

(1997) 09 DEL CK 0106

In the Delhi High Court

Case No : R.A. of 1997 and CMs. 5753-5754 of 1997 in CW 113 of 1981

Rollatainers Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 36(2)

Citation : (1998) 1 AD 986 : (1998) 71 DLT 182 : (1998) 98 ELT 311

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J;Arun Kumar, J

Bench : Full Bench

Advocate : Mr. Arshad Hidaytullah, Ms. Beena Gupta, Mr. Pradeep Jain and Mr. R.C. Gupta, for the Appellant; Mr. Sarabjit Sharma and Mr. B.S. Saini, for the Respondent

Judgement

Y.K. Sabharwal, J.—The petitioner/accessee is manufacturer of printed cartons and had been paying excise duty on the printed cartons under Tariff Item No. 68 of Central Excise since 1975. The petitioner submitted a revised classification list No. 29/78 on 15th May, 1978 with a representation that printed carton should be exempted from duty under Tariff Item No. 68 since these were products of printing industry and, Therefore, eligible for exemption under Notification No. 55/75 dated 1st March, 1975 as amended by Notification No. 114/75 dated 30th April, 1975 and 122/75 dated 5th May, 1975. The Assistant Collector, Faridabad, held that the benefit of exemption claim was not admissible. In appeal, however, the Appellate Collector held that the petitioner manufactured printed cartons and not merely cartons used for packing of goods and as such these goods were to be treated as products of printing industry and thus eligible for exemption from payment of duty. The Appellate Collector order was made on 23rd November, 1978. The Government of India issued to the petitioner a show cause notice dated 24th September, 1979 u/s 36(2) of the Central Excise and Salt Act, 1945, proposing to set aside the order of the Appellate Collector and to pass an order that printed cartons manufactured by the petitioner could not held to be products of printing industry eligible to exemption but were products of packaging

industry. At this stage, Civil Writ Petition No. 113/81 was filed by the petitioner seeking quashing of show cause notice dated 24th September, 1979.

2. The writ petition was heard by a Division Bench of this Court to determine the question whether design printed boards/cartons should be classifiable under Item No. 17(2) of the Central Excise Tariff or under Item No. 68. If classifiable under Item No. 17(2) the goods will be immune from levy of excise duty. The Division Bench noticed that in case the goods are held to be products of packing industry and not of printing industry then they will have to be classified under Item No. 68 so as to be available for levy of excise duty. Considering the importance of the question involved the Division Bench by orders dated 8th April, 1992 referred the matter for determination by a larger Bench.

3. When the matter was heard by a Full Bench learned Counsel for the parties agreed that the question referred to Full Bench stood concluded by a decision of the Supreme Court in *Rollatainers Ltd. and Another Vs. Union of India (UOI) and Others*, and that the printed cartons manufactured by the petitioner Company cannot be treated as products of the printing industry and, Therefore, not entitled to the exemption as claimed by the petitioner. The Full Bench in its decision dated 9th January, 1995 noticed that the petitioner had also raised in the writ petition another point, namely, the show cause notice being barred by limitation. Dealing with the question of limitation the Full Bench held that the appropriate remedy, if any, for the petitioner is to agitate that point before the Tribunal. The relevant part of the decision of the Full Bench on this aspect reads as under:

"With regard to the said question, learned Counsel for the respondents submits that in view of the amendment to the Central Excise and Salt Act, as amended in 1982 by Finance (No. 2) Act, 1980 which came into force on 11.10.1982, the show cause notice issued to the petitioner by the Central Government is converted into an appeal before the CEGAT by virtue of the statutory provisions contained in Sub-section (2) of Section 35-P of the Act. In view of the said provision whereby show cause notice issued by the Central Government is converted into a memorandum of appeal before the CEGAT, it is not possible for us to decide the said plea of the petitioner relating to limitation. It will be for the petitioner to seek appropriate remedy, if any, before the said Tribunal in regard to the said contention."

With the aforesaid observations the writ petition and C.M 7198/94 were disposed of.

4. The petitioner filed a review application (RA 59/96) seeking review of Full Bench decision dated 9th January, 1995 mainly on the ground that the show cause notice dated 24th September, 1979 had been disposed of by an order of Central Government dated 14th September, 1981, which is a date long prior to 11th October, 1982 when the amendment to the Central Excise and Salt Act came into force and contending that the question of show cause notice being

converted into appeal by virtue of amending provisions of the Act, Therefore, does not arise and thus sought to challenge the order of the Central Government dated 14th September, 1981. The Bench in the order dated 20th November, 1996 dismissing RA 59/96 held that the order dated 9th January, 1995 could not be reviewed since the petitioner had not challenged the order dated 14th September, 1981 by either amending the petition or filing an independent writ petition. On this aspect the order dated 20th November, 1996 reads as under:

"The petitioner now states that the show cause notice dated 24.9.1979 had been disposed of by an order of the Central Government dated 14.9.1981, which is a date long prior to 11.10.1982 when the amendment to the Central Excise and Salt Act came into force. The result would be that there is no question of the show cause notice being converted into an appeal by virtue of the amending provisions of the Act. The petitioner ought to have amended the writ petition and questioned the final order that was passed by the Central Government dated 14.9.1981 disposing of the show cause notice issued to the petitioner. No such amendment application was filed in the writ petition, nor has that final order been challenged by way of an independent writ petition. In that view of the matter, we do not find anything for review of the order dated 9.1.1995. If the show cause notice was not in force on the date when the amending provision came into force on 11.10.1982, there is no possibility of there being an appeal before the CEGAT that could be disposed of the said Tribunal."

