

Raman Electricals Vs. Union of India (Uoi) and anr.

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Court : Allahabad

Decided On : Dec-10-1987

Reported in : 1988(35)ELT275(All)

Judge : R.M. Sahai and ;Om Prakash, JJ.

Acts : Central Excise Rules, 1944 - Rule 8(1); [Central Excise Act, 1944](#) - Sections 11A; [Constitution of India](#) - Article 226

Appeal No. : Civil Misc. Writ Petition No. 835 of 1985

Appellant : Raman Electricals

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : Central Government Standing Counsel

Advocate for Pet/Ap. : Sunil Gupta, Adv.

Disposition : Petition allowed

Judgement :

R.M. Sahai, J.

1. Principal issue raised in this petition is leviability of duty on goods manufactured and used for captive consumption.

2. The petitioner, a factory engaged in manufacture of electric transformers since 1972, started repairing of fused or defective transformers in 1975. Dispute is about payment of duty on value of parts produced in the factory and replaced in course of repair of transformer. In July, 1982 the Government of India in case of Electric Equipment Factory which also carried on repair of transformers decided that in common parlance repair was clearly distinguishable from manufacture, therefore, the repaired transformer did not attract duty under tariff item No. 68. On 28th September, 1983 the petitioner relying on this decision applied for refund of duty paid on repair of transformers from April, 1983 to September, 1983. The application was allowed by the Assistant Collector on 30th October, 1984 as the transformers were received from various electricity divisions of U.P. State Electricity Board under repairing contract and their repair did not amount to manufacture as held by Government of India. In November, 1984 the petitioner made another application for refund of duty paid on repair of transformers between 29th September, 1979 to 14th April, 1983. Since no order was passed the petitioner reiterated its claim by letters sent in February and October, 1985. But when no order was passed it invoked extraordinary jurisdiction of this Court on October, 1985. While entertaining the petition on 30th October, 1985 and inviting counter-affidavit the bench directed the Assistant Collector to dispose of the application for refund. But no orders were passed instead an order dated 18th December, 1985 was passed by Superintendent Central Excise without giving any notice to petitioner to pay duty on manufacture of certain parts used in process of repairs including coils etc. The order was passed presumably because since 24th October, 1983 the revised classification list showing that no duty was leviable on repaired transformer had been approved. On 5th February, 1986 this Court again directed opposite party to comply with its order dated 30th October, 1985. The Superintendent of Central Excise once again directed the petitioner on 4th March, 1986 to submit details of any pay (payment of) duty on old transformer after 24th September, 1983. On same day another notice was given Under Section 11A to petitioner to show cause as to why the amount of duty erroneously refunded for period 5th April, 1983 to 29th September, 1983 may not be recovered and on next day, that is, 5th March, 1986 the Assistant Collector issued a notice to show cause as to why the refund application of petitioner for the period 3rd October, 1979 to

5th April, 1983 may not be rejected as it failed, 'to prove that the new components and the fresh raw material used and replaced in the process of repairs (if excisable) has discharged the respective burden of duty'. The notice further required to show cause as to why should the claim be not rejected as barred by time. In reply it was stated, 'that in course of repair of damaged transformers, transformer oil or leg coils etc. are replaced and the invoice value represents the cost of these material plus painting and labour charges. All the materials and components used are purchased except the leg coils. Transformer oil, Procelain Bushings, Bushing metal parts and painting material etc. is purchased from the market and wire used in leg coils is also a purchased material.' In respect of leg coils it was claimed that it did not amount to manufacture. But even if it was assumed, 'that we manufacture leg coils and used them in transformers they are wholly exempted from duty by Notification No. 118/75 dated 30th April, 1975'. The Assistant Collector however, by its order dated 30th May, 1986 rejected the claim as the petitioner in course of repair replaced certain parts such as magnetic steel core which formed 40 per cent cost of transformer and electric coils of different sizes and some other part manufactured in the unit on which duty had not been paid before, replacing it in transformer. The claim was held to be barred by time as well as it related to period between September, 1979 to April, 1983 and the claim was made in November, 1983.

3. Although the order of Assistant Collector is in teeth of the decision of Government of India on nearly identical facts it cannot be sustained even on merits. The order of Superintendent Central Excise on 18th December, 1985 and 4th March, 1985 gives an impression that they were passed to create ground for rejecting the application for refund. It is not necessary to comment any further as the order of Assistant Collector suffers not only from manifest error of law but is palpably erroneous as it introduced facts without any foundation or basis. The finding that magnetic steel core was used appears to be assumptive. On what material the Assistant Collector recorded this finding has not been disclosed. Even the averments in sub-paragraph (s), (t) and (u) of paragraph of the amendment application averring that petitioner never manufactured or replaced magnetic core as it is not subject to replacement nor did any of its customers which is the Electricity Board, only, ever required it replace it has been specifically denied in

