courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 03/11/2025

(1979) 4 ELT 155

Calcutta High Court

Case No: Civil Rule No. 1197-W-1973

Suburban Industrial Works	APPELLANT
Vs	
Collector of Central Excise	RESPONDENT

Date of Decision: July 21, 1976

Citation: (1979) 4 ELT 155

Hon'ble Judges: M.M. Dutt, J

Bench: Single Bench

Judgement

M.M. Dutt, J.
The petitioner feels aggrieved by the action of the respondents in not refunding to him the excise duty charged by them on the bellowers manufactured by the petitioner in his factory.

2. The petitioner is a manufacturer of electrical fans and blowers with and without electrical device. The blowers without any electrical device were not liable to excise duty under Item 33 of the Schedule to the Central Excises and Salt Act, 1944, till June 30, 1971, when the said item was amended. In order to appreciate the contention of the petitioner Item 33, as it stood before the amendment, may be reproduced as follows : -

"33. ELECTRICAL FANS, including air circulators but excluding those which are designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose, and parts of such electrical fans etc."

After amendment Item 33 reads as follows : -

"33. Electrical Fans, all sorts; - (1) Table, cabin, carriage, pedestal and air circulator fans,, of a diameter not exceeding 40.6 centimeter,

(2) Those designed for use in an industrial system as parts indispensable for its operation and have been given for that purpose some special shape or quality which would not be essential for their use for any other purpose.

(3) Not otherwise specified."

3. It is not necessary for our purpose to mention the rates of duty chargeable on each of the above articles. Sub-item (1) are all electrically operated fans and there can be no doubt that they are chargeable to excise duty. The dispute is with regard to those mentioned in sub-item (2). I have already referred to Item 33 as it stood before the amendments and it is clear that the articles mentioned in sub-Item (2) were exempted from excise duty under Item 33 before it was amended. The question is whether the inclusion of sub-item (2) makes the blower without any electrical device and manufactured by the petitioner chargeable to excise duty. Mr. Sarkar, learned Advocate appearing on behalf of the petitioner, submits that blowers with electrical device may be chargeable to excise duty but blowers without any electrical device are not contemplated by sub-item (2) of Item 33. In my opinion, there is considerable substance in the said contention of Mr. Sarkar. The pronoun "those" undoubtedly refers to electrical fans. Therefore, unless the articles mentioned in sub-item (2) are electric fans pr are operated by electrical device, they cannot, in my opinion, come within the purview of that sub-item so as to make them chargeable to excise duty.

4. In these circumstances, if any excise duty have been realised from the petitioner in respect of blowers manufactured by him, which are without any electrical device, the respondents shall refund such duty to the petitioner as claimed by him. It is made clear that the petitioner shall not be entitled to claim refund of duty realised by the respondents on blowers with electrical device or electrically operated. The respondents shall not also charge any excise duty on blowers without any electrical device or which are not electrically operated. Let a writ in the nature of mandamus issue in the above terms.

5. The Rule is made absolute to the extent indicated above.