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Court : Gujarat

Decided On : Nov-26-1990

Reported in : 1992(37)ECC79; 1991LC532(Gujarat)

Judge : M.B. Shah and; M.S. Parikh, JJ.

Appeal No. : Special Civil Application No. 1797 of 1979

Appellant : Satellite Engineering Ltd.

Respondent : Union of India (Uoi) and ors.

Judgement :

M.B. Shah, J.

1. This Special Civil Application is filed by Satellite Engineering Limited, wherein it is contended that the petitioner-Company manufactures items such as aluminium terminals, brass terminals, glow lamps, bakelite disc, jets, float pins, rivettings and lugs. The said items fall within the purview of residuary tariff item 68. In exercise of powers conferred under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government has issued notification dated 18th June, 1977, which was amended by Notification dated 15th July, 1977, whereby it has granted exemption to goods falling under item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 and cleared for home consumption on or after the first day of April in any financial year, by or on behalf of a manufacturer from one or more factories

from the whole of the duty of excise leviable thereon if certain conditions laid down therein are satisfied. The said notification is produced at Annexure 'A'. On the basis of the said notification, the Assistant Collector of Central Excise, Ahmedabad, by his judgment and order dated 31st December, 1977, held that the petitioner was entitled to have exemption under the aforesaid notification for tariff item 68. He also held that the petitioner is entitled to the exemption under notification No. 242/77 dated 15th July, 1977 for the tariff item 61 of Central Excise Tariff.

2. Thereafter, the Central Government has issued a fresh notification, dated 1st March, 1979, which is produced at Annexure 'C' to the petition. On the basis of the said notification, the petitioner submitted declaration dated 29th May, 1979 which is at Annexure 'E' to the petition, pointing out, that the petitioner was entitled to get the benefit of the exemption granted in the said notification. He had also submitted declaration on 15th May, 1979, under notification No. 111/78 dated 9th May, 1978.

3. It is the contention of the petitioner that without disclosing anything the petitioner received a letter dated 19th June, 1979 from the Superintendent of Central Excise, Range VI, Division III, Ahmedabad, which reads as under:.As per the oral instructions received from the Assistant Collector of C.Ex. Div. III, A'bad and in conformity with our telephonic talk today morning, you are hereby requested to clear the goods covered under T.I. 68 only after payment of Central Excise Duties....

That letter is challenged by the petitioner in this petition.

4. Subsequently, he got the information that the Assistant Collector has rejected his exemption application, by letter dated 7th July, 1979. It is his contention that he has not received the said order. He has submitted that without giving any opportunity to the petitioner-Company for being heard or for making any representation, the Assistant Collector of Central Excise has passed the order, rejecting the petitioner's application and, therefore, it is violative of the principles of natural justice and it also contravenes the provisions contained in the Central Excise Act and Rules.

5. This Court has issued rule on 24th December, 1979. In spite of the service of notice, no affidavitin-reply is filed denying the contentions raised by the petitioner. Therefore, it is apparent that the impugned order dated 7th July, 1979 passed by the respondent No. 2, without giving an opportunity of hearing to the petitioner and without any material on record, is, on the face of it, illegal. Mr. B.B. Naik, learned Advocate appearing on behalf of the respondents, was also not in a position to justify the order in any manner. Even the order is not served upon the petitioner, nor its copy produced on record. Further, whether the petitioner was entitled to exemption as claimed by it as per its declarations cannot be decided by oral instructions. Hence, this petition requires to be allowed.

6. In the result, this Special Civil Application is allowed. The alleged order dated 7th July, 1979 passed by the respondent No. 2 against the petitioner without giving it any opportunity of hearing shall be considered as non est. The Assistant Collector of Central Excise, Ahmedabad is directed to decide afresh whether the petitioner was entitled to have exemption as claimed by it as per its declarations dated 15th May, 1979, Annexure 'D' and 29th May, 1979, Annexure 'E', after giving an opportunity of hearing to the petitioner and to pass appropriate order. Rule made absolute to the aforesaid extent with costs.

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