(1981) 11 MAD CK 0016

In the Madras High Court

Case No : Writ App. No''s. 334 and 335 of 1981 and Writ Petition No. 4836 etc. of 1981

Witco Match Works, Kalugumalai and Another APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 10-11-1981

Acts Referred:
Central Excise Rules, 1944 — Rule 8(1)

Citation : (1983) 3 ECR 218 : (1983) 12 ELT 345

Hon'ble Judges : V. Ramaswami, J;Sengottuvelan, J

Bench : Division Bench

Advocate : S.A. Kareem and Janakiraman, for the Appellant; K.N. Balasubramaniam, Addl. Central Govt. Standing Counsel, for the Respondent

Judgement

V. Ramaswami, J.—In respect of matches which is an excisable commodity, the Central Government issued a notification No. 42 of 1981,

dated 1st March, 1981, in exercise of their powers conferred on them under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and that

reads as follows -

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts matches

in or in relation to the manufacture of which none of the following mechanical process, namely :-

(i) box making;

(ii) frame filling;

(iii) dipping of splints in the composition for match heads;

(iv) filling of boxes with matches;

(v) labelling or banderolling, or both; and

(vi) packaging,

is ordinarily carried on with the aid of power, falling under item No. 38 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944)

and cleared for home consumption by a manufacturer; from so much of the duty of excise leviable thereon as is in excess of Rs. 4.50 per gross

boxes of 50 matches each :

Provided that -

(i) in the case of matches packed in boxes in which both the outer slide as well as the inner slide are made of card board, the amount of exemption

shall be increased by sixty paise per gross of boxes;

(ii) in the case of matches packed in boxes in which the inner slide alone is made of card board, the amount of exemption shall be increased by

twenty-four paise per gross of boxes;

(iii) the amount of exemption shall be increased, or further increased, as the case may be, by fifty paise per gross of boxes if bamboo is used for

the splints or for both splints and veneers;

(iv) if the splints of such matches are made of bamboo and the matches are packed in boxes of 40s, the rate of duty shall be four-fifths of the rate

applicable to matches of identical description produced in the same factory but packed in boxes of 50s and if such packing in boxes of 50s is not

done, it shall be four-fifths of the notionally determined rate for matches packed in boxes of 50s.

This notification shall come into force on the 1st day of April, 1981.

(vide Notification No. 42/81-CE, dated 1-3-1981 as amended by notification No. 88/81-CE, dated 31-3-1981 and notification No. 89/81- CE,

dated 31-3-1981),

2. The petitioners who manufacture matches, put back the same in boxes in which the outer slide alone is made of card board, claimed that they

are also entitled to the benefit of exemption and the demand by the first respondent for payment of excise duty at the rate of Rs. 4.50 per gross

boxes of 50 matches each, was illegal. It may be mentioned that under item 38 of the First Schedule to the Central Excises and Salt Act 1944, the

normal rate of duty is Rs. 1.30 for every 1000 matches or fraction thereof, so that for a gross boxes of 50 matches, each, the normal duty payable

will be Rs. 10.40. Under the notification above cited, if in relation to the manufacture of matches, mechanical processes are involved, excise duty

was payable only at the rate of Rs. 4.50 per gross boxes of 50 matches each and the exemption covered the duty payable for over and above the

said sum of Rs. 4.50. A further exemption is provided even among those who manufacture matches not using mechanical processes, in cases

where matches are packed in boxes in which both the outer slide as well as the inner slide are made of card board or where such matches are

packed in boxes in which the inner slide is made of card board. As already stated, the petitioners herein are manufacturers of matches where the

matches are packed in boxes in which the outer slide alone are made of card board, on the ground that the notification did not cover such

categories and that the first respondent demanded duty to be paid at the rate of Rs. 4.50 per gross boxes of 50 matches each.

