

Ralli Engine Ltd. Vs. Union of India (Uoi) and ors.

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Court : Gujarat

Decided On : Apr-27-2004

Reported in : 2004(95)ECC415

Judge : M.S. Shah and; A.M. Kapadia, JJ.

Appeal No. : Special Civil Applicaion No. 4378 of 2004

Appellant : Ralli Engine Ltd.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Dharmishta Raval, Adv.

Advocate for Pet/Ap. : M. Dave, Adv.

Judgement :

ORDER

1. Rule.

Heard the learned counsel for the parties on the question of interim relief.

2. The petition contains challenge to the discriminatory treatment being given by the Commissionerates in three different States, i.e., Gujarat, Maharashtra and Tamil Nadu in respect of the same product. The petitioner-Company is a manufacturer of agricultural knapsack sprayer engine which is used as a part/component in mechanical appliances for spraying pesticides in fields and

farms. The product is being classified under Heading No. 84.24 in Maharashtra (manufacture-High Power Engineering Company Private Limited, Satara) and in Tamil Nadu (manufacturer-Greaves Limited, Chennai) whereas in Gujarat it is classified under Heading No. 84.07 in the petitioners' case by the Assistant Commissioner of Central Excise at Valsad under the Commissionerate of Central Excise, Valsad.

3. The petitioners' contention is that in view of the aforesaid classification in Maharashtra and Tamil Nadu, the petitioners' competitors are not paying any Excise duty whereas the petitioner-Company is required to pay Excise duty at the rate of 16% ad-valorem and, therefore, the petitioner is unable to compete with them and petitioners' factory is closed down since December 2003.

Mr. Paresh M. Dave, learned counsel for the petitioners, has relied on the decision of this Court in *Ambica Meta Yarn Manufacturing Co. v. Superintendent of Central Excise and Ors.*, 1982 (2) GLR 155, wherein this Court has held that even when alternative remedy is available, the High Court may interfere where the Excise authorities of other States are accepting the interpretation canvassed by the assessee because in such a case the assessee will not be able to withstand the competition in market and the industry in the State will suffer serious handicap and may even get mauled. Strong reliance is also placed on similar observations made by this Court in *J.D. Patel v. Union of India*, 1978 ELT 540,

4. On the other hand, Ms. D.N. Raval, learned senior standing counsel for the Central Government, has submitted that when the Assistant Collector has taken decision on the question of classification on merits and that is a plausible view, this Court would not grant interim relief merely because two other manufacturers in Maharashtra and Tamil Nadu are given benefit of classification under Chapter Heading No. 84.24. It is submitted that the petitioner-Company itself does not manufacture the sprayers but the petitioner-Company only manufactures the machines which, according to the petitioners, are being used for making sprayers or agricultural purposes. It is, therefore, submitted that so far as the petitioner-Company is concerned, it is only manufacturing engines falling under the Heading No. 84.07.

5. This Court had earlier by Order dated 24.12.2003 in Special Civil Application No. 17946 of 2003 relegated the petitioner-Company to the Assistant Commissioner with a specific direction that the Assistant Commissioner shall compare the machines being manufactured by three different manufacturers in three different States and decide whether discriminatory treatment is given to the petitioner-Company and respondent No. 3, the Assistant Commissioner was also expected to call for the information from the concerned officers of different States. The relevant observations are as under:

(i) As far as machines being manufactured by High Power Engineering Company Private Limited is concerned, respondent No. 3 has clearly expressed the view that they have cleared their goods HP 35 Agricultural Engine without payment of duty under Chapter Heading 84.24 and that the Central Excise authorities of said M/s. High Power Engineering Company Private Limited have confirmed that the same is allowed to be cleared without payment of duty.

(ii) Respondent No. 3 has referred to the invoice produced by the petitioner-Company regarding goods manufactured by M/s. Greaves Limited and opined that the said invoice was not issued by the manufacturer and therefore does not give correct picture. [Annexure C collectively at page 24 indicates that invoice is issued by the Mumbai Branch of Greaves Limited and therefore there is no reason why the invoice issued by Mumbai Branch of Greaves Limited could not have been looked into by respondent No. 3].

(iii) Respondent No. 3 has referred to and relied upon classification of such machines in case of M/s. HMP Engineers Limited, Surat which Company was also manufacturing the same type of product and the Central Excise authorities at Surat had classified the same under Chapter Heading No. 84.07 and confirmed the demand.

