(1997) 01 SC CK 0037

In the Supreme Court Of India

Case No : Civil Appeal No. 1922 Of 1982

Union of India (UOI) APPELLANT

Vs

Narendra Engineering Works RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (1998) 79 ECR 234 : (1998) 101 ELT 572 : (1997) 11 SCC 98

Hon'ble Judges : A. M. Ahmadii, C.J;S. C. Sen, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The respondents are engaged in processing forgings supplied to them into connecting rods of different sizes as per the requirement of the suppliers by job work. After the raw material in the form of connecting rod forgings is received by the respondent the following process is applied on those forgings, namely, (1) Boring; (2) Knotching; (3) Facing; (4) Gun metal bush processing for small ends; (5) Fine boring (cutting etc.); and (6) Oil hole drilling. The raw material after having undertaken all the above processes emerges as a finished product known as connecting rods. The question is regarding assessment of duty payable on these connecting rods.

2. There is no dispute that the respondents are a small scale industry. They, by job work, manufacture connecting rods for diesel engines and tractOrs. They claim exemption under Notification dated 1st March, 1979. For claiming that exemption certain conditions set out in the notification have to be satisfied, one of them being that the value of the unit should not exceed Rs. 10 lacs and the value of the goods should not exceed Rs. 15 lacs. It appears that the assessee wrote a letter to the Assistant Collector on 24-8-1979 stating that the Jurisdictional Superintendent of Central Excise had informed them that in the computation of value limit to determine the duty liability as contemplated by the notifications, the value of raw materials plus the job charges had to be

determined u/s 4 of the Central Excises and Salt Act. The assessee contended that the mode of computation of value indicated by the Jurisdictional Superintendent of Central Excise had no support in law. They, therefore, desired to know whether the stand taken by the Jurisdictional Superintendent had the Board''s concurrence. In reply to the said letter the Assistant Collector, by his letter dated 7th September, 1979 informed that the decision of the Superintendent is correct as per law. After the receipt of this letter, the respondents filed a writ petition in the High Court of Judicature at Bombay, being Writ Petition No. 3075 of 1979, which was disposed of by a Divisional Bench on 6th November, 1981. The Division Bench gave the following direction: The respondents are directed not to act upon the letter dated 7th September, 1979 and to include only the job work charges for the purposes of calculation of the aggregate clearance of the petitioners under the notification dated 1st March, 1979. The respondents shall proceed to determine whether the petitioners are entitled to exemption under the said notification upon the said basis.

Feeling aggrieved by this direction, the Union of India has preferred this appeal.

3. We have heard learned Counsel for the parties and we deem it necessary to make it clear that since the respondents had approached the High Court directly, the machinery under the Central Excises and Salt Act had not been set into motion and, therefore, there is no decision of the Excise authorities on the question whether the respondents satisfied the conditions for exemption. Since there is no adjudication by the authorities on the issue raised in the Writ Petition, the High Court also felt constrained to direct the authorities to determine whether the assessee is entitled to exemption under the said notification. It seems clear to us in the back-drop of the above facts that since no exercise was undertaken by the Excise authorities under the Statute, the question of computation of value for the purposes of payment of excise duty in cases where the job work results in processing forgings supplied by the suppliers converting themselves into connecting rods of different sizes, the exercise will have to be undertaken by the authorities under the Statute. The facts in the instant case are clear, namely, that the assessees engage in job work by processing forgings supplied to them into connecting rods of different sizes. In such a situation, how the value is to be determined will be the subject matter before the authorities under the Statute. They will have to determine the value as per the law settled by this Court by different decisions rendered in this behalf. We would, therefore, only modify the order of the High Court by saying that the authorities may determine the value as per the law as explained by this Court and thereafter consider the question of application of the exemption notification dated 1st March, 1979.

4. With this modification, we dispose of this appeal. There will be no order as to costs.

