforementioned notifications of the Central Government. He, therefore, demanded immediate release of the goods. He again sent a letter reiterating the earlier demands but even after the expiry of six months, the seized goods have not been released. The petitioners have averred that the seizure of the goods is completely illegal, arbitrary and without jurisdiction. The petitioners, therefore, had filed Writ petition No. 1204 of 1988 before this Court. The aforesaid petition was dismissed by this Court vide order dated 1.12.1989 holding it as premature.

3. The respondent No. 5 after completion of the investigation issued a show cause notice to both the petitioners along with four others on January 18, 1989. In the aforesaid show cause notice the petitioners were asked to show cause as to why the seized HDPE sacks should not be confiscated under the rules and why penalty should not be imposed upon them under the Rules. According to the petitioners, the notice is without jurisdiction because the HDPE sacks recovered from the possession of the petitioners were not prepared by the petitioners on circular looms, as has been admitted by the respondents themselves. The respondents were in error in holding that as the HDPE sacks are manufactured out of the cut pieces of HDPE fabrics woven on circular looms supplied by M/s. Raj Packwell and therefore they are HDPE sacks woven on circular looms. As such, the benefit of exemption under the notification dated 3.4.1986 by the Government of India as amended is not available to the petitioners. Actually the respondents are wrongly interpreting the notification because the notification nowhere says that the HDPE woven sacks manufactured from the fabrics woven on circular looms are not exempted from the duty. Actually only those HDPE sacks which are manufactured on circular looms are not exempt from duty. All other HDPE sacks manufactured by any other process are exempt from the

excise duty. The petitioners undisputedly do not manufacture the HDPE sacks on circular looms but are only stitching the HDPE sacks by machines from the fabric woven on circular looms. Hence the authorities had no right to add any word to the taxing notification in accordance with the well settled principles of interpretation of a taxing statute. The petitioners have, therefore, prayed that the show cause notice dated 18.1.1989 (Annexure-F) issued by the respondent No. 5 be quashed and the respondents be commanded to release the goods seized by the respondent Nos. 3 and 4 by seizure memo dated 30.7.1988 and the respondents be further directed not to interfere with the business of the petitioners as the petitioners are not in possession of circular looms and, therefore, they are entitled to the benefit of exemption granted by the notification dated 30.4.1986 as amended.

5. The respondents in their return have admitted that the petitioners are engaged in the work of stitching and printing of HDPE woven sacks and it is also admitted that the petitioners are doing the job work on the orders of the customers. However, it has been denied that the HDPE woven sacks which are stitched and printed at the petitioners' respective premises are not manufactured on circular looms. According to Revenue as a matter of fact HDPE woven sacks are stitched of the HDPE fabrics manufactured on circular looms. The fabric is manufactured in tubular form and this woven tubular material is manufactured on circular looms in the factory of m/s. Raj Packwell Ltd. Pithampur. The circular looms are designed only for the manufacture of woven sacks, in as much as the diameter of the woven tubular form is the required diameter of HDPE woven sacks. Thus, the primary process of manufacture of these HDPE woven sacks is done on circular looms only, and as such, the HDPE woven sacks as stitched and printed by the petitioners are basically the HDPE sacks manufactured on circular looms and are, therefore, not entitled to the benefit of exemption under notification dated 3.4.1986 as further amended by notification dated 7.1.1987. It is thus clear that the process of manufacture of HDPE woven sacks is completed at the premises of the petitioners without taking out Central Excise Licence under Rule 174 of the Central Excise Rules and without accounting for any statutory records in contravention of Rule 173-G of the Rules and without filing any price list under Rule 173-C of the Rules. Similar Excisable goods have been removed without obtaining the Central Excise Gate Pass in contravention of rule 52-A of the Rules and without paying any excise duty leviable thereon. Therefore, respondent No. 4 has rightly seized the goods, which are liable to confiscation. As the petitioners are responsible for contravening the Central Excise Act, a show cause notice was rightly issued to them and, therefore, this petition deserves to be dismissed. A plea of availability of alternative remedy has also been raised.

6. The learned Counsel for the petitioners Shri A.M. Mathur has strenuously argued that the interpretation of the tax notification has to be made in accordance with its language. The authorities have got no right to add or subtract any word in the notification. In support of his arguments, the learned

Counsel has placed reliance on the judgments of the Central Excise Appellate Tribunal and of the various High Courts. Let us first look at the judgments cited by Shri Mathur. A special bench of the CEGAT at New Delhi in the case of 1989 (20) ECC 1 has held that the Exemption notification has to be read as it is. Neither any word is it is to be ignored nor intention of the legislature is to be searched. The Madras High Court in the case of P.M. Abdul Latif and Others Vs. Assistant Collector of Central Excise, Trichirapalli and Others, has also taken the same view that benefit under the notification, if available, has to be granted to the person entitled to such benefit and the notification has to be acted upon in accordance with the wordings of the notification. The Karnataka High Court in Indian Sugars and Refineries Ltd., Hospet v. Union of India and Ors. 1983 E.L.T. 209 bhu has also held that if an expression in notification is used in plain and meaningful language there is no scope for assuming an ambiguity and trying to interpret it on a supposed intention of the makers of the notification. The Calcutta High Court in the case of Continental Marketing Pvt. Ltd. Vs. Union of India (UOI), has also held that by various decisions of the Supreme Court it is a well settled position of law that a taxing statute has to be construed liberally, and there is no scope for seeking the intention of the legislature. Strict application of taxing statute even leading to an unjust or absurd result has to be upheld.

