

(1979) 06 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 3555 of 1976

S. Sornam

APPELLANT

Vs

Inspector of Central Excise and Others

RESPONDENT

Date of Decision : 18-06-1979

Acts Referred:

Central Excise Rules, 1944 — Rule 10, 10A, 8(1)
Constitution of India, 1950 — Article 226

Citation : (1980) CENCUS 145 : (1982) 10 ELT 49

Hon'ble Judges : Varadarajan, J

Bench : Single Bench

Advocate : R. Janakiraman, for the Appellant; U.N.R. Rao, for the Respondent

Final Decision : Allowed

Judgement

Varadarajan, J.—This petition under Article 226 of the Constitution of India is for the issue of a writ of certiorari or any other appropriate

writ or order calling for the records of the second respondent, the Union of India, relating to Order No. 1624 dated 11-8-1976 relating to F.No.

195/15/303/75 CX-V and quashing that order.

2. The petitioner is a manufacturer of safety matches and also matches of the type known as Bengal Lights. The Government of India, the second

respondent, issued two Notifications Nos. 45 of 1961 and 162 of 1967. Notification No. 45 of 1961 dated 1-3-1961 reads :-

In exercise of powers conferred by Sub-rule 1 of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts matches of

the type known as "Bengal Lights" when manufactured in a factory whose output does not exceed 500 million matches per year and packed in

boxes containing on an average not more than 10 matches, from the payment of

so much of the excise duty leviable thereon as is in excess of 77 paise per gross of boxes.

Notification No. 162 of 1967 dated 21-7-1967, reads:

Under Government of India, Ministry of Finance (Department of Revenue and Insurance), Notification No. 162/67-Central Excise dated 21-7-

1967, as subsequently amended by Notification No. 205/67-Central Excise, dated 4-9-1967, and No. 187/68-Central Excise, dated 2-11-1968,

the Central Government hereby exempts matches specified in column 2 of the Table below falling under this item and cleared by any manufacturer

for home consumption from so much of the duty of excise leviable thereon as is in excess of the rate specified in the corresponding entry in column

3 of the said table.

Provided that (i) matches referred to in category 2 and cleared for home consumption during the financial year from a factory from which the total

clearance of matches during that year is not, as per declaration made by the manufacturer under this Notification estimated to exceed 75 million

matches, shall be allowed to be cleared at the rate of Rs. 3.75 per gross of boxes of 50 matches each, upto 75 million matches and the quantity of

matches, if any, cleared in excess and upto 100 million matches shall be allowed to be cleared at the rate of Rs. 4.30 per gross of boxes of 50

matches each ; and if the clearance in such factory exceeds 100 million matches, during the financial year the manufacturer shall be required to pay

duty at the rate of Rs. 4.30 per gross of boxes of 50 matches each, on the entire quantity cleared during the financial year;....

3. As per Notification No. 45 of 1961, the petitioner can manufacture 500 million Bengal Lights paying excise duty at 77 paise per gross of boxes

containing 10 Bengal lights each. As per Notification No. 162 of 1967, the petitioner can manufacture upto 75 million safety matches paying excise

duty at Rs. 3.75 per gross match boxes containing 50 sticks each and if she wants to manufacture 100 million matches she should pay excise duty

at Rs. 4.30 per gross of the quantity exceeding 75 million matches, and if the quantity manufactured by her exceeds 100 million, she should pay

excess duty at the enhanced rate of Rs. 4.30 per gross on the entire quantity. The petitioner gave an undertaking as per Notification No. 162 of

1967, for not exceeding the manufacture of 75 million matches in the year

1973-74. But in that year upto 30-11-1973, she manufactured 73.98 million safety matches and paid the necessary excise duty. On 11-1-1974, the petitioner sought permission to manufacture another 25 million safety matches offering to pay excise duty at the enhanced rate on the quantity in excess of 75 million matches; and she manufactured in all 97.57 million matches in that year. In that year she manufactured 34.81 million Bengal lights and paid the necessary excise duty at 77 paise per gross of boxes containing 10 Bengal lights each.

4. On 22-2-1974 the Inspector of Central Excise, Sivakasi, the first respondent, issued a demand notice under Rule 10-A of the Central Excise Rules calling upon the petitioner to pay a sum of Rs. 5728-25 being the difference between Rs. 4.30 and Rs. 3.75 per gross on the ground that she had manufactured 32.3 million matches in excess of 100 million matches, clubbing the manufacture of both kinds of matches, namely, safety matches and Bengal Lights.

