(1995) 09 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No. 4714 of 1989

Travancore Rayons Ltd. — APPELLANT

Vs

Asstt. Collr. of Centl. Ex. and Others — RESPONDENT

Date of Decision : 14-09-1995

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Item 14

Citation : (1995) 61 ECR 8

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Sreedharan, J.—Petitioner is a Public Limited Company engaged in the manufacture of Cellophane. In the course of manufacture of Cellophane, petitioner manufactures Nitro Cellulose Lacquer. The Nitro Cellulose Lacquer manufactured by the petitioner is captively consumed in the petitioner''s own factory for coating Cellophane for moisture prevention. After moisture proofing, the excess is recovered and again re-used in the manufacture of Nitro Cellulose Lacquer again and again. In accordance with the orders issued by the Ministry of Finance, Government of India petitioner was paying duty on Nitro Cellulose Lacquer actually used for coating the Cellophane. No duty was being charged by the Government on the solvent which was recovered after coating and which enters in the process of manufacture of lacquer again and again. This is clear from Exts. P 1 and P 2 dated 28.8.1962 and 4.12.1964, communications issued by the Government of India in the Ministry of Finance. These communications state that Nitro Cellulose Lacquer actually consumed in the process of coating should be charged to duty and the solvent which is recovered after coating and which enters into the process of manufacture of lacquer again and again should not be subjected to duty. While the matters stood like that, a show cause notice was issued by the Range Officer, Central Excise Range Office, Muvattupuzha on 5.12.1972 calling upon the petitioner to show cause why the petitioner should not be made liable to pay duty amounting to Rs. 10,27,012.50/- on the quantity of nitro cellulose lacquer produced from 5.9.1972 to 4.12.1972. This show cause notice was presumably issued on the basis of the decision taken by the Central Board of Customs and Central Excise on 5.12.1972. Petitioner filed objections to that notice. While so, Government of India in the Ministry of Finance re-examined the matter and issued Ext. P 7 communication bearing No. F 51/5/70/CXB dated 7th February, 1973. For a proper understanding of that, I read the relevant portion:

It has now been decided that the manner of assessment of nitrocellulose lacquer conveyed in Ministry''s Order F. No. 11/3/62 CXVI dated 28.8.1962 (Ext. P 1 in this case) and F. No. 1/33/64-CXVI dated 4.12.1964 (Ext. P 2) should continue to hold good and a notification under Rule 8(1) of the Central Excise Rules, 1944 is proposed to be issued to place the matter beyond doubt.

By this it is clear that whatever might have been the decision taken by the Central Board of Customs and Central Excise, Government of India clarified the position that the solvent which was recovered after coating and which enters into the process of manufacture of lacquer again and again should not be subjected to duty. Pursuant to this communication dated 4.2.1972, Government of India issued Ext. P 10 notification on 9.6.1973. That notification is in the following terms:

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 the Central Government hereby exempts Nitrocellulose lacquer falling under item No. 14 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), actually not consumed in the process of coating moisture-proof cellophane from the whole of the duty of excise leviable thereon, subject to the condition that the solvent recovered after coating is returned to the process of manufacture of nitrocellulose lacquer.

2. In spite of the above decisions of the Government of India in the Ministry of Finance, respondents 1 and 2 took steps to realise the amount of Rs. 10, 27,012.50/- being the duty on the quantity of nitrocellulose lacquer produced during the period from 5.9.1972 to 4.12.1972. Since coercive steps have been taken against the petitioner, this Original Petition has been filed.

3. Learned Central Government Standing Counsel representing the respondents raised a contention that Ext. P 10 notification dated 9th June, 1973 is only prospective and the period covered by Ext. P 3 show cause notice was in relation to the anterior period. So the demand of duty on nitrocellulose lacquer for the said period is proper and not open to challenge. It is also contended that petitioner having not challenged the order and having allowed the order to become final is not to question the order of assessment at this distance of time.

4. Ext. P 10 notification does not state it has got any retrospective operation. But the circumstances under which Ext. P 10 happened to be issued are discernible from Ext. P. 7. Ext. P 7 dated 7.2.1973 is specific in stating that the orders

issued by the Government of India in Exts. P 1 and P 2 dated 28.8.1962 and 4.12.1964 respectively should continue to be in force. It is only after Ext. P 7, Ext. P 5 demand notice was issued on 17.2.1973. Further, when petitioner raised objection before the Superintendent (Technical), he informed the petitioner by Ext. P 9 dated 16.5.1973 that the demand made as per the show cause notice dated 5.12.1972 will be withdrawn on receipt of the proposed notification by the Government. In the light of this undertaking by the Superintendent and in the light of Ext. P 10 notification issued by the Central Government, petitioner was well within his rights in not challenging the demand made by first and second respondents before the higher authorities. In the light of Exts. P 1, P 2, P 7 and P 10, the assessment made by respondents 1 and 2 against the petitioner demanding a sum of Rs. 10,27,012.50/- as duty for the quantity of nitrocellulose lacquer produced during the period from 5.9.1972 to 4.12.1972 is clearly without jurisdiction. Since the order of assessment was one passed without jurisdiction, it was not incumbent on the part of the petitioner to challenge the same in terms of the provisions contained in the Act. Petitioner was well within his power to ignore the same.

In view of what has been stated above, Ext. P 5 order passed by the Assistant Collector, the first respondent and Ext. P 18 passed by the second respondent threatening coercive steps for the realisation of the amount of Rs. 10,27,012.50/- are quashed as having been passed without authority.

Original Petition is allowed as indicated above.