

(1982) 05 P&H CK 0033
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3225 of 1973

Unique Industries

APPELLANT

Vs

Superintendent (Prevention), Central Excise Collectorate and
Others

RESPONDENT

Date of Decision : 03-05-1982

Acts Referred:

Central Excise Rules, 1944 — Rule 174
Central Excises and Salt Act, 1944 — Section 6
Constitution of India, 1950 — Article 226, 227

Citation : (1982) 10 ELT 349

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; A.S. Brar, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—The petitioner, approaching this Court under Articles 226/227 of the Constitution of India, is a partnership concern engaged in the business of manufacture of Spring Balances, Weighing Machines and other articles. On 9-1-1973 a party of the Central Preventive Staff raided the factory premises of the petitioner, and seized their records and accused it of having contravened the provisions of Section 6 of the Central Excises and Salt Act, 1944 and Rule 174 of the Central Excise Rules, 1944 framed thereunder. In due course, the petitioner received a show cause notice dated 8/12-6-1973 (Annexure P. 11). Instead of meeting the show cause notice, it approached this Court to forestall the action.

2. The dispute between the petitioner and the Department seemingly is two-fold: (1) Whether the articles manufactured by the petitioner fall in the category of Item No. 40 of the First Schedule to the aforesaid Act, to mean steel furniture" and (2) whether the articles are manufactured with the aid of power. Concededly, question No. 2 is a question to be determined by the Excise Authorities, as it is essentially a question of fact. Some effort has been made to convert question

No. 1 to be a question of law and jurisdiction. According to Seth Bhagirath Das, learned counsel for the petitioner, the articles, manufactured by the petitioner are hospital equipment so as to be outside the purview of Item No. 40. The correspondence appended with the petition, on the other hand, does give an indication that the inventory of seizure prepared by the Departmental Authorities has termed those articles to be "steel furniture" coverable under Item No. 40. In either situation, the articles remaining the same, it is by a set of reasoning that the true and legal nomenclature is to be applied to them. There, again, the Excise Authorities are the initial Judges for the purpose. There is some authority for the view, as put forth by Seth Bhagirath Das, learned counsel for the petitioner, that furniture is distinct from hospital equipment as was noticed in the context of U.P. Sales Tax Act, in the matter of Imperial Surgico Industries, Lucknow v. Commissioner, Sales Tax, Uttar Pradesh, Lucknow, 32 Sales Tax Cases (Vol. XXII) 201. The Bombay High Court has taken the view in Material Handling Engineering Co. v. M.G. Waknis, Superintendent of Central Excise and Ors. 1980 E.L.T. 231 (Bom). in the context of Item No. 40 of the Act in question that the word "furniture" has got a peculiar connotation and indicates that these articles can be used for the convenience or comfort of a human being either in the house or in the office. It seems that in that precedent, the use established of the article has been brought to the forefront. Be that as it may, this appears, again, to me but only a question of fact which has to be decided by the authorities dealing with the matter.

3. On the aforesaid analysis of the problem, this petition cannot make any headway, for nothing logical can be concluded therefrom. This Court refrains to undergo the exercise in deciding questions of fact. It is only on the establishment of facts that a weighty question of law can sometimes arise. In the present case, the petitioner cannot be granted any relief. Accordingly, this petition fails and is hereby dismissed, leaving the petitioner to answer to the show cause notice and establish its facts before the Departmental Authorities in accordance with law and to their satisfaction. No costs.