
(1982) 03 BOM CK 0058

In the Bombay High Court

Case No : Miscellaneous Petition No. 1402 of 1975

Tata Oil Mills Company Ltd.

APPELLANT

Vs

T.R. Srikantia and Others

RESPONDENT

Date of Decision : 17-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 26 ECR 106

Hon'ble Judges : Kurdukar, J

Bench : Single Bench

Judgement

Kurdukar, J.—This petition under Article 226 of the Constitution of India is filed by the petitioners challenging the orders passed by the Assistant Collector of Central Excise at Exhs. H and I rejecting the classification list dated March 7, 1978 in respect of hardened vegetable non-essential oil, submitted by the petitioners.

2. The petitioners are a company registered under the Companies Act, 1956 and have their mills at Sewri, Bombay. The petitioners are manufacturers, inter alia, of Laundry and Toilet soaps. In the manufacture of soaps, the petitioners use minor and inedible oils like rice-bran oil, castor oil, sal oil, kusum oil, neem-oil etc. The petitioners further stated that it has been the policy of the Government to encourage use of the minor oils. To make some of these oils fit for use in soap manufacture they have to undergo certain processes like bleaching, treatment with acid or alkali and also hardening by hydrogenation. The petitioners then described the process that they follow and ultimately the oil which they manufacture is hardened technical oil known as HT oils.

3. The petitioners then stated that under and by virtue of Notification No. CER-8(3) dated January 14, 1956 the hardened technical oil was exempt ed from payment of excise duty provided it was used in the manufacture of soap. This notification however was rescinded with effect from March 1, 1978. The notification is annexed to the petition at Ex. A. In view of the revocation of the

said notification at Ex. A the petitioners filed their classification list or their product at Ex. C to the Superintendent of Central Excise. The Superintendent of Central Excise however, did not accept the classification submitted by the petitioners at Ex. C and issued a show cause notice at Ex. E to the petitioners. In the show cause notice the Superintendent of Central Excise indicated that the product of the petitioners still falls under Tariff Item No. 13 and not 12 as shown in the classification at Ex. C. The Superintendent of Central Excise therefore called upon the petitioners to file their explanation to the show cause notice. After filing the explanation to the show cause notice, the Assistant Collector by his letter dated October 6, 1978 at Ex. H informed the petitioners that the hydrogenated oils unfit for human consumption were classified under the said Tariff Item 13 which was accepted by the petitioners till recently and that they continued to be correctly assessed to duty under Tariff Item of C.E.T. only. The Assistant Collector further stated that the question of granting provisional assessment of the said product either under T.I 12 or T.I. 68 does not arise. He therefore rejected the request made by the petitioners. In regard to the classification list filed by the petitioners the Assistant Collector of Central Excise, Bombay, vide his letter dated November 3, 1978 informed the petitioners that the HT oils were classified in the past under T.I. 13 which was accepted by them. The classification now sought to be made under T.I. 12 is not acceptable in view of the fact that in the past the petitioners have accepted the classification of H.T. oils under T.I. 13. The Assistant Collector further stated that he does not approve that the HT oils fall under T.I. 12 but consistent with the past conduct it has to be covered under T.I. 13. Accordingly he rejected the classification list filed by the petitioners.

4. It is these two orders which are under challenge in this petition.

5. It is needless to refer to the rival arguments advanced on behalf of both the parties. The orders at Ex. H and I are liable to be set aside only on the short ground that the second respondent has failed to give personal hearing before he passed orders at Ex. H and I rejecting the classification list submitted by the petitioners. The petitioners in their reply to the show cause notice have specifically asked for the personal hearing and, in my opinion, the second respondent was not justified in refusing the personal hearing and passing the orders ex parte. The orders in my opinion, are ex facie illegal and deserve to be quashed and set aside.

6. Both the parties have raised several contentions in the form of their affidavits. The Assistant Collector shall take into account all these contentions including the judgment rendered in Miscellaneous Petition No. 1402 of 1975 on November 24, 1980 by Parekh, J. as well as any other judgment of the Supreme Court and other High Courts if cited before him. It is, however, made clear that until the classification is made final by the Assistant Collector, the said Officer shall not levy any duty on the product of the petitioners. Both the parties agree that the interim order passed at the stage of admission to continue until final orders are

passed by the Assistant Collector. The Assistant Collector shall dispose off the proceedings as expeditiously as possible and preferably within four months from to-day.

7. In the result the rule is discharged subject to the above directions. There shall be no order as to costs.