3. The learned counsel for the petitioners contended that clause (1) of the proviso dealt with a case of matches packed in boxes in which both the

outer slide as well as the inner slide are made of card board and the further exemption granted was 60 ps. Clause (ii) dealt with cases of matches

packed in boxes in which the inner slide alone is made of card board and the amount of increased exemption was 24 ps. per gross of boxes. Since

an exemption of 60 ps is provided for cases where both the outer slide and the inner slide are made of card board and since an exemption is

provided in case where the inner slide alone is made of card board, there was no need for providing another class or classification of matches

packed in boxes in which the outer slide alone is made of card board. According to the learned counsel, the difference between 60 ps and 24 ps.

above referred to represents the concession that should be granted to a case where the outer slide alone is made of card board and since any

further clause would be a surplusage, the notification had not mentioned anything about the outer slide alone made of card board. Though the

argument is attractive, we are unable to agree with this contention of the learned counsel. We are construing a provision in the notification which is

in the nature of an exemption from normal levy of excise duty. In the circumstances, we have normally to interpret it in its ordinary, natural and grammatical sense and it will not be possible for us to import any notion of policy or otherwise to enlarge the exemption as such to categories

which are not expressly covered. The learned counsel for the revenue contended that the exemption was really a concession meant to be available

for users of inner slide alone as that seems to be the purpose of the notification itself. The learned counsel gave certain possible reasons for such

restrictive concession, but since that has not been spelt out in the counter affidavit filed in these cases, we are unable to give that as the reason for

such exemption. Whatever may be the reason, since the notification specifically do not cover a case where the outer slide alone is used made of

card board, we are unable to agree with the learned counsel for the petitioners that they are also to be given some exemption in the matter of

payment of excise duty. The learned counsel also contended that having regard to the policy of the Government to encourage the use of card

board in the manufacture of boxes for packing the matches, there is no difference between a manufacturer who uses boxes in which the outer slide

alone is made of card board and the manufacturer who uses card board for making the inner slide alone or those who make both the outer slide

and the inner slide out of card board. If there is no such distinction among those manufacturers, the differential levy of excise duty would amount to

discrimination violative of Article 14 of the Constitution. Alternatively, the learned counsel also contended that if two constructions of the

notification were possible, one consistent with the notification being valid and not discriminative and the other interpretation which will lead to a

discrimination, that interpretation which will validate the notification that should be adopted by this Court rather than adopting an interpretation

which will make it discriminatory and void. Though the principle as such is quite sound and valid, we are unable to agree with the learned counsel

that the notification permits of two different interpretations. As we have stated already, the ordinary, natural and grammatical interpretation will not

lead to any such two different interpretations. If, on the ground that those who use the card board for making the inner slide alone are given the

exemption and not those who are using card board for making the outer slide alone, the notification is to be held discriminatory, we need more

facts as to the cost involved, as to why one could not be distinguished from the other and all other relevant factors. On the materials available, we are unable to say that there is no such distinction between manufacturers who use boxes the outer slide of which are made of card board and those

who use boxes in which the inner slide alone is used as card and they are not two different categories, having regard to the fact that excise duty

also has a bearing on the cost of manufacture. In fact, at one stage the learned counsel for the petitioners could not seriously dispute when we

pointed out that the use of inner slide made out of card board is not generally resorted to for the reason that it is too thin and therefore too flexible.

Of course, the learned counsel would not concede this. But having ourselves seen the inner slide, we think that that might have been the reason for

the Government making such distinction between the use of card board for inner slide and the use of card board for outer slide. Any way, the

reason may be anybody''s guess. But the notification is plain and it does not cover the cases of outer slide alone being made of card board for

exemption. Accordingly, the writ petitions are liable to be dismissed and they are dismissed. The rule nisis are discharged. There will be no order

as to costs.

4. Though the interim injunctions granted pending the writ petitions will lapse along with the writ petitions by way of abundant caution, we vacate all

the interim injunctions granted in these cases. The writ appeals are dismissed. There will be no order as to costs.

