

(2000) 07 SC CK 0045
In the Supreme Court Of India
Case No : Civil Appeal 1274 of 1992

Union of India (UOI)

APPELLANT

Vs

Aflon Engineering Corporation

RESPONDENT

Date of Decision : 20-07-2000

Acts Referred:

Central Excise Rules, 1944 — Rule 8
Tariff Act, 1934 — Section 2A

Citation : (2001) 73 ECC 22 : (2000) 122 ELT 334 : (2001) 10 SCC 677

Hon'ble Judges : D. P. Mohapatra, J; B. N. Kirpal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Under tariff item 15A duty can be levied on artificial or synthetic resins and plastic materials. The rate of duty is specified under column 3 of the said tariff item.

2. Under Rule 8 of the Central Excise Rules, 1944 the Central Government has the power to issue a notification exempting from payment of duty certain excisable articles as is provided in any of the tariff items.

3. It is in exercise of this power under Rule 8 that a notification No. 68/71-C.E., dated 29-5-1971 was issued which reads as follows :

Exemption to Articles made of Plastics:

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts articles made of plastics, all sorts, falling under Sub-item (2) of Item 15A of the First Schedule to the Central Excises and Salt Act. 1944 (1 of 1944) except -

(i) rigid plastic boards, sheetings, sheets and films, whether or not; and

(ii) flexible polyvinyl chloride sheetings, sheets, films and lay-flat tubing's not containing and textile material, from the whole of the duty of excise leviable

thereon;

Provided that -

(a) such articles are produced out of the artificial resins and plastic materials or cellulose esters and others in any form falling under Sub-item (1) of the said item, on which the duty of excise of the additional duty u/s 2A of the Indian Tariff Act, 1934 (32 of 1934) as the case may be, has already been paid; or

(b) such articles are produced out of scrap of plastics.

4. The respondent is manufacturing plastic sheet. It claimed benefit of the said exemption notification on the ground that the plastic sheet manufactured by them was flexible, not rigid and, therefore, claimed total exemption from excise duty.

5. On 26-11-1975 show cause notice was issued to the respondent on the basis that the sheets manufactured by them were excisable and by an order dated 14-6-1976 it was held that the sheets manufactured by the respondent were liable to excise duty.

6. Respondent filed a writ petition challenging the said order and the same was dismissed on the ground that there was adequate alternative remedy by way of appeal. Against the said dismissal an appeal was filed before the Division Bench.

7. During the pendency of this appeal a notification No. 198/78 was issued whereby an explanation was added to the said exemption notification of 1971. The explanation, which was added, reads as follows :

Explanation :

For the purpose of this notification -

(i) the expression "flexible" in relation to an article made of plastic, means the article which has a modulus of elasticity either in flexure or in tension or not over 700 kilograms per square centimeter at 23 degree centigrade and 50 percent relative humidity when tested in accordance with the method of test for stiffness of plastics (ASTMO Designation D-474-63) for flexural properties of plastics (ASTM) Designation D-790-63 for Tensile properties of plastics (ASTM Designation D-638-63-T) or for Tensile Properties of Thin Plastic Sheeting (ASTM) Designation D-882-64-T).

(ii) the expression "rigid" in relation to an article made of plastic, means all articles other than "flexible" articles as defined in Clause (i).

8. As a result of this explanation the sheets which were manufactured by the respondent fell within the category of being rigid and, therefore, not entitled to the benefit of the exemption notification. The respondent then filed another writ petition being SCA No. 1300/79 for quashing the amendment notification dated 25th November, 1978 and also consequential trade notice dated 8th February, 1979. By impugned judgment dated 17th January, 1991, the writ petition was

allowed and the impugned notification of 1978 whereby the explanation was inserted was quashed with the High Court observing that the said notification was not consistent with the tariff item No. 15A inasmuch as the definition of the two words by the impugned notification was not consistent with the true meaning of the said words as used in the tariff item.

9. The Government has the power, as already noticed, to grant exemption by issuing a notification under Rule 8 of the Excise Rule which reads as follows :

Power to authorise exemption from duty in special cases :

(1) The Central Government, may, from time to time, by notification in the Official Gazette, exempt (subject to such conditions as may be specified in the notification) any excisable goods from the whole or any part of duty leviable on such goods.

(2) The (Central Board of Excise and Customs) may, by special order in each case, exempt from the payment of duty, under circumstances of an exceptional nature, any excisable goods.

10. In matters of taxation it is not a right of any one to claim exemption. Rule 8 gives the discretion to the Central Government to grant such exemption and to such items as it may think proper. In the present case, the Central Government had granted exemption from payment of excise duty, inter alia, on the manufacturers of flexible plastic sheets. The original notification of 1971 excluded rigid plastic sheets from the benefits of the exemption notification. As the respondent was unable to show that the plastic sheets manufactured by them was flexible, therefore, it claimed benefit of the notification.

11. The 1971 notification did not elaborate or specify as to what would be regarded as a rigid plastic sheet. In order that there should be no ambiguity as to what is to be categorised as a flexible or rigid material the explanation was inserted in 1978. It is rightly not being contended that the Central Government could not have included the explanation at the time when the notification was first promulgated in 1971. The Central Government could at that very first instance restrict the ambit of the exemption notification to a particular variety of goods. After all, no manufacturer has a right to claim exemption. It is a relief which is granted by the Government in case where it thinks appropriate and proper. Exemptions could be granted subject to certain conditions. They may even be granted, as in this particular case, to a small variety of items which would otherwise fall under tariff item 15A. If the explanation could have been inserted in 1971 when the exemption was first promulgated there is, in our opinion, no legal impediment in the Government issuing a notification which has the effect of amending an earlier notification and thereby restricting the operation of the exemption notification. Under the General Clauses Act when power is given to the Government to issue notification, there is inherent in the same power to amend the same. This is precisely what has happened in the present case.

12. We are unable to agree that the observation of the High Court in the instant case that the amendment which has been made which has the effect of defining the word "rigid" and "flexible" is not consistent with tariff item 15A which takes in within its ambit, inter alia, all types of categories of plastic sheets. Though both flexible and rigid plastic sheets are covered by tariff item 15A this categorisation of rigid and flexible has been done only with a view to provide exemption to flexible plastic sheets and not to rigid plastic sheets. By defining as to what would be regarded as flexible or rigid plastic sheets would not in any way amount to a conflict with tariff item 15A.

13. In our opinion, the High Court fell in error in quashing the notification of 1978. As a result of the aforesaid discussion, we allow the appeal and set aside the judgment of the High Court. By order dated 6-4-1992 this Court had permitted the respondent to claim refund subject to its furnishing guarantee and on its giving an undertaking that if the amount is ultimately found recoverable then the same shall be paid alongwith interest of 18% per annum. In view of the appeal being allowed the respondent has become liable to give back the refund if it has realised; along with interest at the rate of 18% per annum. If on the other hand, the respondent has not paid duty which was due and payable then the duty shall be paid alongwith interest at the rate of 18% per annum. If the amount is paid within 2 months from today the rate of interest shall be simple, if it is not paid within two months the amount of duty payable would be collected at 18% compounded every quarter ab initio.