

(2016) 08 DEL CK 0096

DELHI HIGH COURT

Case No: Writ Petition (C) No. 270 of 2015

P.R. Chemicals

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Aug. 23, 2016

Citation: (2016) 342 ELT 164

Hon'ble Judges: S. Ravindra Bhat and Deepa Sharma, JJ.

Bench: Division Bench

Advocate: S/Shri Sanjeev Narula, CGSC with Abhishek Ghai and Ajay Kalra, Advocates, for the Respondent; Dr. Ashutosh, Shri S.S. Arora and Ms. Harsimran Kaur, Advocates, for the Petitioner

Final Decision: Allowed

Judgement

S. Ravindra Bhat, J. - The writ petition challenges the order of the Central Government dated 13-5-2014 [2015 (329) E.L.T. 758 (G.O.I.)], rejecting the rebate claim for a sum of Rs. 1,15,58,553/- made under Rule 18 of the Central Excise Rules. The brief facts are that the writ petitioner is a manufacturer of pan masala/gutkha. In respect of 27 consignments it had preferred rebate claims under Rule 18 of the Central Excise Rules read with Notification No. 32/2008-C.E. (N.T.), dated 28-8-2008, between 7-6-2011 and 1-7-2011. The Assistant Commissioner, Central Excise, Farrukhabad rejected the plea for rebate. The appellate authority held that since the articles were exported prior to coming into force of the Plastic Waste (Management and Handling) Rules, 2011 which was on 2-7-2011 the rebate claims could not have been rejected. The Appellate Commissioner also incorporated the CBEC Circular of 30-8-2011 and held that rules were retrospective and consequently, the conditions for seeking rebate could not be said to have amended prior to 2-7-2011. The concerned departmental authorities preferred the revision under Section 35EE of the Central Excise Act which was allowed by the Central Government. The petitioner was however held entitled to relief in respect of four clearances - which according to the revisional authority qualified for rebate of duty since goods had left India.

2. It is urged that the impugned order is in error of law. Learned counsel submits that the ban on use of plastic sachet which was brought in force on 2-7-2011 by substituting the definition "carry bag" could not have defeated the rebate claim on account of admitted exports that occurred between 7-6-2011 and 1-7-2011. In support of the submissions, learned counsel relied upon the revisional order of the Central Government In Re : P.R. Chemicals - 2014 (314) E.L.T. 942 (G.O.I.). The relevant portion of the said decision is as follows :

3.3 The party has claimed the rebate of duty under Rule 18 of the Central Excise Rules, 2002 read with Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004 but the Condition (g) of this Notification reads as under :-

"That the rebate of duty paid on the excisable goods, export of which is prohibited under any law for the time being in force, shall not be made."

Since, in the instant case, gutkha manufactured by the party is exported in plastic sachets/material hence rebate allowed on the same is in contravention of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

The Commissioner (Appeals) while dealing with the above issue has erred in his findings while taking the plea that instruction dated 4-3-2011 by the Chief Commissioner, Central Excise, Lucknow Zone in the form of letter C. No. V(30) CCO/LKO/Tech/26/2011, dated 4-3-2011 may be one of the factors which may be considered while deciding the instant case. However, this letter cannot override the Rules and Sections pertaining to the issue. The Commissioner (Appeals) himself held in the concluding para of his Order-in-Appeal that "Section 3A of the Central Excise Act overrides the provisions of Rule 8 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008." Therefore, a letter dealing with some issue in a general form cannot be made precedence to decide a case where the case can be decided on merit only.

3.4 Further it cannot be accepted that since C.B.E. & C. Circular No. 528/69/2011-STO (ITU) was issued on 30-8-2011, therefore, the cases covered by this clarification prior to 30-8-2011 are not covered by the same since it cannot have retrospective effect. This finding is not correct as the law i.e. Plastic Waste (Management & Handling) Rules, 2011, dated 4-2-2011 was in existence when the export took place and therefore any clarification issued subsequently would have no bearing and the party would not be able to escape from the statutory provisions of Plastic Waste (Management & Handling) Rules, 2011, dated 4-2-2011. Any circular and subsequently issuance of a trade notice on the basis of the same only facilitates interpretational aspects but it does not mean that the provisions of the relevant Act were not in force as on that date.

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4.3 The Trade Notice No. 20/2011 of the Central Excise Commissionerate, Lucknow and the C.B.E. & C. letter F. No. 528/69/2011-STO(TI), dated 30-8-2011 issued consequent to amendment of the Plastic Waste (Management and Handling) Rules, 2011 on 2-7-2011, cannot have a retrospective effect in respect of the manufacture and export of gutkha by the respondent under proper permissions and departmental clarifications on the subject matter.

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10. Applicant department has contended that in view of Condition 3(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004, the rebate of duty paid on excisable goods, export of which is prohibited under any law for the time being in force cannot be granted since Gutkha manufactured by respondent was exported in plastic sachets/material. In this regard Government notes that the said goods were exported by the respondent after issuance of clarification by Chief Commissioner of Central Excise, Lucknow Zone vide letter C. No. V(30) CCO/LKO/Tech/26/2011, dated 4-3-2011 in the case of other manufacturer exporter M/s. Pan Parag India Ltd., Kanpur.

