

Texmaco Ltd. Vs. Superintendent of Central Excise

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Court : Kolkata

Decided On : Jan-22-1992

Reported in : 1992(59)ELT506(Cal)

Judge : Suhas Chandra Sen, J.

Acts : Central Excise Act

Appeal No. : Civil Order No. 2619 (W) of 1986

Appellant : Texmaco Ltd.

Respondent : Superintendent of Central Excise

Advocate for Def. : N.C. Roy Chowdhury and S.K. Sengupta, Advs.

Advocate for Pet/Ap. : R.N. Bajoria, Sr. Adv., S.K. Bagaria and CM. Ghorawat, Advs.

Judgement :

ORDER

Suhas Chandra Sen, J.

1. This writ petition was moved on 11th of March, 1986. On that date directions for affidavits were given and the department was given liberty to proceed with the impugned show cause notice. The petitioners were directed to reply to the show

cause notice with three weeks from date.

2. It appears that the show cause notice has not been proceeded with. The case has now come up for hearing after six years. I see no reason to wait for the department to complete the proceeding pursuant to the show cause notice.

3. The case of the petitioners is that the petitioners purchased ball bearing from the market from various suppliers. Copies of the invoice have been annexed showing that the Central Excise duty has been paid on the ball bearings by the manufacturers. The petitioners had to pay price of ball and roller bearing as well as the Central Excise duty at the rate of 15 per cent.

4. The petitioners used these ball bearing for the purpose of manufacture of textile machines. The department has now decided to make a fresh levy on the ball bearing. The allegation of the department contained in the show cause notice is that the ball bearing were fitted with shaft procured from the market. Such shafts were used in textile machine. The shaft-bearing manufactured by the petitioners had escaped assessment of duty under T.I. 49. The assessee was called upon to show cause why the assessee should not be levied with a duty of Rs. 1,52,175/- as the total value of the shafts cleared by the assessee came to Rs. 9,66,190/-.

5. This show cause notice was issued on 26-9-1984. There is no explanation why the department has not proceeded with the show cause notice. In any event, T.I. 49 deals with 'Rolling bearings, that is to say, ball or roller bearing all sorts'. The department, therefore, is, in fact, alleging that the petitioners have manufactured ball or roller bearings. Otherwise, there is no sense in making the case under T.I. 49 of the Central Excise Act. The manufacturers have also paid duty under T.I. 49 on ball or roller bearings. The respondents are now trying to levy a fresh burden of tax on the petitioners once again on ball or roller bearings. It is difficult to see what new excisable item has emerged by the shaft being added to the bearing bought by the petitioners. Even if all the allegations in the show cause are assumed to be correct no case has at all made out by the respondents to establish that a new excisable commodity has emerged as a result of shaft being added to the ball or roller bearings. The case of the petitioners is that this bearing is used for the purpose of manufacturing textile machineries which are excisable commodities.

6. Under these circumstances the writ petition must succeed. There will be an order, as prayed for, in terms of prayer (a) and (b) of the writ petition.
7. The writ petition is finally disposed of as above.
8. There will be no order as to costs.

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