

(1979) 07 BOM CK 0020
In the Bombay High Court
Case No : Misc. Petion No. 455 of 1974

The Tata Oil Mills Company Ltd.	Vs	APPELLANT
Superintendent, Central Excise and Another		RESPONDENT

Date of Decision : 11-07-1979

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3

Citation : (1983) ECR 648

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

M.L. Pendse, J.—The petitioners are a company carrying on the business of manufacture of soaps, laundry and household and also other categories. Section-3 of the Central Excises and Silt Act, 1944 provides that there shall be levied and collected in such manner as may be prescribed duties on excisable goods Soap is one of the excisable goods falling under item 15 of the First Schedule of the said Act. The said item 15 in the First Schedule of the said Act is as urder:

15. "SOAP" means all varieties of the product known commercially as soap:

1. Soap, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power or of steam for heating-

(i) Soap, household and laundry 7.0% Ad valorem (ii) Other sorts- (a) Where the value of soap is below Rs. 7.800/- per metric tonne 12.5% Ad valorem

(b) Others 15% Ad valorem

2. In the manufacture of soap minor and inedible oils particularly rice bran oil is used. " With a view to encourage the use of such oils, the Government of India in exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 issued two notifications dated 17th March, 1972. By these notifications soap made from indigenous rice bran oil and other minor oils or

from a mixture of such oils with any other oils and falling under item 15 of the First Schedule of the Act was exempted from so much of the duty of excise leviable thereon as was equivalent to the amount of duty calculated at the rate of Rs 1.50 per metric tonne of such soap for each additional percentage point increase in the use of such rice bran oil which was in excess by 15% of the total oils used in the manufacture of such soap.

3. The petitioners manufacture household and laundry soaps as also the toilet soap. Under the Central Excise Rules, 1944 the petitioner had maintained a personal ledger account of the duties payable on soaps at their factory at Sewri. The petitioners relying upon the notification dated March 17, 1972 claimed exemption in respect of production of soaps. The claim made by the petitioners was on the basis of the calculation of production of soaps of various categories on a particular day. From out of the duties due on this total production the petitioners deduct the amount of exemptions which they are entitled to under the notification on account of the use of rice bran oil and other minor oils. It is required to be stated that the rate of duty on laundry sap was 7% while in the case of toilet soap it was 12% and 15% for Premium Toilet Soaps. What the petitioners do is to club up their entire production of household soap, laundry soap and toilet soap and claim exemption in respect of these three categories taken together. The respondent by letter dated April 20, 1973 addressed to the petitioner pointed out that in the months of August 1973 and September 1973 the petitioner claimed more rebate than due in household and laundry soaps, and the petitioners were informed that the rebate amount of Rs. 3,04,583.31 and Rs. 2,32,142.86 deducted respectively for the month of August and September 1973 should be properly adjusted. The petitioner has filed the present petition under Article 226 of the Constitution to challenge the legality and validity of this direction.

4. Mr. Dalai appearing for the respondent has raised an objection to the maintainability of the petition on the ground that the petitioner has not exhausted remedies of appeal and revision provided under the Act. The objection is substantial but I am disposing of the petition en meritis as the objection was raised after the petition was argued for a considerable length of time. In any event no valid purpose would be served by directing the petitioner to file appeal after lapse of seven years.

5. On behalf of the petitioners Mr. Joshi contended that on plain reading of the notification dated March 17, 1972 soap of every category is entitled to an exemption. This proposition is not seriously disputed. The plain reading of the notification leaves no manner of doubt that soap of every category included in item 15 of the First Schedule is entitled to the advantage of this notification. The crucial point which falls for determination is how this exemption is to be calculated in cases where a manufacturer is producing various categories of soap. As stated herein above the petitioners are manufacturing household, laundry and toilet soaps. It cannot be disputed that each category of these soaps

