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(1980) 06 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No''s. 5593 and 6148 of 1979

Y. Thirupathi Rao and Another		APPELLANT
	Vs	
Collector of Central Excise, Hyderabad and Others		RESPONDENT

Date of Decision: June 20, 1980

Acts Referred:

- Central Excise Rules, 1944 - Rule 174, 176, 56B
- Central Excises and Salt Act, 1944 - Section 2, 3, 6
- Constitution of India, 1950 - Article 226

Citation: (1983) 14 ELT 2346

Hon'ble Judges: Amareshwari, J

Bench: Single Bench

Advocate: V. Lakshmi Devi, for the Appellant; K. Subrahmanya Reddy for Central Government, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. In these two writ petitions, the petitioners pray for a declaration that Trade Notice Nos. 135/79 dated 22-6-1979 and 200/79 dated 17-8-1979 are not applicable to them. The petitioners are persons known as Takedars, who get the biris rolled by labour employed in biri making. They take the tobacco and leaves from the Principal Manufacturer, engage workers within their premises, get them rolled into biris and deliver the goods to the Principal Manufacturer and receive proportionate consideration for the biris rolled in their premises. By Trade Notice No. 135/79 (Hand made biris No. 6/79) dated 22-6-1979 all agents including contractors, sattedars and takedars of principal manufacturers of biris, whose clearance of raw biris in a financial year exceed 60 lakhs were required to take out a licence in Form No. L-IV and execute bonds for removal of raw biris provided they do not themselves sort, bake or wrap the biris. It is not necessary to refer to the other

items in the notice as we are not concerned with them in these Writ Petitions. Form No. L-IV licence is a licence which is required to be taken by a manufacturer under the provisions of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). The legality of this requirement is the principal challenge in Writ Petition No. 5593 of 1979. Later in partial modification of this notice Trade Notice No. 200/79 (Handmade biri No. 7/79) was issued on 17-8-1979. Under the said notice only such of the Takedars who get biris rolled through workers in his own premises was required to obtain Form No. L-IV licence and follow the procedure under Rule 56B of the Central Excise Rules, 1944 (hereinafter referred to as the Rules) while moving the biris from the premises of the Takedars to the premises of the Principal Manufacturer. Questioning the validity of this notice Writ Petition No. 6148 of 1979 was filed.

2. The main contention of Miss V. Lakshmi Devi, the learned counsel for the petitioners in these two writ petitions is that these two notices requiring the Takedars to obtain Form No. L-IV licence is illegal and without jurisdiction inasmuch as they cannot be said to be manufacturers. They are persons, who take the leaves from the Principal Manufacturers, get them rolled into Katcha biris and send them back to the principal manufacturer and receive commission for the work done. They are not manufacturers within the meaning of Section 6 of the Act. Further Katcha biris are not excisable goods attracting excise duty. Hence the procedure prescribed in respect of excisable goods cannot be applied to them, as they prepared only Katcha biris. It was also contended that these two notices requiring Takedars whose clearance of biris exceeds 60 lakhs to obtain Form No. L-IV licence is discriminatory.

3. On the other hand, Mr. K. Subrahmanya Reddy, the learned standing Counsel for the Central Government contends that Takedars are manufacturers within the definition of Section 2, clauses (f) and (f)(i) and biris are excisable goods as it is an item mentioned in the First Schedule. He further submitted that the requirement to obtain Form No. L-IV licence was confined to such of the Takedars, who clear more than 60 Lakhs of biris in a year as Trade Notification No. 31/79 dated 1-3-1979 exempts the clearance of biris on behalf of a manufacturer upto 60 lakhs from the whole of the excise duty leviable thereon. It was therefore contended that there was no discrimination in the application of this requirement.

4. To appreciate the rival contentions it is necessary to refer to the relevant provisions of the Central Excises and Salt Act, 1944. Section 3 of the Act is the charging Section and it says that an excise duty shall be levied and collected on all excisable goods other than salt which are produced or manufactured in India. Section 6 of the Act deals with the necessity for a licence in respect of certain operations under the Excise Act. Section 6 is as follows :

"6. Certain operations to be subject to licence. - The Central Government may, by notification in the Official Gazette, provide that, from such date as may be specified in the notification, no person shall except under the authority and in accordance

with the terms and conditions of a licence granted under this Act, engage in -

(a) the production or manufacture of any process of the production or manufacture of (any specified goods included in the First Schedule) or of saltpetre or of any specified component parts or ingredients of such goods or specified containers of such goods; or

(b) the wholesale purchase or sale (whether on his own account or as a broker or commission agent) for the storage of (any specified goods included in the First Schedule)."

Clause (a) of Section 6 requires a person engaged in production or manufacture or any process of the production of manufacture of any excisable goods to take out a licence in the prescribed form. Clause (b) of Section 6 deals with a person, who purchase or sells or storage any excisable goods. Rule 174 also prescribes that every manufacturer of excisable goods except salt to take out a licence in the proper form. Rule 176 directs that every application for the licence should be in one of the forms of application as may be appropriate and Form (A)L-IV was the form in which an application for licence was to be made by the manufacturer of excisable of excisable goods. All these provisions make it clear that a manufacturer of excisable goods will have to obtain a licence in Form No. L-IV.