7. On the other hand, Shri. B.C. Neema, learned Counsel for the respondents states that in M.P. No. 1205 of 1982 (Raj Packwell Ltd. Indore and 3 Ors. v. Union of India and four Ors.) this Court has held that the fabric is manufactured on circular looms and actually the petitioners only complete the process of manufacturing of HDPE sacks on circular looms. Therefore, they cannot claim the exemption on the ground that HDPE sacks manufactured by them are not manufactured on circular looms.

8. In view of the respective contentions of the parties, we find, that on one hand the petitioners have claimed exemption on the ground that their activities are covered by the exemption notification, whereas on the other hand the stand of the Revenue is that the petitioners are manufacturing the HDPE sacks by stitching the fabric manufactured on circular looms, therefore, they are not entitled to the exemption. First of all, in our opinion, it will be necessary to examine whether the petitioners are at all manufacturers. The impugned show cause notice has been issued to the present petitioners and four others. The other notices are not before us. In Clause (c) to the notice to show cause dated 18th January, 1989 the Revenue Authorities as a result of the investigation have clearly come to the conclusion that it was noticee No. 4 i.e. The Phosphate Company Limited, Rishra, Distt. Hooghly which had placed an order with M/s. Raj Packwell, Pithampur for supply of cut pieces of HDPE fabrics woven on circular looms with instructions to deliver the same in the premises of noticees No. 5 and 6, who are job workers engaged by the noticee No. 4 for stitching, printing and baling of HDPE sacks on job charges basis out of HDPE fabrics delivered by Raj Packwell Limited, Pithampur. This fact is also clear from the letter dated 13.5.1988 placing the order with noticee No. 5 which clearly says that according

to the terms and conditions stipulated in the order form the petitioners had to do a job work at the rate of 60 p. per bag which includes the cost of labour, yarn, printing, packing, baling and delivering the bags to their works and octroi charges. It is also made clear that if there be any excise charge the principles shall not pay the same to the noticee No. 6. It is also undisputed that the petitioner No. 1 M/s. Shubham Tailors only stitches the fabric and thereafter it is printed by petitioner No. 2 M/s. Plasto Craft and thereafter they are packed and despatched to the principles. As such the petitioners are only doing the job work and not manufacturing the bags on their own.

9. The definition of "manufacture" and "manufacturer" is contained in Section 2(0) of the Central Excises and Salt Act, 1944, which is as under:

(f) "manufacture" includes any process-

(i) incidental or ancillary to the completion of a manufactured product; and

(ii) which is specified in relation to any goods in the Section or Chapter notes of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture;

and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.

From the aforesaid definition it is clear that a person who hires labour in the production or manufacture of excisable goods and engages in the production or manufacture on his own account shall be a manufacturer. Now it is a common ground that the petitioners are not engaged in production or manufacture of the goods in question on their own account and they are also not getting goods manufactured on their own account by any hired labour. They are only doing the stitching and printing job on behalf of the principles. The raw material belongs to the principles and after the completion of job the goods have also to be delivered to the principles. What the petitioners gain is only the labour charges at the rate of 60 p. per bag for stitching, and printing and packing.

10. The Supreme Court in the often cited case of *Shree Agency v. S.K. Bhattacharjee and Ors.* AIR 1972 SC 780 while confirming the view taken by the Revenue Authorities has held that when an agency though did not own its own factory was the manufacturer of goods, if it gets the goods manufactured through some other persons or factory who had no interest in the production and did not even maintain proper accounts of consumption of raw material and production of cloth, and the agency received the entire production of the actual manufacturers. Then in that case although the actual manufacturers of cloth were proprietor-weavers, but when the yarn was supplied by the agency and the final product was received by the agency and huge sum of money was advanced to the weaver-proprietors, it was held that since the weaver-proprietors had no interest in the production and the real manufacturer is the Shree Agency.

Therefore, in the light of the above decision of the Supreme Court the petitioners cannot be held to be manufacturers. Therefore, in the impugned show cause notice the Central Excise Authorities have also not treated the petitioners as manufacturers, but notice to show cause against imposing of penalty and confiscation of goods has been given. In our opinion, when the petitioners are not the manufacturers, then how they cannot (sic) be held liable for committing a breach of the Central Excise Rules? However, as regards the goods found in possession of petitioners neither the petitioners claim the goods as their own nor it is the case of the Revenue that the goods belong to the petitioners. Therefore, the Revenue Authorities, if they so choose, may take action in respect of the goods after determining who is the actual manufacturer. We do not want to express any opinion on the point raised pertaining to exemption notification because the other noticees to whom notices for levy of duty and penalty have been issued are not before us and any observation in this petition may prejudice the case of the parties.

11. In the result this petition is partly allowed. It is held that since the petitioners are not the manufacturers of the goods they are not liable for imposition of any penalty or violation of any Rules. The confiscation of the material relates only to the actual manufacturer and it is for the revenue authorities to determine as to what would be the stage of confiscation of goods, whether it would be in the hands of the petitioners or in the hands of the actual manufacturer. However, in any case the petitioners cannot be treated as manufacturers and, therefore, the show cause notice issued against them is liable to be quashed and accordingly quashed. There shall be no order as to costs.