(1988) 04 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16098 of 1984

Southern Steel Ltd.	APPELLANT
Vs	
Central Government	RESPONDENT

Date of Decision : 06-04-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 8, 8(1)
Constitution of India, 1950 — Article 14

Citation : (1989) 20 ECC 131 : (1989) 22 ECR 215 : (1988) 37 ELT 196

Hon'ble Judges : Panduranga Rao, J;P.A. Choudary, J

Bench : Division Bench

Advocate : T. Anantha Babu, for the Appellant; N.R. Devaraj, Additional Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Choudary, J.—The petitioner is a manufacturer of cold rolled strips which are subjected to excise duty under Tariff Item No. 25 (12). Hoops, strips and skelp of iron or steel, whether galvanised or not, hoops and strips, and skelp are subjected to a rate of Rs. 1,350/- per metric tonne. In an explanation to the aforesaid item, the word ''strips'' has been defined to mean hot or cold rolled products. Subsequently, the Excise Authorities acting under Rule 8 have reduced the rate of excise duty payable for the cold rolled strips and hot rolled strips. Under the amended Tariff the cold rolled strips are made liable to pay Rs. 650/- per metric tonne whereas hot rolled strips exceeding 5 mm. in thickness are made to pay Rs. 330/- per metric tonne. From the counter, it appears the petitioner had submitted his return and has been assessed on December 14, 1983 according to the revised rates of excise duty. That order was passed by the Assistant Collector, against which the petitioner has not filed any appeal or revision. But the petitioner has filed this Writ Petition challenging, in substance, the imposition of Rs. 650/- per metric tonne on his produce of cold rolled strips while the rate of duty on hot rolled strips exceeding 5 mm. in thickness was reduced to Rs. 330/- per metric tonne. In the affidavit filed by the writ petitioner, it is alleged that this distinction between the rates of cold rolled strips and hot rolled strips is unauthorised, ultra vires and violatlve of powers of the executive to grant exemption, and also violatlve of Article 14 of the Constitution.

2. The argument of the learned Counsel for the petitioner is that the Parliament has enacted a law treating the strips, both hot and cold rolled, as one excisable article, and that it would not be open for the exemption granting authority to make a further distinction between cold rolled strips and hot rolled strips in the matter of granting exemption. In other words, the learned counsel says that cold rolled strips should also be treated in the matter of exigibility to excise duty as hot rolled strips exceeding 5 mm. in thickness, and should be made liable to pay not Rs. 650/- per metric tonne but Rs. 330/- per metric tonne. In our opinion, this argument cannot be accepted. The rule which empowers the granting of exemption is Sub-rule (1) of Rule 8. It empowers the Central Government to grant exemption to any excisable goods from the whole or any part of duty leviable thereon. It says:

The Central Government may from time to time, by notification in the Official Gazette, exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of duty leviable on such goods."

3. For the application of this rule, the following condition must be satisfied. The exemption proposed to be granted must relate to excisable goods. Now the Tariff item 25(12) read with its explanation would clearly show that the excisable goods under that item are strips which include both hot and cold rolled strips. It means that the Tariff Item itself has recognised both hot and cold rolled strips as excisable commodities. It is, there-lore; not correct to say that the exemption granting authority has created any new distinction. In fact, if the learned counsel''s argument is to be given effect to and if we were to uphold that the strips are not to be treated under the Tariff Item-No. 25 as hot strips and cold rolled products, the entire exemption would have to be quashed as being ultra vires of the powers of the exempting authority and the petitioner would have to be made to pay Rs. 1,350/- per metric tonne. Obviously, that cannot be the prayer of the petitioner. We, therefore, see no force in the argument of the learned counsel.

4. The argument that there is unconstitutional discrimination in imposing different rates of excise duty on hot strips and cold strips cannot be accepted. Firstly, It must be noted that every piece of law attaches to itself a presumption of constitutionality. Further, the Supreme Court in Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others, held that it would be the duty of the Court to imagine circumstances that might have legitimately been taken into account by the Legislature but not made apparent on the face of the statute for sustaining the impugned law. The fact that hot strips and cold strips exist in the trade world is enough to show that they can be treated legally as different items for the purpose of exemption. In economic matters of this nature, the courts will be slow, in fact, extremely slow to interfere unless driven to that conclusion by a

clear demonstration of facts. In this case, no such proof has been offered by the petitioner to show that the distinction drawn between hot strips and cold strips is arbitrary. For these reasons, we cannot accept the second contention of the learned counsel.

5. Accordingly the Writ Petition is dismissed with costs, Advocate''s fee Rs. 250/-

