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Court : Andhra Pradesh

Decided On : Nov-05-1970

Reported in : 1979(4)ELT600(AP)

Judge : Sharfuddin Ahmed and ;Vaidya, JJ.

Acts : Central Excise Rules, 1944 - Rule 10 and 10A; Central Excises Act, 1644

Appeal No. : Writ Petition No. 3354 of 1968

Appellant : Andhra Re-rolling Works and ors.

Disposition : Petition dismissed

Judgement :

Sharfuddin Ahmed, J.

1. The petitioner is a firm carrying on business of re-rolling having its factory at Moosapet near Sanatnagar, Hyderabad. On 16-6-1964, the 5th respondent (Surana Trade and Finance Corporation, Secunderabad) entered into a written agreement with the petitioner and during the period from 29-4-64 to 23-2-1966 entrusted about 3,000 metric tonnes of second class untested rails having purchased the same from Hindustan Steel Limited, Bhilai Division for the purpose of re-rolling it into M.S. rounds of different specifications. The rolling charges varied according to the size of the finished product. In accordance with the terms

of the said agreement, the rails were supplied by the 5th respondent to the petitioner and the petitioner re-rolled the said second class untested rails into M.S. rounds and delivered the same to the 5th respondent for which the petitioner received the requisite re-rolling charges. The contention of the petitioner is that under the provisions of the Central Excises and Salt Act, 1644 (hereinafter called the Act) rails are exempt from duty. The petitioner and the 5th respondent are under the impression that M.S. rounds rolled out of the duty free rails are also exempt from duty. But after the last delivery of the finished goods the Inspector of Central Excise issued to the petitioner demand notices dated 17-10-66 for Rs 98,191.95 and Rs. 37,707.90 respectively demanding payment as excise duty on the rounds re-rolled by the petitioner under tariff item No. 26AA in Schedule I of the Act. The demand notices were purported to have been issued under Rule 10A of the Central Excise Rules, 1944. Thereupon the petitioner made a written representation to the Assistant Collector, Central Excise that the demands were not valid and enforceable in law. But the Assistant Collector by his order dated 17-1-1967 rejected the contention of petitioner. He, however, gave direction to revise the demands in accordance with the rates of duty current for the different periods. Pursuant to it three demand notices dated 18-3-1967 for various amounts were issued. The petitioners filed an appeal to the Collector, Central Excise but the appeal was rejected and the demands were confirmed. A revision petition filed to the Central Government also met with the same fate. The petitioner was, therefore, obliged to file the writ petition.

2. It is submitted that the liability to pay excise duty attaches only to a manufacturer or producer of excisable goods and the petitioners do not fall within this category. The demand made more than three months after the removal of excisable articles would be clearly without jurisdiction and barred by Rule 10. The provisions of tariff item 26AA are not attracted and the various notifications, to which we shall shortly advert, grant relief to the petitioner and as such the demand notices issued by the Inspector of Central Excise are liable to be quashed. It was also suggested that the liability to pay the taxes, if any, would be with the 5th respondent and not with the petitioner.

3. 5th respondent filed a counter denying its liability to pay the taxes. It however did not admit or refute the various contentions raised by the petitioners firm against the legal validity of the levy by respondents 1 to 4.

Respondents 1 to 4 being Union of India represented by its Secretary, Ministry of Finance, Collector of Central Excise, Assistant Collector of Central Excise and the Inspector of Central Excise stated in their counter that M.S. rounds came under 'iron and steel products' under the Central Excise Tariff Item 26AA and that the demand notices were correctly issued. It was also urged that the definition of manufacturer was wide enough to cover the petitioner's case as well. In regard to the question of limitation it was stated that as Rule 10-A applied, the objection was untenable.

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10. The last contention on behalf of the petitioner is that he does not come within the definition of manufacturer and as such cannot be held liable for the excise duty. The definition of 'manufacture' in the Section is to be following effect.

'2 (f) manufacture includes any process incidental or ancillary to the completion of a manufactured product ... and the word 'manufacture' shall be construed accordingly and shall include not only a person who employs hired labour in production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account.'

The definition is comprehensive enough to include the petitioner within its ambit. It cannot be denied that the petitioner was engaged in the production of M.F. rounds and as such cannot accept the liability sought to be imposed on him. We are not concerned here with the contractual relation between the petitioner and the 5th respondent nor it is necessary to express any opinion on that aspect.

11. In the view we have taken the petitioner is not entitled to the relief asked for. The writ petition is accordingly dismissed with costs. Advocate's fee Rs 100.