

Electronics Limited Vs. Union of India and Others

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Court : Delhi

Decided On : Apr-01-1981

Reported in : 1981(8)ELT496(Del)

Judge : S.S. Chaddha, J.

Acts : Central Excise Rules, 1944 - Rules 8(1), 52A, 56A and 56A(3)(1)

Appeal No. : Civil Writ Petition No. 510 of 1970

Appellant : Electronics Limited

Respondent : Union of India and Others

Judgement :

1. This petition under Articles 226 and 227 of the Constitution of India seeks a writ of certiorari to quash the notice of demand dated August 25, 1967 issued by the Inspector, Central Excise, the orders of the Assistant Collector, Central Excise, dated May 6, 1968 and June 19, 1968 confirming the notice of demand and rejecting the claim of the petitioner for refund of excise duty, the orders of the Collector of Central Excise dated July 9, 1968 and October 3, 1968 rejecting the appeals of the petitioner and the order of the Joint Secretary to the Government of India, Ministry of Finance (Department of Revenue & Insurance), New Delhi dated April 2/6, 1970 rejecting the revision petition of the petitioner. The dispute has arisen on these facts.

2. The petitioner is the manufacturer of Air-conditioners and holds a license issued under Central Excises and Salt Act, 1944 (hereinafter referred to as the Act) and the Central Excise Rules, 1944 (hereinafter referred to as the Rules) for the manufacture of air-conditioners and parts thereof. The manufacture is carried on at the petitioner's factory situated at 26, N.I.T., Faridabad in the State of Haryana. For the manufacture of Air-conditioners, the petitioner purchase, amongst others, the parts from other indigenous manufacturers, namely, compressors, thermostats and starting relays. Under item No. 29-A of the First Schedule to the Act, Air-conditioners and parts thereof are subject to the levy of excise duty and during the relevant financial years 1966-67 and 1967-68 the rates of excise duty livable thereon was as under :-

Description of goods	Rate of Excise Duty
29A REFRIGERATION AND AIR-CONDITIONING APPLIANCES AND MACHINERY, ALL SORTS, AND PARTS THEREOF-(1) Refrigerators ... (2) Air-conditioners and other air-conditioning appliances, which plus Special Excise are ordinarily sold or offered for sale as ready assembled units, including of package type air-conditioners and evaporative type of coolers. (3) Parts of refrigerating and machinery, all sorts.	30 per cent ad valorem plus Special Excise Duty @ 33-1/3 per cent of Excise Duty.

3. Sub-rule (1) of Rule 8 of the Rules provides that the Central Government may, from time to time, by notification in the Official Gazette, exempt subject to such conditions as may be specified in the notification, any excisable goods from the whole or any part of duty livable on such goods. This is the power to authorise exemption from excise duty. In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Rules, the Central Government issued a notification dated June 2, 1962 in these words :-

'G.S.R.... - In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts

refrigerators, air-conditioners and other refrigerating and air-conditioning appliances and machinery falling under sub-items (1) and (2) of Item No. 29A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) which are fitted with indigenous or imported parts falling under sub-item (3) of the said Item 29A from so much of the duty of excise livable thereon as is equivalent to the amount of the duty of excise or the countervailing import duty already paid on such parts.'

4. In pursuance of the said notification dated June 2, 1962, the petitioner was allowed exemption of excise duty on the air-conditioners manufactured and cleared by the petitioner of an amount equivalent to the amount of excise duty already paid on the indigenous Compressors, Thermostats and Starting Relays fitting in such Air-conditioners.

5. On July 15, 1967, the Central Government issued a notification, being No. 150 of 67 making certain amendments in the earlier notification No. 97 of 62 dated June 2, 1962 in these words :-

'G.S.R. 1067. - In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 97/62-Central Excises, dated the 2nd June, 1962, namely, -

(1) for the words 'or the countervailing import duty already paid on such parts', the words, figures, letter and brackets 'or the additional duty under Section 2A of the Indian Tariff Act, 1934 (32 of 1934), paid on such parts' shall be substituted;

(2) the following proviso shall be added at the end, namely :-

'Provided that no manufacturer shall be entitled to claim the exemption under this notification unless he avails of the procedure laid down in rule 56A of the said Rules in respect of the manufacture of such refrigerators, air-conditioners or refrigerating and air-conditioning appliances or machinery.'

It will be seen that by the amending notification a proviso was added that no manufacturer shall be entitled to claim the exemption unless he avails of the procedure laid down in Rule 56A. Pursuant to the said amendment dated July 15, 1967, the petitioner by his letter dated July 21, 1967 made an application to the Assistant Collector of Central Excise, Faridabad, for availing of the procedure laid down in Rule 56A of the Rules. By an order dated August 31, 1967 made by the Asstt. Collector of Central Excise, Faridabad, the petitioner was permitted to avail the concession under Rule 56A of the Rules in respect of the specified component parts used in the manufacture of air-conditioners falling under item 29-A of Central Excise Tariff. The components specified are :-

'(i) Compressors

(ii) Thermostats

(iii) Starting Relays and Control Switch

(iv) Overload Protection and Electric Motor.'