is entitled to the advantage of the notification and the petitioners are entitled to get exemption from the payment of excise duty. What is required to be decided is whether the petitioners would be entitled to the exemption by taking into consideration each category separately or whether it is open for the petitioners to club together the production of soaps of various categories and then claim exemption in respect of these categories. On behalf of the respondents Mr. Dalai pointed out that the method adopted by the petitioners would give them an unfair advantage because the duty payable in respect of different categories of soap is not the same and, therefore, while considering what exemption is to be granted such categories will have to be considered separately. Mr. Dalai also pointed out that plain reading of the relevant notification and procedure for availing the concession makes it crystal clear that the petitioners would be entitled to claim exemption by taking into consideration each category of soap separately and not clubbing several categories into one. The submission of Mr. Dalai seems to be sound. The procedure for availing of concession is set out in the letter dated May 2, 1974 addressed by the Assistant Collector, Central Excise to the petitioners. This procedure indicates that the manufacturer who intends to claim exemption shall make an application in writing to the Assistant Collector, Central Excise requesting for permission to avail of the concession on monthly basis for the day-to-day clearance of the soap, the exemption being claimed on individual Gate Passes. It further provides that a manufacturer who intends availing of this procedure shall compute the quantum of exemption claimed on a gate pass for a particular product on the basis of the percentage of oil used for its manufacture. It further provides that in case certain category of soap is produced where oil is not used then while preparing the monthly analysis the said consignment should be excluded. The plain reading of this procedure leaves no room for doubt in my mind that an exemption is to be granted in respect of each of the consignment which leaves the gate of the factory. It is required to be stated that a consignment is not entitled to an exemption unless for manufacture of products under the said consignment oil is being used. Mr. Joshi submitted that for the purpose of convenience the exemption is not granted by looking into each and every gate pass, but a daily summary is prepared and so also a monthly analysis is prepared at the end of the month. It is undoubtedly true that such daily summary and monthly analysis are prepared as per the directions given by the Excise Officers. But such summary and such analysis would refer to the various consignments which left the gate on a particular day or in a month only of a particular category. On behalf of the petitioners an illustrative daily summary and monthly analysis has been produced in the Court and it clearly indicates that different categories of soaps had been shown in the said summary separately. This procedure is obviously followed because the excise duty in respect of different categories of soap is not identical. If the excise duty in respect of several categories of soap is different then it is not possible to conceive that for the purpose of exemption all these categories can be clubbed together. Mr. Dalai is right in his submission that if such procedure is adopted then it would lead to absurd results, and in some cases the amount of exemption

would exceed the excise duty itself. Mr. Dalai has demonstrated this absurdity by reference to the charts prepared by the petitioner themselves. In these circumstances, I have no hesitation in holding that the method adopted by the petitioners in calculating the claim for exemption is faulty and the petitioners are not entitled to the advantage which they are seeking by such faulty mode of calculation. In my judgment the letter sent by respondent on April 20, 1974 rightly calls upon the petitioner to properly adjust the rebate amount which they have illegally credited.

6. Mr. Joshi invited my attention to a decision of the Supreme Court reported in *Hansraj Gordhandas Vs. H.H. Dave, Assistant Collector of Central Excise and Customs, Surat and Others*, in the case of *Hansraj Gordhandas v. Assistant Collector of Excise and Customs, Surat*. The Supreme Court has laid down that the question as to whether a notification is applicable to a set of facts has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intent. The Supreme Court further observes that the entire matter is governed wholly by the language of the notification. There cannot be any dispute on the principle, but as pointed out by Mr. Dalai the Supreme Court has also observed in *Commissioner of Wealth Tax, Andhra Pradesh Vs. Officer-in-charge (Court of Wards), Paigah*, in the case of *Commissioner of Wealth Tax, Andhra Pradesh v. Officer-in-Charge (Court of Wards), Paigah* as under:

It is not correct to give as wide a meaning as possible to terms used in a statute simply because the statute does not define an expression. The correct rule is that Courts have to endeavour to find out the exact sense in which the words have been used in a particular context. They are entitled to look at the statute as a whole and give an interpretation in consonance with the purposes of the statute and what logically follows as a result.

Taking into consideration the principles laid down by the Supreme Court in my judgment the plain reading of the exemption notification gives the benefit to all categories of soaps covered under item 15 of the First Schedule but while calculating such exemption each category of soap will have to be considered separately. In this view of the matter the petition must fail and the rule is discharged. In the circumstances of the case there will be no order as to costs.