10.1 In the said letter, issue was clarified as under :-

"I would like to make it clear that in the matter of export, the goods which are likely to be consumed by subjects and citizens of other countries, the ban ordered by Hon"ble Supreme Court or even by Ministry of Environment and Forests, vide its standing order of 4th February, 2011 would not be applicable to cases and consignments for export. Even otherwise, there are instructions of the Government, issued from time to time, that in matter of exports no unwarranted and unjustified restrictions should be imposed. Therefore, flow of consignments meant for exports should not be got interrupted."

It was clearly stated in the said letter that ban ordered by Hon"ble Supreme Court or even by Ministry of Environment and Forests vide standing order, dated 4-2-2011 would not be applicable to cases and consignments for export. In pursuance to said clarification, clearance of said goods was allowed for export by Central Excise authorities. The Customs authorities at the port of export has also allowed export without any objection.

10.2 Respondent in his counter reply had stated that in case M/s. Pan Parag India Ltd., Kanpur, rebate of duty paid on similar goods, was allowed and no such objection has ever been raised and department is discriminating against him by proposing recovery of already sanctioned claims. Matter was checked up from the applicant department who vide letter F. No. IV-853/R/O/2011, dated 23-11-2012 stated that another exporter M/s. Pan Parag India Ltd., Kanpur had exported Pan Masala/Gutkha in sachets of plastic up to August, 2011 and rebate claims of duty paid on exported goods was allowed up to that period.

10.3 Government notes that Trade Notice No. 20/2011, dated 20-9-2011 issued on the basis of C.B.E. & C. Circular F. No. 528/69/2011-STO(TI), dated 30-8-2011 clarifying distinction between sachets and carry bags, cannot have retrospective effect. The clarification issued by Chief Commissioner, Lucknow was binding on the Central Excise officers and as such the rebate allowed for duty paid on exported goods at the relevant time cannot now attract the provisions of Condition 3(g) of Notification No. 19/2004-C.E. (N.T.), dated 6-9-2004.

10.4 Government also notes that departmental authorities are bound by Circular/Instruction and they have to comply with the same. Hon"ble Supreme Court has held in the case of Paper Products Ltd. v. CCE - 1999 (112) E.L.T. 765 (S.C.) that Circular/Instructions issued by C.B.E. & C. are binding on departmental authorities. They cannot take contrary stand and department cannot repudiate a Circular on the basis that it was inconsistent with the statutory provision. Apex Court has further held that department"s actions have to be consistent with circulars, consistency and discipline are of far greater importance than winning or losing court proceedings. In view of said principles laid down by Hon"ble Supreme Court, the instructions issued by Chief Commissioner, Lucknow were rightly followed by departmental Central Excise officers.

3. Learned counsel for the respondent relied upon the definitions of "export" and "prohibited goods" under Sections 2(18) and 2(33). It was urged that the loading of goods for export would be the relevant point of time which would be reckoned for the purpose of export. In support of this submission learned counsel relied upon the decision of the Madras High Court in 1985 (12) TMI 234 /1987 (28) E.L.T. 266 (Mad.) - Lucas TVS, Madras v. Assistant Collector of Customs, Madras and Others.

4. The facts in this case are extremely limited and un-controverted. The clearance of the goods occurred in 27 consignments between 7-6-2011 and 1-7-2011. Concededly, notification prohibiting manufacture of plastic packaging for the articles in question i.e. Pan Masala and Gutkha came into force on 2-7-2011. Equally, it is not in dispute that such packaged goods qualify for duty rebate in terms of extant notifications and other provisions governing it - notably the notification dated 20-8-2008 and Rule 14 of the Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008. The Central Government itself in almost identical facts and powers seems to have (see in P.R. Chemicals"s case (supra)) taken the view that (a) notifications is not retrospective and (b) that it cannot be applied for consignments that were cleared prior to 2-7-2011. As far as the textual interpretation to "export" goes, the revisional authority in this case construed the meaning of the term based on its common grammatical connotation rather than on analysis of other parts of the statute i.e. the Customs Act. Section 51 of the Customs Act in this regard is of some relevance.

5. During the hearing learned counsel for the petitioner had relied upon the decision of the Supreme Court in Union of India v. Asian Food Industries - 2006 (204)

E.L.T. 8 (S.C.). In that the Supreme Court had analysed the provisions of Customs Act. There in the context of notification issued under the Foreign Trade (Development and Regulation) Act, 1992 and the Import/Export hand book, the Court had noticed that the statute prescribes different points in time and various stages for the different purpose both in respect of customs and exports. After analysis of the various provisions of the Customs Act, the Court pertinently observed :

"Section 51 of the Customs Act, 1962, therefore does not say that until and unless shipment crosses the international boarder, the notification imposing prohibition shall be attracted."

6. In this Court's opinion the view taken by the Central Government in P.R. Chemicals's case (supra) is the correct one. Instead in this case, the Central Government appears to have relied entirely on the textual meaning of export as the point in time when goods actually crosses the international border. Section 51 of the Customs Act, in our opinion, completely answers the issue at hand. Having regard furthermore, in part the Government was of the view that the notification was not retrospective and the consignment did qualify for rebate. In the present case as well, the petitioners were entitled to relief. It is therefore held that the impugned order cannot be sustained. The order of the appellate authority is restored.

7. The writ petition is allowed in the above terms. There shall be no orders as to costs.

8. The respondent shall ensure that the petitioner's rebate applications are processed expeditiously preferably within four months from today and appropriate refund orders as per its entitlement are released.