6. The petitioner was called upon to maintain the necessary statutory records but the order was made effective from August 31, 1967.

7. After the said amendment made by the notification dated July 15, 1967, the petitioner was allowed the exemption of excise duty to the extent of Rs. 63,400.28 in respect of the Compressors, Thermostats/Relays fitted in the air-conditioners manufactured and cleared by the petitioner from July 15, 1967 to August 10, 1967, by deducting the amount of excise duty already paid on such compressors and Thermostats/Relays from the excise duty assessed on the air-conditioners. It appears that the Central Excise Division thought that the petitioner had not been permitted to avail the concession under Rule 56A of the Rules and, therefore, the exemption was against the Rules. On August 25, 1967, the Inspector of Central Excise issued a notice of demand requiring the petitioner to pay a sum of Rs. 63,400.28 being the amount of excise duties on the parts used in the manufacture of air-conditioners which were cleared by the petitioner between July 15, 1967 and August 10, 1967 and in respect of which exemption was allowed to the petitioner.

The main objection was that the petitioner was not availing the procedure under Rule 56A during this period and, therefore, the exemption was not due to the petitioner. The petitioner raised the dispute before the authorities under the Act and the impugned orders referred to above were passed by all the authorities that the exemption in the excise duty was not admissible to the petitioner as he was not allowed to avail of the procedure laid down in Rule 56A of the Rules and that was allowed to be availed with effect from August 31, 1967.

8. Mr. Soli J. Sorabjee, the learned counsel for the petitioner had taken me through the averments made in the writ petition laying down the procedure followed for allowing the exemption under the notification dated June 2, 1962. The allegations are made in para 7 of the writ petition. He also took me through the procedure prescribed under Rule 56A of the Rules which was a condition provided in the subsequent amendment notification dated July 15, 1967 providing that no manufacturer shall be entitled to claim the exemption unless he avails of the procedure laid down in Rule 56A. He also invited my attention to para 7 of the counter-affidavit filed on behalf of the respondents in which there is an admission by doctrine of non-traverse as the material allegations contained in para 7 in the writ petition have not been specifically denied. In the counter-affidavit, it is further stated that the attention of this Court is invited to the relevant procedure for itself for claiming an exemption in accordance with the said notification. The procedure for claiming the exemption under the notification dated June 2, 1962 has not been detailed in the counter-affidavit nor such a procedure has been brought to my notice even during the hearing of the writ petition. I may do well to state here the procedure prior to July 15, 1967 as stated in the affidavit of petitioner and the procedure under Rule 56-A of the Rules :-

-----'Procedure followed prior to
Procedure under Rule 56A of July 15, 1967 the Central Excise Rules,
1944-----Prior to receipt of duty
paid (a) Prior notice has to be parts petitioner gave notice given to the proper
officer, to Central Excise Authorities before the excise paid goods (CEA) to enable
them to be received in the factory identify the parts and verify to enable that officer
to be the actual quantity thereof present at the time of receipt. and duty paid vide

duly paying documents in AR 1. Rule 56A(3)(1)(a) Parts mentioned above received (b) To bring to the factory by petitioner in original materials under cover of packing Along with relevant AR 1 or bill of entry or such documents showing - other document as may be approved by the Central Excise (i) Quantity and Customs evidencing the payment of excise duty. (ii) Payment of excise duty (AR 1) which is the prescribed application for removal of excisable goods. Rule 56A(3)(1)(b)(iii) Amount of Excise Duty assessed and paid. (iv) Gate Pass issued under Rule 52-A. (v) Manufacturer's Invoice. (vi) Manufacturer's dispatch Advice. Said parts brought into (c) To produce the materials factory of petitioner were when brought to the factory produced before the Central before the Proper Officer to Excise Authorities - who enable him to identify the identified them and verified materials and verify the quantity and amount of actual quantity thereof. Excise Duty paid thereon. Rule 56A(3)(1)(c) Petitioner maintained (d) To maintain an account account of the said parts in form RG 23. in form Annexure 'A' giving details of - Rule 56A(3)(1)(d)(i) Date of Receipt. (ii) Description of Parts. (iii) Opening Balance. (iv) Value. (v) AR 1, No. & Date. (vi) Quantity received. (vii) Name of Manufacturer from whom goods received. (viii) Amount of Excise Duty and Special Excise Duty already paid. The Central Excise Authorities (e) To maintain account then physically verified the in respect of duty paid on entries and signed the finished goods and account relevant entries and even current with the Collector and endorsed AR 1 etc. with adequate credit balance to cover Central Excise Duty liable on finished goods cleared at any time. Rule 56A(3)(1)(e).'

