(1990) 12 GUJ CK 0033

In the Gujarat High Court

Case No : Spl. Civil Application No. 1880 of 1980

Stadfast Paper Mills APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-12-1990

Acts Referred:
Central Excise Rules, 1944 — Rule 10, 173J, 8
Central Excises and Salt Act, 1944 — Section 4(4)

Citation : (1991) 34 ECC 62 : (1993) ECR 306 : (1992) 61 ELT 29

Hon'ble Judges : M.S. Parikh, J;M.B. Shah, J

Bench : Division Bench

Advocate : M.U. Chinnubhai, for the Appellant; B.B. Naik, for the Respondent

Judgement

M.B. Shah, J.—The petitioner Company is a manufacturer of different types of wrapping and packing papers falling under Item 17 of the First Schedule to the Central Excises and Salt Act, 1944. By a Notification No. 45/73, dated 1st March 1973 the Central Government, in exercise of powers under Rule 8 of the Rules, exempted the paper of the varieties described therein, falling under Item 17 of the First Schedule to the Act, cleared by any manufacturer during any financial year upto the quantity prescribed in the Notification from so much of the duty of the excise leviable thereon as was specified in the Table to the Notification. Under the Table on the clearance of paper upto the first 100 metric tonnes the extent of exemption was specified as 75%, on the next 100 metric tonnes of paper cleared the extent of exemption was specified as 25% and on the next 200 metric tonnes the extent of exemption was specified as 15%.

2. By the show cause notice dated 5th May 1977 (Annexure "C") the petitioner was called upon to show cause why an amount of Rs. 21,185.38 should not be recovered under Rule 10 read with Rule 173-J of the Central Excise Rules as the said amount was short-levied for the clearance of paper between 16th March 1976 to 30th April 1977. It was stated that the petitioner had charged the price equal to assessable value approved plus effective rate of duty at 30% ad valorem

while the petitioner has paid duty of excise at the rate of 7.5% ad valorem.

3. The Assistant Collector of Central Excise, Surat, after hearing the petitioner confirmed the demand issued under show cause notice No. MP/17-2-77 dated 5-5-1977 and directed the payment of Central Excise duty, held to have been short-levied. That order was passed on 27-3-1978. Against that order the petitioner filed an appeal before the Appellate Collector, Central Excise & Customs, Bombay. The Appellate Collector found that the petitioner had charged a higher price than on which the petitioner intended to pay duty and allowed the appeal with condition that the valuation should be done after taking into consideration the actual price charged by the petitioner from which the duty element paid by the petitioner should be deducted along with other admissible deductions. That order dated 5-9-1979 (Annexure ''H'') is challenged before this Court.

4. [It is an admitted fact that Explanation to Section 4(4) is added by the Finance Act, 1982 (14 of 1982) with effect from 1-10-1975. Section 4(4)(d) defines the word "value" in relation to any excisable goods.] It reads as under :

"4(4)(c) ''value'' in relation to any excisable goods, -

(i) where the goods are delivered at the time of removal in a packed condition, includes the cost of such packing except the cost of packing which is of a durable nature and is returnable by the buyer to the assessee.

Explanation. - In this sub-clause ''packing'' means the wrapper, container, bobbin, pirn, spool, reel or wrap beam or any other thing in which or on which the excisable goods are wrapped, contained or wound;

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale;"

The Explanation which is inserted from 1-10-1975 reads as under :

"Explanation. - For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of -

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods /P>

and the effective duty of excise on such goods under each Act referred to in clause (a) or clause (b) shall be, -

(i) in case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods."

[By the aforesaid Explanation the amount of duty which is required to be excluded for determining the value of excisable goods is defined. The effective duty of excise in a case where the notification or order providing for any exemption from the duty of excise for the time being in force, shall be the duty of excise computed with reference to the rate specified in respect of such goods as reduced so as to give full and complete effect to such exemption. This question is considered by various Courts. Reference may be made to B.K. Paper Mills Pvt. Ltd. Vs. Union of India (UOI) and Others, , Duncans Agro Industries Ltd. and Another Vs. Assistant Collector Of Central Excise, Rajahmundry and Another, and Assistant Collector of Central Excise, Rajahmundry and Another Vs. Andra Pradesh Paper Mills Ltd., .

5. In view of the Explanation and the aforesaid decisions, Mrs. M. U. Chinnubhai does not press this petition. In this view of the matter, this petition would not survive.

6. Hence rule discharged with costs.