the counter-affidavit. What is astonishing is that the allegation that Electricity Board never asked the petitioner to replace magnetic core has been replied by saying that it is technical in nature. Refund is claimed of duty paid on parts used in repair. What were these parts, used to be disclosed in monthly returns. Even the classification list approved by department indicated that components which were manufactured and replaced in course of repair. In none of these magnetic core was mentioned. At least that is not the finding. And allegations in writ petition, and amendment application have not even remotely been attempted to be explained. It has nowhere been mentioned that magnetic core was one of the items which was mentioned in monthly return or classification list. Even in reply to the show cause notice the petitioner had given out the parts which were used by it. The magnetic core was not mentioned in it. The finding of the Assistant Collector, therefore, appears to be based on no material. Normally this Court does not examine the correctness of findings recorded by the authorities. But if it appears to be arbitrary and added deliberately to distort the fact and law it has to be dealt with without any compunction. It appears the cue was taken from the argument raised before Government of India in Electric Equipment Case that magnetic coils are not normally replaced. The Assistant Collector assumed from it that since magnetic cons was one of the items which could be used in repair of transformer it must have been used by petitioner. A novel way of recording finding of fact on assumption. There is no finding that any part purchased from outside and replaced in the transformer was not duty paid. The controversy therefore, is narrowed down to if the petitioner was liable to pay duty on parts manufactured in its factory and replaced in course of repair. Even though it is claimed that electric coils the only part which was replaced were prepared by conforming to dimension, weight and design, therefore, it did not amount to manufacture it need not be examined as the government had in exercise of power conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 exempted goods falling under item No. 68 of the First Schedule if it was manufactured in a factory and intended for use in the factory in which it was manufactured by Notification No. 118/75-C.E. dated 30-4-1975. It is reproduced below:

'Exemption to goods used in the factory of production or in any other factory of the same manufacturer - In exercise of the powers conferred by Sub-rule (1) of Rule 8

of the Central Excise Rules, 1944, and in supersession in the M.F. (D.R. & I) No. 58/75-C.E., dated 1-3-1975 the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), manufactured in a factory and intended for use in the factory in which they are manufactured, or in any other factory of the same manufacturer, from the whole of the duty of excise leviable thereon :

Provided that where such use is in a factory of a manufacturer, different from his factory where the goods have been manufactured, the exemption contained in this notification shall be allowable subject to the proper officer being satisfied that the goods are intended for such use :

Provided further that nothing contained in this notification shall apply to complete machinery manufactured in a factory and meant for producing or processing any goods, even if they are intended for use in the same factory in which they are manufactured or in any other factory of the same manufacturer.'

Since the coils or other parts if any were produced or even manufactured for captive consumption, they were exempt from duty under aforesaid notification. The payment of duty therefore, on parts produced in the factory but used in course of repairs of transformers was not exigible to duty and payment was collected on it as duty of excise even though it was exempt.

4. What still survives for consideration is if the finding of Assistant Collector that the claim was barred by time suffers from any error of law. But more important than this is the question if the remedy of petitioner was barred under the statute was it entitled to approach this Court. And if it was then whether it came within reasonable time. In paragraph 24 of the petition it is admitted that petitioner came to know of the mistake of law in April, 1983 when it received communication from its Association about the decision of Government of India in Electrical Equipment's case. Since then it was claiming exemption and paying duty under protest. It was in November, 1984 only that its claim was accepted and revised classification list was approved from October, 1983. According to it the refund application was filed in November, 1984 immediately after the decision of Association was communicated on 26-3-1983. The opposite party, however, admits to have

received the application in September, 1985. Since not much turns on these dates, ultimately, 1985. Whether the application was filed in November, 1984 or September, 1985 is not of much consequence as the petitioner having coming to know of mistake of law in April, 1983 should have filed the application for refund within six months from the date of knowledge as held by this bench in Civil Misc. Writ No. 257 of 1980, Agra Beverages Corpn. v. Union of India decided on 10-12-1987. Since the application was filed beyond this period the Assistant Collector did not commit any error in rejecting the application. The finding, therefore, that the application was barred by time is upheld but for different reasons.

5. Even then the question is if the petitioner is entitled for refund under Article 226. In Sri Vallabh Glass Works Ltd. and Anr. v. Union of India, [A.I.R. 1984 (3) S.C. Cases page 362], it was held that the remedy under Article 226 was in addition and not in supersession of the ordinary remedy by way of suit (see also Sales Tax Officer v. Kanhaiya Lal, A.I.R. 1959 S.C. 135, State of M.P. v. Bhailal Bhai, 1964 S.C. 1006, State of Kerala v. Aluminium Industries, (1965) 16 STC 689 and D. Cawasji v. Union of India decided on 9th December. It has been held that the knowledge of payment under mistake of law gives rise to two remedies, one in the Statute which can be enforced within six months and the other under the general law which can be availed of within three years from the date of knowledge and it is this period which has been held to be reasonable period within which the payer of duty is entitled to invoke extraordinary jurisdiction of this Court under Article 226 [In State of M.P. v. Bhailal Bhai, (A.I.R. 1964- S.G. 1006], it was held :

'It appears to us, however, that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a Civil action for the remedy but where the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable.'

Since petitioner has approached this Court in October, 1985 as its claim was not being adjudicated upon, the relief sought for cannot be refused. Although

petitioner had come to know of the mistake in April, 1983, yet it could lay its claim only after the Assistant Collector accepted its claim for period between April, 1983 to September, 1983. In any case in filing the petition in October, 1985, the petitioner cannot be said to have approached with unreasonable delay.

6. In the result this petition succeeds and. is allowed. A direction is issued to opposite parties to refund the amount of Excise duty paid between April, 1979 to September, 1983.

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