9. A comparison of the procedure which was being followed prior to July 15, 1967 and the procedure which has been laid under Rule 56A shows that the petitioner has been substantially complying with the provisions of the statutory rules during the period July 21, 1967 to August 31, 1967, the date on which the petitioner was permitted to avail the concession under Rule 56A of the Rules. Rule 56A requires maintenance of the account in form RG-23. Allegations have been made in the writ petition that the petitioner was maintaining accounts similar to those provided in form RG-23 regarding receipts and issues of materials giving details of quantities received, issued, excise duty paid, AR 1, No., Gate Pass No. and the date etc. Allegations have also been made that the petitioner was maintaining an account

similar to the one required under Rule 56A(3)(1)(e) i.e. the petitioner was maintaining a similar personal ledger account prior to the date of the notification out of which excise duty payable on finished goods was paid. After notification dated July 15, 1967 came into effect, the same personal ledger account has been maintained with the Excise Authorities to cover up the excise duty payable at the time of clearance of the goods. If the procedure which is akin to the procedure laid down in Rule 56A was already adopted by the petitioner and there were records on the basis of which the exemption could be properly and fairly worked out, then I see no reason or justification why the petitioner has not been allowed to avail the concession under Rule 56A from the date of the application dated July 21, 1967. Mr. Sorabjee fairly does not press the claim for exemption from the date of the notification. The application was made with the prescribed authorities on July 21, 1967 and a reminder was sent on August 26, 1967 and it was only then that the order dated August 31, 1967 was issued permitting the petitioner to avail the concession under Rule 56A but effective from August 31, 1967. The delay in disposal of the application by the authorities under the Act has resulted in grave prejudice to the petitioner. The authorities under the Act cannot take any undue advantage of their delay in disposal of the application. I could understand the meaning of the proviso that no manufacturer shall be entitled to claim the exemption unless he avails of the procedure laid down in Rule 56A but the availing of the procedure was dependent upon an order of the Assistant Collector. Till then, the procedure under Rule 56A could not be adopted by the petitioner. The petitioner was doing his best by adopting the procedure which was akin to Rule 56A and had noted in all the statutory records which were required under Rule 56A. On the basis of the records already maintained by the petitioner from July 21, 1967 to August 31, 1967, it is possible by the competent authorities to work out the exact amount of the exemption that can be availed of by the petitioner under the notification dated June 2, 1967 read with the proviso added by notification dated July 15, 1967. The petitioner has to be allowed the exemption from July 21, 1967 as any other interpretation would put a premium on the laches of the authorities in disposing of the application for permitting the availing of the procedure under Rule 56A.

10. In *Zenith Tin Works Pvt. Ltd. v. K. K. Verma and others*, 1979 E.L.T. (618), a similar question arose before the High Court of Bombay. The Union of India issued a notification under Rule 8(1) whereby extruded sheets and sections of aluminium were exempted from payment of so much of the duty of excise livable under item (d) of item No. 27 of the First Schedule to the Central Excises and Salt Act, 1944 as was equivalent to the duty already paid on the aluminium in crude form or on the aluminium manufacturers under sub-items (a) or (b) of item No. 27. The procedure required to be followed for obtaining the exemption under the notification was to file an application under Rule 56A issued by the Bombay Central Excise Collectorate. The permission there was granted from the date of the order. The order passed by the Assistant Collector was challenged by the petitioner there in appeal before the Collector of Central Excise and the grievance of the petitioner was that the permission should have been granted not from the date of the order i.e. September 2, 1968 but from the date of the notification dated April 3, 1965. The appeal ended in dismissal and the petitioner carried further a revision before the Government of India. The Government of India partially allowed the revision application by order dated May 21, 1973 directing that the petitioner there be granted permission under Rule 56A from the date of their application instead of from the date of the order of the Assistant Collector. The petitioner there then filed a writ petition under the Article 226 of the Constitution of India to challenge the validity and the legality of the order and claimed that the exemption should have been granted from April 3, 1965. Pendse, J. held that it was necessary under the notification for the importer to make an application under Rule 56A and the rules provide the procedure to be followed while granting the permission to the importer, that there was no absolute right in a party to claim that exemption should be granted from the date of the notification and that the Government had acted very rationally in granting the permission and the petitioner there would not be entitled to any further relief. The order of the Central Government granting the petitioner their permission under Rule 56A of the Rules from the date of the application was upheld. I cannot see any justification on the part of the Central Government in not conceding this writ petition by saying that the petitioner could avail of the exemption from July, 1967 instead of August 31, 1967.

11. For the above reasons, the writ petition succeeds. The impugned notice of demand and the subsequent orders are quashed. The respondent are directed to work out the exemption for the period from July 21, 1967 to August 31, 1967 on the strength of the records already maintained by the petitioner and then refund the amount of the excise duty realise from the petitioner. On the facts and the circumstances of the case, I make no order as to costs.

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