5. The petitioner contended that the first respondent is not entitled to club the manufacture of the two kinds of matches for the purpose of excise duty so far as the rate is concerned and that Rule 10 alone would apply and not Rule 10A and that the claim is barred by limitation, it having been made more than" three months after the date of the assessment. The petitioner's appeal before the Appellate Collector of Central Excise failed. A revision petition filed before the Government of India also failed under the impugned order dated 11-8-1976.

6. Two contentions are raised before me by the learned counsel for the petitioner in the affidavit filed in support of the writ petition. The first is that the Notification No. 162 of 1967 does not take in Bengal Lights and, therefore, it is not open to the first respondent to club the manufacture of Bengal lights with the manufacture of safety matches for the purpose of the rate of excise duty leviable on the petitioner. The second is that the case is governed by Rule 10 and not Rule 10A and Rule 10A has been struck down by this court by an order dated 22-3-1972 made in W.P. No. 419 of 1970, which has been followed by a Bench of this court by the order dated 6-10-1975 in W.P. No. 4145 to 4155 of 1975. The objection of the respondents is that the petitioner's contention that Bengal lights should not be taken into account for determining the total clearance of the

matches as per Notification No. 162 of 1967 is not correct on the ground that nowhere in the Notification the word "safety matches" is mentioned

and only the total number of match sticks is to be taken into account for the purpose of the rate of excise duty. It is also contended that the

concessional rate of assessment for Bengal lights under Notification No. 45 of 1961 is on the output not exceeding 500 million sticks, while in the

notification under No. 162 of 1967 the assessment is based on clearance of 75 million or in excess of 100 million matches and that for this purpose

matches come within the meaning and definition of "matches" in the Central Excises and Salt Act of 1944.

7. It is not disputed that the demand of the first respondent was made more than three months after the assessment and it would not be in time if

the case is governed by Rule 10 of the Central Excise Rules. The respondents contend that the case is governed by Rule 10A. It has not been

disputed that the rule has been struck down by this court in W.P. No. 419 of 1970 which has been followed by a Bench of this court in W.P. No.

4145 to 4155 of 1975. It has only been contended that C. A. 1202 and 1203 of 1975 have been preferred against this court's judgment in W.P.

No. 419 of 1970. So long as the result in W. P. No. 419 of 1970 stands, no interference with this court's judgment in the said W.P. No. 4145 to

4155 of 1975 is called for. As observed by the learned judges of the Bench which disposed of W.P. No. 4145 to 4155 of 1975, the judgment

rendered in W.P. No. 419 of 1970, is binding on this court. Therefore, it has to be held that Rule 10A is invalid in law and could not be relied

upon by the respondent and a claim made more than three months after the assessment is barred by limitation.

8. No doubt in item No. 38 of the First Schedule to the Central Excises and Salt Act, 1944, "match" has been defined to include a firework in the

form of a match and Bengal light would fall within that definition. It is not possible to agree with the respondents that for that reason the

manufacture of Bengal lights and ordinary safety matches could be clubbed together for the purpose of levy of excise duty at the enhanced rate.

No doubt, reference has been made to "output" in Notification No. 45 of 1961, whereas reference has been made in the other Notification No.

162 of 1967 to "manufacture". But under Sec. 3 of the Central Excises and Salt Act, 1944, duty shall be levied and collected in such manner as

may be prescribed on all excisable goods other than salt which produced or manufactured in India, and a duty on salt manufactured is, or imported

by land into, any part of India as, and at the rates, set forth in the first Schedule. So, the duty which could be levied under the Act on matches is

only on the manufacture of the commodity. I am of the opinion that the reference to "output" in the Notification No. 45 of 1961 is regarding the

capacity of the factory with reference to which the rate of levy has been made in that notification, and that it is not possible to agree with the

learned counsel for the respondents that the levy of duty under that notification is on the output and is different from the levy on Bengal Lights

manufactured in the factory. If, for the purpose of levying excise duty, matches and Bengal lights could be clubbed together having regard to the

definition of match in the Act, two different Notifications No. 45 of 1961 relating to Bengal lights and No. 162 of 1967 relating to matches-would

have been totally unnecessary. I am, therefore, of the opinion that it is not possible to club the manufacture of Bengal lights and safety matches for

the purpose of levying excise duty at the enhanced rate and that duty could be levied on Bengal lights only separately as provided for in the

Notification No. 45 of 1961, and on matches other than Bengal lights manufactured by the petitioner separately in accordance with the provisions

of Notification No. 162 of 1967 and that the demand made on the petitioner clubbing the manufacture of both the kinds of matches is invalid in

law.

9. The writ petition is accordingly allowed with costs; Advocate's fee Rs. 200/-.