5. The question for consideration therefore is whether a Takedar, who obtain leaves from the Principal Manufacturer and get them rolled into biris at his residence by engaging labour is a manufacturer of excisable goods and is required to take out a licence in Form No. L-IV. The contention of the petitioners that biris are not excisable goods is not sustainable. Section 2, Clause (d) defines excisable goods as goods specified in the First Schedule as being subject to a duty of excise and includes salt. Tobacco is shown as Item No. 4 in the First Schedule. Biris are shown in sub-item No. 3 of Item No. 4. Sub-item No. 2(3) of Item No. 4 is biris which are manufactured with the aid of machines and sub-item No. 2(3)(ii) is "other biris". Different rates are prescribed for these two items of biris.

6. On a plain reading of the provisions of the Act particularly Section 3 which is the charging section and sub-item 2(3) of Item No. 4 of the First Schedule, the contention of the petitioners that biris are not excisable goods cannot be accepted.

7. The two decisions relied upon by the learned counsel for the petitioners have no application to the facts of the present case. In Union of India (UOI) Vs. Delhi Cloth and General Mills, , the question was whether refined oil which was brought into existence after some manufacture process in the course of manufacture of Vanaspati falls within the definition of vegetable non-essential oil and so is liable to excise duty under Item No. 12 of the First Schedule. That case has no applicability to the case before me where biris are mentioned specifically in the First Schedule. Similarly the decision in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, on which reliance was placed by the petitioner is of no assistance as the

gas which was subjected to excise duty was held by the Court not to be carbon dioxide while only carbon dioxide was liable to duty.

8. The next question to be considered is whether the petitioners can be said to be manufacturers within the meaning of Section 6 read with Rule 174 and are required to take out of a licence in Form No. L-IV. If they come under the category of manufacturers it is not in dispute that they will have to obtain a licence in Form No. L-IV and follow the excise procedure. The definition of manufacture as found in Section 2(f) is as follows :-

"2(f). "Manufacture" includes any process incidental or ancillary to the completion of a manufactured product; and

(i) in relation to tobacco, includes the preparation of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff, and" ...

This is an inclusive definition and it includes any process which is incidental or ancillary to the completion of the manufactured product and particularly in relation to tobacco the word ''manufacture'' includes the preparation of biris. The petitioners are admittedly persons, who get the tobacco rolled into biris at their premises. This is a process which is incidental or ancillary to the completion of the product. Without getting them rolled into biris, biris cannot be manufactured. In other words, rolling the tobacco into biris is one of the essential process for completion of a manufactured product. After rolling them into biris they are baked and branded and sent out into the market. I have no doubt in my mind that rolling the tobacco into biris is a process which is essential for completion of the manufactured product. Having regard to the definition of ''manufacture'' in Section 2(f)(i) preparation of biris amounts to manufacture of biris, and Section 2(f)(iv) says that the word ''manufacture'' shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods but also any person, who engage labour in their production or manufacture on his own account. Having regard to the definition of the word ''manufacture'', the contention of the petitioners that mere preparation of biris cannot amount to manufacture of biris is unsustainable.

9. It is next contended that the two impugned notices are discriminatory inasmuch as only persons manufacturing more than 60 lakh biris per year are asked to take out a licence while orders are not required to take out a licence. In the counter affidavit, it is stated that as per the notification No. 31/79 dated 1-3-1979 the clearance of unbranded biris upto 60 lakhs in a financial year are exempted from the whole of the excisable duty leviable thereof and the clearance of biris over and above 60 lakhs were subjected to excise duty. Since there is exemption of excise duty on the clearance of biris upto 60 lakhs only persons, who clear more than 60 lakhs were required to take out a licence as they have to be necessarily brought under licensing control. It is a valid distinction made for the purpose of achieving

the object under the Act namely, imposition of excise duty. Hence these notices cannot be said to be discriminatory.

10. Lastly a feeble attempt was made that trade notice No. 200/79 makes a distinction between Takedars, who get them rolled at the house of the home-workers and that this distinction has no reasonable basis. This contention has no substance. There is an essential difference between the two types. The petitioners get the biris rolled in their own premises. They directly come under the definition of Takedars whereas in the other type of Takedars, the process of manufacture does not take place in their premises. They merely pass on the leaves which they obtain from the Principal Manufacturer to the home-workers who roll them into biris at their houses. Thus there is an essential difference between the two. These Takedars merely keep the biris received from the house-workers for few hours before they are despatched to the Principal Manufacturer. All the Takedars, who get the biris rolled in their premises are treated alike. Hence the petitioners cannot complain of any discrimination between persons placed in similar circumstances.

11. I see no merits in any of the contentions raised in the writ petitions. The writ petitions are accordingly dismissed. No costs.