

(1993) 04 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 6693 of 1983

Union of India (UOI)

APPELLANT

Vs

Bata India Ltd. and Others

RESPONDENT

Date of Decision : 19-04-1993

Acts Referred:

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

Citation : (1994) 2 PLJR 36

Hon'ble Judges : S. P. Bharucha, J;B.P.J. Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is preferred by the Union of India against the judgment of the Patna High Court allowing the writ petition filed by the Respondent herein- Bata India Ltd. The Writ Petition was filed by the Respondent questioning the notice of demand served upon it by the. Central Excise Authorities to pay the duty specified therein.

2. The Respondent is a renowned manufacturer of footwear in India. It has got its own factories at various places in the country. According to its case, it was also purchasing the footwear manufactured by certain small manufacturers and selling them under its own brand 'Jalsa' and 'Bata'. Respondents 4 to 7 in the writ petition (Respondent Nos. 2 to 5 in this appeal) are such small manufacturers.

3. Under Rule 8 of the Central Excise Rules, the Central Government issued a Notification being Notification No. 93/67 dated 26th May, 1967 exempting certain small manufacturers of footwear from the payment of duty. The said Notification was amended by Notification No. 103/76 dated 16th March, 1976. These notifications did not affect the Respondent. However, on 9th May, 1977, the Central Government issued another Notification (No. 88/77) in supersession of the earlier notifications, which reads as follows:

"NOTIFICATION" GENERAL EXCISES

G.S.R.--In exercise of the power conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules 1944, and in supersession of the Notification of the Government of India in the Department of Revenue and Banking No. 103/76 Central Excise dated the 16th March, 1976 the Central Government hereby exempts footwear falling under sub-item (1) of Item No. 36 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) from the whole of the duty of excise leviable thereon:

Provided that:

- (i) Such footwear is produced by or on behalf of a manufacturer in one or more factories, including the precincts thereof, wherein not more than 49 workers are working, or were working on any day of the preceding 12 months; and
- (ii) the total equivalent of power used in the manufacture of such footwear by or on behalf of a manufacturer in one or more factories does not exceed two Horse Power.

Explanation.--Where footwear, manufactured by a manufacturer, is affixed with brand or trade name, registered or not of another manufacturer or is purchased have been manufactured by or on behalf of such other manufacturer.

4. According to this Notification, foot wear produced by or on behalf of a manufacturer in premises wherein not more than ten workers are working and in which manufacturing process power consumption not exceeding two Horse Power is used, is exempted from duty. (The said Respondents 4 to 7 satisfy this requirement). The Notification however, says further that where the footwear manufactured by such a manufacturer affixed with the brand or trade name of another manufacturer or is purchased by such other manufacturer, "it shall be deemed to have been manufactured by or on behalf of such other manufacturer." Applying the explanation (sic) appears, the Central Excise Authorities had issued a demand notice to Bata India Limited (Respondent herein) treating it as the manufacturer.

5. The Respondent did not choose to pursue the remedies prescribed by law but chose to approach the High Court straightway. Its contention was that inasmuch as it is only a purchaser from the small manufacturers, it cannot be deemed to be the manufacturer or producer, merely because it affixes its brand thereon and sells them. It questioned the validity of the Explanation aforesaid. According to it, Rule 8 does not empower the Central Government to create a duty liability where none exists under the statute nor does it enable the Central Government to shift the duty from the manufacturer/producer to someone else who is not the manufacturer/purchaser of the goods concerned. In the counter-affidavit filed by the authorities they not only justified the validity of the Notification and the Explanation but raised the further contention that Respondent Nos. 4 to 7 in the writ petition were really ancillaries of the Respondent. It was the case of the

revenue that the said Respondent Nos. 4 to 7 were supplied with machinery and raw material by Respondent and that even the labour charges were paid for by the Respondent. In these circumstances, it submitted, the Respondent was the real manufacturer and that the duty was rightly levied upon it.

6. The High Court allowed the writ petition holding that the Explanation in the aforesaid Exemption Notification is beyond the competence of the Central Government. It held that in exercise of the power of exemption granted by Rule 8 of the Central Excise Rules, a condition can certainly be imposed while granting exemption but that condition should be qua the manufacturer/producer. It held that the said power cannot be employed to shift the liability of the manufacturer/producer to a person who is not the manufacturer of producer of such goods. Section 3 cannot be overridden by a notification under Rule 8 it held. So far as the contention of the revenue that Respondents 4 to 7 in the writ petition were ancillaries of the Respondent is concerned, the High Court brushed it aside observing that the basis of the impugned demand was the Explanation in the Notification and not that the Respondents 4 to 7 were its ancillaries.

7. In our opinion, this was not a matter which the High Court should have entertained under Article 226, more particularly when the Union of India, raised a dispute with respect to the relevant factual situation. The notices issued to the Respondent prior to the filing of the writ petition did not speak of the. Explanation aforesaid; they did not spell out their stand clearly; they referred to the Notification as such-though the Respondent referred specifically to the Explanation in his letters. Be that as it may, it was appropriate that the true factual situation is ascertained first, before pronouncing upon the question of law. If the factual situation alleged by the authorities is true, it changes the entire complexion of the controversy. We are, therefore constrained to set aside the judgment of the High Court on the said ground. The result is that the declaration made by the High Court with respect to the validity of the Explanation in the Exemption Notification aforesaid stands set aside. The demand notices issued to the Respondents are also quashed herewith. We make it clear that it shall be open to the authorities to issue fresh demands upon the persons liable to pay the duty after investigating the necessary facts and an adjudication according to law. If and when they do so, it is made clear, the question of limitation shall not be raised by the Respondent for the period of pendency of these proceedings.

8. In view of the above opinion of ours, it is not necessary to go into the question of maintainability of the writ petition which was raised in the High Court with reference to the provisions of the 42nd Amendment Act, then in force.

9. The appeal is allowed with the above directions. There will be no order as to costs.