

(1969) 09 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3257 of 1969

Venus Rubber Industries

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-09-1969

Acts Referred:

Central Excise Rules, 1944 — Rule 174, 174(2), 175
Central Excises and Salt Act, 1944 — Section 2, 3, 35, 36, 6
Constitution of India, 1950 — Article 226

Citation : (1978) 2 ELT 490

Hon'ble Judges : Kondaia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kondaia, J.—This application by the petitioners under Article 226 of the Constitution is for the issuance of a writ of mandamus declaring the requirement in the letter No. C.C.456 of 1969 dated 28.7.1969 of the Superintendent of Central Excise as invalid and that it is not necessary for the petitioners to obtain a licence u/s 6 of the Central Excises and Salt Act 1944 (hereinafter called the Act.)

2. The learned counsel for the petitioners strenuously contends that the petitioners are not manufacturing excisable goods within the meaning of Section 2(d) of the Act, that there is no notification made by the Central Government as required by Section 6 of the Act, and Rule 174 of the Central Excise Rules made under the Act is not applicable to the petitioners and that the footwear below the value of Rs. 5/- per pair has been exempted by the Central Govt. by its notification u/s 3 dated 27-7-1967 and hence the petitioners are not required to take out a licence under the Act.

3. On notice being given to the counsel for the Central Government the Central Government Standing Counsel has appeared and urged that Rule 174(2)(a) is applicable to the petitioners, that the payment of excise duty is different from

taking a licence under Rule, 174 of the rules and that the very notification on which the petitioners are relying clearly shows that the petitioners should continue to take licences and there is no merit in this writ petition.

4. Section 2(d) of the Act defines "excisable goods" as "goods specified in the First Schedule as being subject to a duty of excise and includes salt".

Item 36 of the First Schedule reads thus:

* * * *

5. u/s 3 of the Act, duties are levied and collected on all excisable goods other than salt which are produced or manufactured in such manner as may be prescribed at the rate or rates specified in the First Schedule. u/s 6, every person who was engaged in the production or manufacture or any process of the production or manufacture of any specified goods included in the First Schedule or of salt petre or of any specified component parts or ingredients of such goods or specified containers of such goods, or the wholesale purchase or sale or the storage of any specified goods included in the First Schedule is required to take a licence as per the notification made by. the. Central Government in the Official Gazette. u/s 7 every licence granted u/s 6 shall be subject to restrictions and conditions if any, relating to any areas, or period or form containing such particulars, as may be prescribed. Rule 174 of the rules made thereunder the Act requires the manufacturers, traders or other persons to take out a licence. That rule reads thus :-

"Every manufacturer, trader or person hereinafter mentioned, shall be required to take out a licence and shall not conduct his business in regard to such goods otherwise than by the authority, and subject to the terms and conditions of a licence granted by a duly authorised officer in the proper form."

6. Rule 174(2)(B) relating to other excisable goods except salt specifically mentions the class of manufacturers. Rule 175 prescribes the procedure for obtaining licence as required under Rule 174. Rule 175 gives the form of application.

7. It is clear from the facts stated in the affidavit that the petitioners are manufacturers of footwear which is admittedly "excisable goods" within the meaning of Section 2(d) of the Act. Rule 174(2)(a) is certainly applicable to all classes of manufacturers of excisable goods. There is no dispute about this aspect. The only submission of Mr. Upendralal Waghay is that by virtue of the notification made by the Central Government on 27-7-1967, all footwear whose assessable value does not exceed Rs.5/- per pair, has been completely exempted with retrospective effect from 26-5-1967 and his clients are manufacturing only footwear whose cost is less than Rs. 5/- per pair and they are not required to take out licences as contemplated under Rule 174 of the rules. Clause (iii) of the very notification, on which strong reliance has been placed by learned counsel reads thus:

"All power operated footwear factories falling in the exempted sector shall continue to be licensed"

8. It is not in dispute that the petitioners are having factories operated by power in manufacturing footwear. The owners of power operated footwear factories, though manufacturing footwear whose assessable value is not more than Rs. 5/- per pair have to take out a licence as per Clause (iii) of the notification referred to above. On a close reading of the material provisions of the Act and the rules made thereunder, it is clear that the payment of excise duty under the Act is different from the payment of licence fee to obtain a licence for the manufacture of footwear. By virtue of Clauses (i) and (ii) of the notification dated 27-7-67 the petitioners may not be liable for payment of excise duty but still they are bound to take out a licence as required by Rule 174. I do not find any illegality or impropriety much less want of jurisdiction in the impugned notice sent by the 2nd respondent. There is absolutely no merit in any of the contentions raised by the petitioners.

9. That apart, the very conduct of the petitioners that they have filed similar applications in the previous year is also a point against the petitioners. The petitioners are entitled to raise all the objections including the objections now raised before this Court under Article 226 of the Constitution before the licensing authority and have a decision on all the points. In case the decision of the licensing authority goes against the Petitioner there is a regular right of appeal provided u/s 35 of the Act to any Central Excise Officer not below the rank of an Asstt. Collector of Central Excise, and thereupon a right of revision is provided u/s 36 to the Central Government. There are adequate and effective statutory remedies provided under the Act. The writ petition is liable to be dismissed in limine on that short ground alone apart from the fact that there are no merits in this petition.

10. In the result, the writ petition fails and is dismissed.