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(1987) 02 SC CK 0044

In the Supreme Court Of India

Case No : Civil Appeal No''s. 2670-71 of 1985

Standard Fireworks Industries, Sivakasi and Another — APPELLANT

Vs

Collector of Central Excise, Madurai — RESPONDENT

Date of Decision : 17-02-1987

Acts Referred:
Factories Act, 1948 — Section 2

Citation : AIR 1987 SC 829 : (1987) 11 ECC 361 : (1987) 11 ECR 358 : (1987) 28 ELT 56 : (1987) 1 JT 460 : (1987) 1 SCALE 351 : (1987) 1 SCC 600 : (1987) 1 UJ 384

Hon'ble Judges : Ranganath Misra, J;R. S. Pathak, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ranganath Misra, J.—These appeals u/s 35-L of the central excise and salt Act of 1994 (hereinafter referred to as the Act) are directed against the decision of the Customs, Excise and God (Control) Appellate Tribunal, affirming the appellate order passed by the Collector (Appeals), Central Excise, Madras.

2. The appellants are manufacturers of fireworks Each of them claimed refund of duty on the footing that they were exempted them claimed refund of duty on the footing that they were exempted from payment therefore under Notification No. 17/77 dated 18.6.1977 as the goods manufactured by them were covered by Tariff Item No. 68 and in relation to such manufactures no process was ordinarily carried on with the aid of power The claims for refund related to the period covering parts of 1978, were rejected by the Assistant Collector and such rejection was upheld in appeal. Revisions directed against the appellant's decision were filed before the Central Government which stood transferred to Tribunal for disposal in accordance with the amended law. The Exemption Notification read thus:

In exercise of the power conferred by Sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government herby exempts all goods falling under Item

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No. 68 of the First Schedule to the Central Excise and Salt Act, 1988 (1 of 1944) in or in relation to the manufacture of which no process is ordinarily carried on with the aid of powers, from whole of the duty of excise lea viable thereon.

3. Tariff Item 68 during the relevant period provided :

All other goods, not elsewhere specified, manufactured in a factory but excluding....

The explanation under the item stated that the expression 'factory' carried the same meaning assigned to the word u/s 2(m) of the Factories Act, 1948.

4. The Tribunal has found as a fact that the appellants were purchasing in bulk all materials required for their manufacturing operation and used to store them in godowns. Their materials covered papers, chemicals, iron fillings, coal, gums, steel wires etc. Steel wires used to be made over to different people unconnected with these appellants to be cut to size and paper used to be made over for being shredded into small strips and to be given special treatment for the purpose of manufacture of fireworks. After steel wires were cut to size and the paper was processed the same were being returned to the factories of the appellants.

5. It is not in dispute that within the factories of the appellants for the manufacture of fireworks power was not used; it is equally not in dispute that power was used for shredding of paper and cutting of steel wires.

6. The claims for refund advanced by the appellants have been rejected on the footing that they are not covered by the Notification of 1976 inasmuch as cutting of wires and conditioning of paper have been carried with the aid of power. The learned Counsel for the appellants has strenuously contended that the statutory authorities under the Act and the Tribunal have overlooked the fact that in Item 68 at the relevant lime the words "manufactured in a factory" occurred. We do not think that there is any substance in this contention. The Notification purports to allow exemption from duty only when in relation to the manufacture of the goods no process is ordinarily carried on with the aid of power. It is not disputed that the cutting of the steel wires or the treatment of paper is a process for the manufacture of goods in question. Since those processes were carried on with the aid of power though carried outside the factory, the requirement of the Notification would not be answered so as to entitle the appellants to exemption from duty. It is not necessary to refer to any authority inasmuch as on the analysis indicated above the claim for refund appears to have been rightly rejected.

7. The appellants are not entitled to claim any refund as they are not covered by the Exemption Notification and the appeals are, therefore dismissed but without any order for costs.

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