
(1995) 02 DEL CK 0019
In the Delhi High Court
Case No : CWP No's. 1140 and 1382/80

R.M.D.C. Press Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 09-02-1995

Acts Referred:

Citation : (1995) 77 ELT 851

Hon'ble Judges : M. Jagannadha Rao, J;D.K. Jain, J

Bench : Division Bench

Advocate : Shri A. N. Haksar and Rajan Narain, for the Appellant; Shri Madan Lokur and Ms. Nandini Ramachandran, for the Respondent

Judgement

M. Jagannadha Rao, C.J.—This batch of writ petitions was listed before us on 31 January, 1995 for directions as it was represented that the issue raised in these petitions, viz., as to whether printed cartons are product of printing industry and Therefore, exempt from duty of excise under the Central Excise Notification No. 55/75-C.E. as amended by Notifications No. 114/75-C.E. and 122/75-C.E. stood concluded, in favor of the revenue, by the judgment of the Supreme Court in Rollatainers Ltd. and Another Vs. Union of India (UOI) and Others, and, Therefore, in the light of the said judgment rule should be discharged. Learned counsel for the writ petitioners, however, pointed out that although on merits the issue appeared to have been decided against the assessee in Rollatainers case, (supra) but the main issue raised in the petition, challenging the impugned orders, was that the impugned notices issued u/s 36(2) of the Central Excises and Salt Act, 1944 (for short the Act) were barred by limitation and the levy illegal. It was stated that the point had been decided in favor of the assessee by the Supreme Court in its recent decision in Union of India v. Associated Cement Companies Limited. (Civil Appeal NO. 6253/83, dated 24 August, 1994) [since reported in 1995 (76) E.L.T. 507 (S.C.)] and, Therefore, the writ petitions have to be allowed. To enable learned counsel for the respondents to seek instructions, all these matters were directed to be listed today for directions/

disposal. This is how the matters are before us.

2. As the issues involved in all the writ petitions are, in substance the same, these are being disposed of by this common judgment.

3. All the petitioners before us are carrying on the business of printing. They filed classification list as required by Rule 173(B) of the Central Excise Rules, 1944 and represented before the Assistant Collector that the cartons manufactured by them were the products of printing industry and thus, exempt from the payment of any excise duty as per the aforesaid notifications. Under these notifications all products of printing industry including newspapers and printed periodicals are exempt from the whole of the duty. The Assistant Collector rejected the assessor's claim and held that the goods in question were the products of the packaging industry and not of the printing industry and, Therefore, not eligible for the concession under the aforesaid exemption notifications. Aggrieved, the assessee filed appeals to the Appellate Collector, who allowed the appeals holding that the products in question would be products of the printing industry. On a tentative view that the order of the Appellate Collector was not correct, legal and proper, the Central Government, in exercise of powers vested in it u/s 36(2) of the Act issued notices to the assessee asking them to show cause as to why the appellate orders should not be reviewed and set aside. On a consideration of the replies filed on behalf of the assessee, the Central Government concluded that the printing cartons have to be classified as a product of packaging industry, classifiable in Item 68 of the Schedule and that the products manufactured by the assessee were not products of the printing industry eligible for the benefit of concession under Notification No. 55/75, dated 1 March 1975, as amended. The Central Government accordingly, in exercise of the powers u/s 36(2) of the Act set aside the impugned order in appeal passed by the Appellate Collector and restored the orders passed by the Assistant Collectors concerned. Hence these writ petitions.

4. The impugned orders were challenged on various grounds. As noted above, one of the main grounds of attack was that the impugned show cause notices having been issued beyond the period of six months from the date of the Appellate Collector's order, these were barred by limitation under the third proviso to Section 36(2) of the Act. Thus the main question for consideration in these writ petitions pertains to the proper construction of the third proviso to sub-section (2) of Section 36 of the Act, as amended from 1 July 1978.

5. Shri Madan Lokur, learned counsel for the respondents has rightly and fairly conceded before us that answer to the said question stands concluded in favor of the assessee and against the revenue by the recent judgment of the Supreme Court in Union of India v. Associated Cement Companies Limited (supra), wherein the decision of this Court in Associated Cement Companies Limited v. Union of India 1981 (8) E.L.T. 421 (Delhi) has been upheld.

6. While dealing with the scope of Section 36(2) of the Act in general and of the

third proviso to the said Section in particular, the Supreme Court held as under :

"Section 36(2) gives to the Central Government the power to call for and examine the record of any proceeding in which any decision or order has been passed under Sections 35 or 35(A) of the principal Act, for the purpose of satisfying itself as to its correctness, legality or propriety and to pass such order thereon as it thinks fit. The second proviso thereto states that "no proceedings shall be commenced under this sub-section in respect of any decision or order (whether such decision or order has been passed before or after the coming into force of this sub-section) after the expiration of a period of one year from the date of such decision or order". The third proviso to Section 36(2) reads thus :

"Provided also that where the Central Government is of opinion that any duty of excise has not been levied or has been short-levied or erroneously refunded, no order levying or enhancing the duty, or no order requiring payment of the duty so refunded, shall be made under this section unless the person affected by the proposed order is given notice to show cause against it within the time limit specified in Section 11A."

The time limit specified in Section 11A when there has been a short levy of excise duty, as is, admittedly, the case here, is six months. This is less than the period of one year provided by the second proviso to Section 36(2). It is contended on behalf of the appellant that since Section 11A was not brought into force until 17th November, 1980, the time limit for the purposes of a short levy notice u/s 36(2) was not, until 17th November, 1980, that provided by Section 11A and that, Therefore, the notice with which we are concerned in this appeal was not time barred.

We find it difficult to accept the contention. The third proviso to Section 36(2) merely indicates how the time limit for a notice, inter alias in regard to short levy of excise duty, has to be reckoned; it has to be reckoned as indicated in Section 11A. The notice u/s 36(2) is not required to be given under the provisions of Section 11A. That Section 11A was not brought into force until 17th November, 1980, is, Therefore, of no relevance, particularly considering the fact that it was enacted in 1978 as was the third proviso to Section 36(2) itself."

7. Appellant before the Supreme Court was the Union of India. The Supreme Court held that in a case of non-levy or short levy of excise duty, the time limit within which a person could be asked to show cause why he should not pay the amount is six months from the relevant date. In that view of the matter, show cause notices having been issued by the Central Government to the petitioners admittedly beyond the period of six months from the order of the Appellate Collector, they are entitled to succeed on this short ground alone and it is unnecessary for us to consider the other contentions raised in the petition against the impugned show cause notices. Consequently the writ petitions are allowed and the impugned notices are quashed. Rule made absolute.

8. No costs.