

(1982) 02 DEL CK 0013
In the Delhi High Court
Case No : C.W. No. 1824 of 1979

Zenon Electronics Private Limited and others	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 05-02-1982

Acts Referred:

Citation : (1982) 10 ELT 454

Hon'ble Judges : Prakash Narain, C.J;S.S. Chadha, J

Bench : Division Bench

Judgement

Mr. Prakash Narain, C.J.—The first petitioner is a company registered under the Companies Act, 1956, which carries on the business of manufacture and sale of radio sets, tape recorders and combinations thereof. The second petitioner is the Managing Director of the first petitioner company as also a shareholder thereof.

2. The first petitioner states that it carries on its manufacturing activities in an industrial unit with capital investment of the value of not more than Rs. 10/- lakhs. This fact is not disputed and indeed admitted by the respondents.

3. Transistorized radio-sets attract excise duty under Item 33A of the First Schedule to the Central Excises and Salt Act, 1944. The duty is livable on an ad valorem basis as a percentage of the value of the goods. Normally, Therefore, the manufacture by the first petitioner of radio sets would attract duty of excise. The first petitioner, however, claims exemption from payment of duty of excise by virtue of an exemption Notification No. 208/77-CE, dated July 2, 1977 (Copy Annexure "B" to the petition). Under this notification exemption can be claimed if two conditions are fulfilled ,namely, each radio, including transistors set, is of a value not exceeding Rs. 165/- and such radios are manufactured in an industrial unit in respect of which an officer not below the rank of Assistant Collector of Central Excise in satisfied that the sum total of the value of the capital investment made from time to time of plant and machinery only of the said industrial unit is not more than Rs. 10 lakhs. As we have noticed earlier, it is not disputed that the industrial unit of the first petitioner has a capital investment of

not more than Rs. 10 lakhs to fall within the ambit of the Notification No. 208/77-CE, dated July 2, 1977. It is also not in dispute that the radio sets manufactured, which are subject matter of dispute in the present petition, are of a value not exceeding Rs. 165/- per set.

4. It seems the first petitioner had surplus manufacturing capacity and in consequence it accepted an order placed by the Gramophone Company of India Ltd., Calcutta, to manufacture and sell to the said Gramophone Company 2000 pieces of two-band transistor radios per month. According to the terms settled between the Gramophone Company and the first petitioner each of the said set manufactured was to be priced at Rs. 105/-. Payment was to be made against delivery or proof of dispatch and delivery had to be made in accordance with a certain delivery schedule. The earlier classification list submitted by the first petitioner so as to claim exemption under the aforesaid Notification No. 208/77-CE was, admittedly, accepted by the respondents' authorities. A dispute was raised with regard to the petitioners' claim for exemption as a consequence of the aforesaid supply order accepted by the first petitioner from the Gramophone Company. The stand taken was that for the sets supplied by the first petitioner to the Gramophone Company the latter must be regarded as the manufacturer in view of the fact that the said sets bore the brand name of Gramophone Company and, Therefore, it will be the capital investment of the Gramophone Company which would become relevant for ascertainment of the claim of the first petitioner to exemption postulated by Notification No. 208/77-CE. In the return two alternative stands have been taken by the respondents. They contend that the first petitioner and the Gramophone Company would fall within the mischief of the term "related persons", as defined in Section 4(4)(e) of the Central Excises and Salt Act and the first petitioner and the Gramophone Company are also interested in the business of each other. At the Bar yet one other point has been urged and that is that Notification No. 158/77 also covers the same goods and under that notification exemption, as claimed by the first petitioner, could be denied.

5. In our view the stand taken by the respondents on any of the points urged is wholly untenable. A reading of the order placed by the Gramophone Company and accepted by the first petitioner (Annexure "D" to the petition) leaves no manner of doubt that goods are manufactured first by the first petitioner by virtue of an order placed by the Gramophone Company in accordance with the requirements of the Gramophone Company but the said goods manufactured are sold to the Gramophone Company. By no stretch of imagination can the Gramophone Company be regarded as the manufacturer of the goods in question. Furthermore, the exemption Notification No. 208/77-CE does not speak of a "manufacturer". It speaks of manufacturer in an industrial unit. Surely, the industrial unit in which the radios are manufactured on the order placed by the Gramophone Company is not an industrial unit of the Gramophone Company and, in any case, is a distinct industrial unit. Admittedly, this industrial unit falls within the ambit of the aforesaid Notification as the admitted value of the capital

investment, plant and machinery, of this industrial unit is not more than Rs. 10 lakhs. The price on which the radios are sold by the first petitioner to the Gramophone Company at arm's length is Rs. 105/- per set. Both the conditions of the notification being satisfied, the petitioners are entitled to claim the exemption postulated by the said Notification No. 208/77-CE.

6. The Contention that the first petitioner and the Gramophone Company are "related persons" or have interest in the business of each other cannot be accepted. No agency is proved on the record and the case is clearly covered by our judgment in *M/s. Sylvania & Laxman Ltd. v. Union of India and others*, C.W. No. 511 of 1979, in which the judgment has been announced this morning. Indeed, we need not even decide this issue in view of our finding that the industrial unit to be taken into consideration is the one in which the first petitioner manufactures the aforesaid radio sets. We have dealt with it only because it is mentioned in the return.

7. Lastly, we have to reject the contention that respondents could take advantage of Notification No. 158/77. It has never been the petitioners' case that the first petitioner claims exemption under Notification No. 158 of 1977. The petitioners are claiming and are entitled to exemption under Notification No. 208/77-CE so long as that notification continues to be in force and is not rescinded.

8. In view of our above finding, we make the rule absolute and issue a writ of certiorari quashing the demand dated October 26, 1979 (Annexure "F") and demand dated December 14, 1979 (Annexure "Q"). We also quash the show cause notice dated November 7/8, 1979 (Annexure "G"). We further issue a mandamus to the respondents to permit the petitioner to avail of the benefit of exemption under Notification No. 208/77-CE, dated July 2, 1977 in respect of the goods manufactured by it and supplied and sold to the Gramophone Company, being HMV 2 Band TR 402 Ranger radio transistors sets by virtue of the order placed on the first petitioner by the Gramophone Company's communication dated August 13, 1979 (Annexure "D"). We further prohibit the respondents from insisting that the first petitioner should file a fresh classification list or price-list in part IV and direct that the first petitioner be permitted to clear the said HMV radio sets on the basis of the classification list dated November 16, 1979 already submitted. The said list should be approved by respondents 2 and 3 to enable the first petitioner to clear its goods. The petitioners will be entitled to their costs. Counsel's fee Rs. 500/-.