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Court : Mumbai

Decided On : Feb-09-1984

Reported in : 1989(39)ELT531(Bom)

Judge : S.P. Bharucha, J.

Acts : Central Excise Rules, 1944 - Rule 8; [Central Excise Act, 1944](#) - Sections 2 and 11A

Appeal No. : Writ Petition No. 1113 of 1980

Appellant : Gitanjali Electronics

Respondent : H.R. Amarnani, Asstt. Collr. of C.E.

Judgement :

1. The 1st petitioner is a partnership firm. It is a small scale industry manufacturing radio sets as its industrial unit at Cotton Green, Bombay. The 2nd petitioner supplies to the 1st petitioner various components parts which go into the manufacture of the radios. Out of these the 1st petitioner supplies to the 3rd respondent several parts which go into the formation of panels. The 3rd respondent, after assembling the panels from the parts supplied by the 1st petitioner, sends the panels to the 1st petitioner. Thereafter, the 1st petitioner, using the panels and various parts supplied by the 2nd petitioner, assembles the radios.

2. On 2nd July 1977 a notification was issued under Rule 8 of the Central Excise Rules, 1944, exempting radios falling under Item 33A(2) of the First Schedule to the Central Excises and Salt Act, 1944, of a value not exceeding Rs. 165/- per set from the whole of the excise duty leviable thereon. The proviso thereof reads thus :

'Provided that the sets are manufactured in an Industrial Unit in respect of which an officer not below the rank of an Assistant Collector of Central Excise is satisfied that the sum total value of the capital investment made from time to time on plant and machinery only is not more than rupees ten lakhs.

Explanation - For the purposes of determining the value of any capital investment only the face value of such investment at the time when such investment was made shall be taken into account.'

3. In November 1977 the 1st petitioner claimed exemption under the said notification and was given approval. On 1st January 1980 the 1st petitioner shifted to new premises and, by reasons thereof, was required to seek approval again, which was given.

4. On 11th April 1980 the officers of the Central Excise seized radios at the unit of the 1st petitioner. They also seized panels at the premises of the 3rd respondent. On 10th April 1980 the office of the 1st petitioner, the Assistant Collector, Central Excise, served upon the 1st petitioner a notice. It stated that the exemption under the said notification did not appear to be admissible in view of the reasons therein given. The first of the reasons stated was that the radios could not be said to be manufactured at the premises of only the 1st petitioner inasmuch as the 1st petitioner received panels from the 3rd respondent, which were fitted to the radios. The third reason was that the work was being done by the 1st petitioner on job contract basis for the 2nd petitioner. The other reasons we are not here concerned with. The 1st petitioner was directed to show cause why the claim for exemption should not be rejected. On 3rd May 1980 the 1st petitioner's attorneys showed cause and submitted that the radios came into existence for the first time in its unit as a result of manufacture by it.

5. On 8th August 1980 the 1st respondent rejected the petitioner's claim for exemption. He found that the 1st petitioner had the status of a contractor, and the manufacturer within the meaning of Section 2(f) would be the 2nd petitioner. This was an irrelevant point because the exemption went with the radios manufactured provided the conditions laid down by the said notification were fulfilled. It was not material whether the 1st petitioner or the 2nd petitioner was the manufacturer. From the facts it was seen that the 1st petitioner got an important part of the radios, viz., the panels manufactured by another unit, the 3rd respondent, on sub-contract basis. This clearly showed that the manufacture of the radios was done by two units, viz., the 1st petitioner and the 3rd respondent, and it could not be said that the radios were manufactured only in the industrial unit of the 1st petitioner.

Consequently, the radios would not be eligible for the exemption.

6. On 26th September 1980 this petition was filed impugning the order dated 8th August 1980.

7. On 27th September 1980 the Excise authorities served upon the 1st petitioner a notice to show cause why excise duty amounting to Rs. 6,53,097.66 should not be recovered from them and why penalty should not be imposed. The grounds upon which this notice was issued stated that the 1st petitioner had the status of contractor and the manufacturer of the radios was the 2nd petitioner. The exemption under the said notification went with the radios manufactured provided the conditions laid down in it were fulfilled.

8. The petition was amended to challenge the show cause notice dated 27th September 1980.

9. There is an affidavit in reply filed by one Gokhale, Assistant Collector, Central Excise, on 3rd February 1984. It says that the manufacture of the radio panel, which was an essential part of the radio, was done at the premises of the 3rd respondent. Therefore, the manufacture of the radio was done at two units, i.e., at the units of the 1st petitioner as also of the 3rd respondent. Hence, the 1st petitioner did not satisfy the condition of the said notification. Since the

manufacture of the radios was done by two units, it could not be said that the radios were completely manufactured in the premises of the 1st petitioner.

10. I shall deal with the order dated 8th August 1980 first. 'Manufacture' has been denied by the Supreme Court in *Union of India v. Delhi Cloth & General Mills*, : 1973ECR56(SC) , to mean the bringing in to existence of a new substance. The Supreme Court observed that it did not mean merely the production of some change in a substance. The observation in an American judgment was approved, namely, that 'manufacture' implied a change, but every change was not manufacture; and yet every change of an article was the result of treatment, labour and manipulation. Something more was necessary and there had to be transformation; a new and different article had to emerge having distinctive name, character or use. In *S.B. Sugar Mills v. Union of India*, : 1973ECR9(SC) , this definition was approved and the word 'goods' was also adverted to. It was said that to become goods the article had to be something which would ordinarily come to the market to be bought and sold and was known to the market. To such an article was the duty of excise attracted.

11. The goods in question here are radios. They are brought into existence in the unit of the 1st petitioner. The radios, therefore, must be held to be manufactured at the 1st petitioner's unit. The 3rd respondent produces panels which are used by the 1st petitioner in the manufacture of the radios, but it cannot be said on that account that the manufacture of the radios had taken place in two units, i.e. of the 1st petitioner and that of the 3rd respondent. In my view, therefore, the order dated 8th August 1980 must be struck down.

12. The show cause notice dated 27th September 1980 does not proceed on the same footing as the order dated 8th August 1980. The show cause notice proceeds upon the footing that the said notification does not apply because the 2nd petitioner is the manufacturer of the radios. This was a ground which was taken in the earlier show cause notice dated 10th April 1980. It was a point considered by the 1st petitioner when he passed the order dated 8th August 1980. He held that it was irrelevant. He rejected the petitioner's contention for exemption on the basis that the radios were manufactured not only in their unit but also in the

unit of the 3rd respondent and that, therefore, the condition of manufacture in one unit in the said notification was not satisfied. It is difficult to see how this contradictory stand could have been taken by the Excise authorities and how the dependent of the affidavit in reply failed to advert to the show cause notice dated 27th September 1980 and defended the order dated 8th August 1980. Having regard to the entirely contradictory stand taken in it, the show cause notice dated 27th September 1980 must also be struck down.

13. Rule absolute in terms of prayers (a) and (c). The reliefs under prayers (b) and (d) are not called for because the radios seized have been returned to the petitioners. No order as to costs.

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