Now the second review petition has been filed by the petitioner Along with an application u/s 5 of the Limitation Act for condensation of delay praying that the order dated 20th November, 1996 passed in Review Application 59/96 be recalled and for fresh hearing and disposal of the writ petition. This review application Along with application for condensation of delay was filed on 24th February 1997. In the application seeking condensation of delay it has been explained that after the orders dated 20th November, 1996 were made the petitioner's representatives met Senior Advocate who had been engaged in the matter earlier for discussion regarding future course of action and in the said meeting it transpired that in February, 1982 the petitioner had filed an application for amendment of the writ petition. It was further averred that "since the officers dealing with the said case had changed as a long time had lapsed the petitioner's representative made efforts to go through the entire earlier records and inspected the file and found that in fact the amended writ petition had been taken on record and was on the file of this Hon"ble Court and had not been disposed of to date.

5. It is contended by learned Counsel for the petitioner that due to inadvertence/ oversight of his clients and even respondents it could not be brought to the notice of the Court that the application seeking amendment of the writ petition had been allowed and amended petition taken on record in the year 1982.

6. The file shows that the petitioner had filed on 1st March, 1982 an application (C.M. 905/82) in C.W. 113 of 1981 under the provisions of Order 6, Rule 17 read

with Section 151, CPC seeking amendment of the writ petition to challenge the legality of the order dated 14th September, 1981 passed by respondent No. 1 and praying that the said order be quashed. C.M. 905/82 was not opposed by the respondents. The application was, Therefore, allowed and amended writ petition was taken on record.

7. The order dated 20th November, 1996 rejecting R.A. 59/96 was passed, inter alia, on the ground that the petitioner ought to have amended the writ petition and questioned the final order dated 14th September, 1981 passed by the Central Government disposing of the show cause notice and since no such amendment application was filed there was no ground to review the order dated 9th January, 1995. As it now transpires this ground for rejection of review application was not factually correct since amended petition had been taken on record in the year 1982. But at the same time we notice that it is a case of our right negligence on the part of the petitioner in not pointing out that amended petition was already on record. If the petitioner was diligent, firstly the order dated 9th January, 1995 would not have been made. Again, if petitioner was diligent when it filed RA 59/96, it would not have been dismissed on the ground that writ petition had not been amended to challenge the legality of order dated 14th September, 1981. However, on the facts and circumstances of the case, we do not think that the petitioner should be made to suffer for the negligence and/or inadvertence in not pointing out to the Court that the amended petition had been filed and should be allowed to agitate, on payment of heavy costs, the question of validity of order of 14th September, 1981 on the ground of bar of limitation. In this view, we recall the order dated 20th November, 1996 passed on RA 59/96 on payment of costs of Rs. 50,000/- which shall be paid to Delhi Legal Services Authority within 3 weeks. For the reasons stated in the application (C M. 5753/97), we also think that it is a fit case where in the interest of justice we should condone the delay in filing this review application.

8. R.A. 59 of 1996 also deserves to be allowed since in the present case the amended provisions which came into force on 11th October, 1982 would not apply for that the matter had already been decided by the Central Government on 14th September, 1981. Thus, we recall second part of the order dated 9th January, 1995 directing that the petitioner would take up the question of limitation before the Tribunal.

9. Reverting to merits now, admittedly the show cause notice dated 24th September, 1979 was issued beyond the prescribed period of six months from the date of the Appellate Collector's order. Learned Counsel for the respondents rightly concedes that the question of limitation deserves to be answered in favor of the petitioner in view of the decision by the Supreme Court in Union of India Vs. Associated Cement Companies Ltd., 1995 (76) E.L.T. 507 and decision of this Court in R.M.D.C. Press Pvt. Ltd. Vs. Union of India, . We, Therefore, hold that the show cause notice dated 24th September, 1979 was issued beyond the prescribed period of limitation and it was thus illegal and so also the

consequential order dated 14th September, 1981.

10. For the aforesaid reasons, we allow C.M. 5753-54/97 and also the review application and quash the impugned show cause notice dated 24th September, 1979 and the impugned order dated 14th September, 1981 subject to deposit of costs of Rs. 50,000/- in the manner stated hereinbefore.

C.Ms. 5753, 5754 of 1997 and review application /97 are disposed of accordingly.