

(1988) 04 CAL CK 0008
In the Calcutta High Court
Case No : C.R. No. 6970 (W) of 1982

Tim Shaw Private Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 27-04-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 173F, 9(1)
Central Excises and Salt Act, 1944 — Section 2

Citation : (1989) 24 ECC 188 : (1989) 43 ELT 30

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Amitava Chowdhury, for the Appellant; Nilava Mitra, for the Respondent

Judgement

Susanta Chatterji, J.—The present Rule was issued on 3-8-1982 at the instance of the writ petitioner, a private limited company, challenging the impugned orders dated 31st January 1981, 21st August 1981 and 1st January 1982, being in annexures "A", "B" and "C" respectively.

2. It is stated in the writ petition that the writ petitioner is a small scale unit which undertakes job work like peeling veneer from logs supplied by manufacturers of plywood. It is the specific case of the petitioner that it peels "timber in log form" on job work basis for Veneer Mills Private Limited, a Central Excise assessee for manufacture of plywood. The Superintendent of Customs and Central Excise, Jaypur issued a show cause noticed on the petitioner saying that the petitioner had cleared commercial veneer (Tariff Item No. 68) without payment of duty and thus had contravened Rules 173F and 9(1) of Central Excise Rules. It is the case of the petitioner that in terms of Notification No. 119/75-C.E. Excise Duty will be charged only on the amount realised as job charges by the petitioners.

3. By the impugned order dated 31st January 1981 passed by the Assistant Collector, Customs & Central Excise, Dibrugarh, the said authority held that the

manufacture of Vaneer out of logs supplied by Vaneer Mills cannot be regarded as job works and as such exemption under Notification No. 119/75 aforesaid is not applicable in the case of the petitioner.

4. Accordingly, it was found that Central Excise duty was liable and leviable on the value of Veneers cleared from the factory and a sum of Rs. 13,250.65p. was assessed as such duty. An appeal was preferred against such order and the Appellate Collector of Customs, Central Excise, Calcutta respondent No. 3 did not find any justification to interfere with the order appealed against and the appeal was accordingly dismissed.

5. The writ petitioner being aggrieved had come up to this Court on the ground that peeling of timber in log form supplied as done by the petitioner was merely job work and the petitioner is entitled to the exemption granted under Notification No. 119/75C.E. as aforesaid. Petitioner has challenged that the impugned orders are contrary to and/or inconsistent with the provisions of law and the petitioner has sought for reliefs as indicated above.

6. The writ petition is contested by the respondents by filing affidavit and the respondents contend that the petitioner had an alternative remedy to ventilate its grievances before the appropriate authority against the order of the appeal authority. Without exhausting the said alternative remedy, the petitioner has come up to this Court and the writ petition accordingly ought not and should not have been entertained. It is however, placed on record that for exemption under the aforementioned notification, the following tests are to be satisfied:

(a) An article is required to be moved from a supplier for certain processing work to job worker:

(b) The job worker should do certain processing on that article;

(c) That article should be returned back to supplier after job work.

7. Having heard the learned Advocates for both the sides and considering the materials on record, this Court finds that the points as to job worker and the Notification No. 119/75-C.E. and the scope of the Item No. 68 have been considered in a decision reported in 1983 E.L.T. 876 (Cal.) (Associated Pigments Limited v. Collector of Central Excise, Calcutta and Ors.) wherein it was clearly found that the conversion of pure lead or lead ingots in sub oxide and lead monoxide does not amount to manufacture as envisaged by Section 2(f) of the Central Excise Act. It is well settled that when an article undergoes a manufacturing process, a new or different article emerges having a distinct name, character and use, and therefore "manufacture" does not mean merely to produce some change in its substance".

8. Applying such test to the instant case, this Court finds that the job undertaken by the petitioner company is not that of "manufacture" as envisaged u/s 2(f) of the Act. It is clearly found that the petitioner is entitled to exemption as per Notification No. 119/75-C.E. Once it is found that the petitioner is entitled to

such exemption, it is to be considered whether after entertaining the petition, the petitioner should be sent back to the Excise Authorities to seek alternative remedy.

9. It is also found in the self-same decision that if the writ petition has been entertained and the petitioner has established his case on merits, the petition cannot be dismissed on the ground of availability of alternative remedy. The view has been accepted in the said decision that since the High Court has discretionary power to direct refund of illegal tax or duty paid, therefore, it would be a travesty of justice to relegate the petitioner to fresh proceedings for refund of amount illegally collected in disregard of exemption granted by Notification No. 119/75-C.E., to the lower authorities.

10. On perusing all the materials on record and considering all the pros and cons and also the above reported decision, this Court finds that the petitioner herein has been able to substantiate its claim on merit that it is entitled to the benefit of Notification No. 119/75-C.E. Since the petitioner has put the case on merit, this Court does not appreciate that the ends of justice would be met by sending the petitioner to seek alternative remedies to the authorities concerned in another forum. This Court further finds that during the pendency of the present Rule, excise duty was illegally levied or realised from the petitioner which must be returned to the petitioner.

11. Hence the writ petition is allowed and the Rule is made absolute. Let a writ of Certiorari do issue quashing the impugned decisions being in Annexure "A", "B" and "C" to the petition and also a writ of Mandamus do issue commanding the respondents not to levy the excise duty on the petitioner's job work of peeling veneer from timber logs and to refund to the petitioner excise duty already levied and collected from the petitioner during the pendency of the present Rule. For such purpose two months' time is allowed to the respondent authorities. The petitioner would produce to the respondents authorities all necessary papers and documents within four months thereafter, and the appropriate authority will complete all necessary calculations and verifications and make the necessary refund in terms of this order.

12. There will be no order as to costs in this Rule.

13. Prayer for stay of operation of this order is refused.