(1970) 01 KL CK 0009

In the High Court Of Kerala

Case No : O.P. No. 1850 of 1968

The South India Rubber Works APPELLANT

Vs

The Assistant Collector of Central Excise and Others RESPONDENT

Date of Decision : 27-01-1970

Acts Referred:
Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 3

Citation : (1979) 4 ELT 156

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Nair J.

1. The short question in this petition is whether ''rubber component'' the expression used in Ext. P1 notification of exemption issued under Rule 8(1) of the Central Excise Rules, 1944, meant the same thing as ''rubber compound'' used in Ext. P2 notification also issued under the same rule in supersession of the earlier notification.

2. The article with which 1 am concerned admittedly falls under sub-item (3) of Item 16 of the first Schedule to the Central Excises and Salt Act, 1944. By Ext. P1 such articles were exempted from the whole of the duty of excise leviable u/s 3 of the Act if the ''rubber component'' in the articles is nil or less than forty per cent by weight. The petitioner was granted exemption by Ext. P1 and articles were exempted evidently because the ''rubber component'' of the article was less than of forty per cent weight. He was however asked by Ext. P 3 notice issued by the Range Officer, Alleppey, to pay a sum of Rs. 12,076.83 on the basis that the exemption was wrongly granted. He appealed to the Assistant Collector of Excise, Trivandrum (respondent 1) by Ext. P 4 and the order of the first respondent is Ext. P5. The relevant part of that order is in paragraph 3 which reads thus :

"The term ''rubber content'' used in Notification No. 80/67 dated 26-5-1967 is intended to mean ''rubber compound content'' and hence the demand is in order and the same is confirmed."

3. There was a further appeal Ext. P6 to the Collector of Customs (respondent 2) and the 2nd respondent''s order is Ext. P7. Paragraph 4 of that order which is relevant is in these terms.

"I have gone through the records. The Tariff items refer to piping and tubing of unhardened of vulcanised rubber. The words ''rubber component'' used in the notification No. 80/67 dated 26-5-67, can therefore only refer to rubber compound used in pipings and tubings of vulcanised rubber. The notification has to be read with the tariff item.

In the circumstances the assessment and demand made is correct."

4. The ''rubber component'' must be distinct from rubber compound as the latter necessarily means ingredients added to rubber. The orders Exts. P5 and P7 when they stated they mean the same thing are clearly and palpably erroneous. The sub-item (3) of Item 16 of the first Schedule contain articles, all of which must have a rubber component as well as a rubber compound content. In fact the authorities determined the ''rubber component'' in these articles and found that it was less than 40 per cent and granted exemption. Perhaps a mistake was committed in the notification in mentioning ''rubber component'' for ''rubber compound''. That is no reason for holding the petitioner liable. The removal from the factory by the petitioner was admittedly at a time when the notification Ext. P1 was applicable that is during the period 26-5-67 to 30-6-1967. The second notification Ext. P2 which superseded Ext. P1 does not purport to act retrospectively nor does it state that it is a correction notification. On the other hand, it contains the preamble that it is in supersession of Ext. P1 notification. This can have effect only after the date of its publication. I therefore see no justification for the demand Ext. P3 and the orders Exts. P5 and P7 cannot be sustained. I set aside Exts. P3, P5 and P7 and allow this original petition. I direct the parties to bear their respective costs.