6. It is the specific case of the petitioners that because of the classification made by the Central Excise officers in the State of Gujarat, the manufacturers in Gujarat are receiving discriminatory treatment. As regards M/s. HMP Engineers Limited, Surat, the learned counsel for the petitioners states that the said Company came to be closed down for the same reason in May 2002 as they also could not

compete with the above named manufacturers in Maharashtra and Tamil Nadu who are not required to pay excise duty on the same product. The petitioner-Company also has to close down its manufacturing operations in December 2003 because it was not in a position to compete with the manufacturers from Maharashtra and Tamil Nadu who are required to pay excise duty at nil rate whereas the petitioner-Company has to pay excise duty at 16% ad-valorem and the petitioner-Company could not absorb this high rate of excise duty on its own without passing the same on to the purchasers.

7. The relevant tariff entries are as under:

Chapter 84 Machinery, mechanical appliances and parts thereof

CHAPTER 84

NUCLEAR REACTORS, BOILERS, MACHINERY AND MECHANICAL APPLIANCES; PARTS THEREOF

Heading No	Sub Heading No	Description of goods	Rate of duty
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84.07	8407.00	Spark-ignition reciprocating or rotary internal combustion piston engines	
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16%	84.12	Other engines and motors	8412.10 -All goods other than parts
16%	8412.90	Parts	16%84.24Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; Fire extinguishers, whether or not charged; spray guns and similar appliances; Steam or sand blasting machines and similar jet projecting machines

8424.10	--	mechanical appliances of a kind used in agriculture or horticulture	
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Nil	8424.80	--Other --Parts:	16% 8424.91--Of goods covered by sub-heading No. 8424.10 Nil 8424.99 --Other 16%
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8. As regards the contention of the learned standing counsel that the petitioner-Company is merely manufacturing engines and not the sprayers, it is necessary to note that sub-heading No. 8424.91 specifically provides that parts of goods

covered by sub-heading No. 8424.10 i.e. the parts of mechanical appliances for projecting, dispersing or spraying liquids or powders and similar appliances used in agriculture or horticulture are liable to pay duty at Nil rate and, therefore, engines which become parts of which mechanical appliances for spraying liquids such as pesticides fall under sub-heading No. 8424.91. The petitioners have also relied on the certificate dated 25.11.2003 issued by Baheti Brothers at Akola in Maharashtra and the certificate dated 25.11.2003 issued by Padsons Ind. Pvt. Ltd. also at Akola in Maharashtra stating that the said parties buy 35CC petrol engines as detailed below from various manufacturers:

(1) 'Ralli' L-25 Knapsack agricultural sprayer engine manufactured by Ralli Engines Ltd.

(2) 'HP-35' Agricultural Engine manufactured by High Power Engineering Co. Pvt. Ltd.

(3) 'Greaves' agricultural mechanical components for sprayer - L36 higher RPM.

As the above are petrol engines 35CC. These engines are fitted with knapsack sprayer and are sold to farmers for agriculture use.'

It is clear that the other manufacturers, like the petitioners, also are merely making engines which are fitted into the knapsack agriculture sprayers being manufactured by the purchasers from the petitioners and the two other manufacturers and then such sprayers with the engines are sold to farmers for agriculture use.

9. In view of the above facts and circumstances, we are of the view that when the same product is being manufactured by three different companies--M/s. High Power Engineering Company Private Limited, Satara, Maharashtra, M/s. Greaves Limited, Chennai, Tamil Nadu and the petitioner at Valsad, Gujarat, the interest of justice demand that the respondent-authorities are required to give similar treatment to the product being manufactured by the petitioner-Company.

10. Accordingly, the respondents are restrained from recovering excise duty from the petitioner Company on Agricultural Knapsack Sprayer Engine being

manufactured by the petitioner-Company otherwise than at the rate at which the Central Excise authorities are recovering excise duty from the manufacturers of the same product in other States.

11. Since this interim relief is being granted mainly for the reason indicated in para 8 above, it will be open to the Central Board of Excise and Customs to consider the matter afresh for giving uniform treatment to the manufacturers of the same product all over the country. It will be open to the respondent authorities to move this Court for appropriate orders after the Central Board of Excise and Customs takes appropriate decision in the matter.

It is expected that the Central Board shall take a decision as aforesaid within four months from the date of receipt of the writ of this Court.

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