

(1983) 10 CAL CK 0005

Calcutta High Court

Case No: C.R. No. 12902 (W) of 1981

R.K. Chemical Industries Pvt. Ltd.

APPELLANT

Vs

Superintendent of Central Excise

RESPONDENT

Date of Decision: Oct. 9, 1983

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 2(d)
- Constitution of India, 1950 - Article 226

Citation: 88 CWN 292

Hon'ble Judges: Ashamukul Pal, J

Bench: Single Bench

Advocate: Nanilal Banerjee, for the Appellant; Surathi Mohan Sanyal, for the Respondent

Judgement

Ashamukul Pal, J.

This is an application made by R.K. Chemical Industries Pvt. Ltd. under Article 226 of the Constitution for issuance of a writ against the Superintendent of Central Excise and the Assistant Collector of Central Excise both of Calcutta-III Division fully described in the petition itself for quashing the order dated 30. 3. 81 No. 20/R/III/3/81/67 and also order dated 17. 11. 81 No. C no. V (30) 23-78) 3902 B mainly on the ground that the same was contrary to the scope of the notifications issued from time to time to enlarge the scope of exemption to those who manufacture more than one "excisable goods" falling under more than one items of goods mentioned in the Tariff of the 1st schedule of the notification dated 19. 6. 80 and also notification dated 1. 3. 81 dated in the ground IV (page 14 of the petition). The petitioner's case is that it is a company incorporated under the Companies Act, 1956 having its registered office at Radhabazar Street, Calcutta. The company manufactures in its factory "Starch" falling under Tariff No. 15-C and also gum powder falling under Tariff item 68 (residuary of the first) schedule to the Central Excise and Salt Act, 1944 hereinafter referred to as the "first schedule"

2. The petitioner had the requisite licence and complied with all the provisions of the excise rules and submitted a classification list showing manufacture of the "excisable goods" falling under Tariff item 15-C-68 of the schedule as required under rule 173 B of the Central Excise Rule 1944. On 1st March, 1978 a notification no. 71-78-C.E. dated 1st March, 1978 was issued by the Government of India and by the said notification goods which were termed as "specified goods" were granted exemption of duty upto Rs. 5,00,000/- in any financial year provided inter alia that during financial years subsequent to the financial year 1978-79 the total clearance of such goods for home consumption during the preceding financial year would not exceed Rs. 15,00,000/-). The relevant notification has been set out at page 5 of the petition. The aforesaid notification was amended in 1979 by Notification No. 141/79-C.E. dated 30th March, 1979 by inserting a new clause granting exemption of the "excisable goods" cleared by a manufacturer upto the limit of Rs. 20,00,000/- for manufacturing "excisable goods" falling under more than one Item Number of the said "first schedule".

3. On 19th June, 1980 another notification no. 80/C.E. dated 19th June, " 1980 was issued by the Government of India in supersession of the earlier Notification No. 71/78-C.E. mentioned hereinbefore but making it clear that it will not apply to a manufacturer who manufacture "excisable goods" upto a limit of Rs. 20,00,000/- (aggregate value of clearance for home consumption during the preceding financial year) and Rs. 15,00,000/- for clearance of "specified goods" in some circumstances (pages 7-8 of the petition).

4. Petitioner's contention is that two sets have been notified, by the Central Government for the purpose of limit of granting exemption; one is "excisable goods" and another is "specified goods". In the case of a manufacturer manufacturing "excisable goods" more than one item, limit of exemption will be Rs. 20,00,000/- and its case is that as the aggregate value of its manufacturing starch and gum-powder being 17 1/2 lakhs that is to say, below Rs. 20 lakhs it ought to have been given exemption and not having been granted exemption the authorities have gone against the express purport and tenor of the said notification thereby falling into lapses and error and the order passed in letter dated 17.11.81 by Assistant Collector, Central Excise Cal. III Division - no. being C. No V(30)23-78/3902B. The petitioner's case is Assistant Collector Central Excise had misconstrued the relevant notification and his finding that the petitioner was not eligible to the exemption under Notification 80/80 dated 19.6.80 as the petitioner was hit by clause (II) of para 2 of the said notification is based on misconception failing to consider the real purport of the notion granting exemption and as such the order should be quashed.

5. The petitioner's further contention is that the aggregate value of manufacture of starch and gum powder was 17 1/2 lakhs (below 20 lakhs) and both are "excisable goods" and that being so exemption should have been granted to the said company as a matter of course in accordance with the provisions of the notification.

6. In paragraph 14 of the petition the petitioner states that in accordance with the express provision of the Notification No. 80/80 C.E. dated 19.6.80 read with the amending notification no. 50/81-C.E. dated 1.3.81 the petitioner is entitled to the exemption as mentioned therein since the aggregate value of the clearance of the excisable goods manufactured was Rs. 17,50,000/- (below Rs. 20 lakhs). (It may be noted here that the excise authorities accepted the position that the total value of the goods was Rs. 17 1/2 lakhs). The petitioner's grievance is that the authorities did not accept the construction of the said notification holding that the petitioner was eligible for exemption under the said notification: instead the authorities declined to give him exemption as he was manufacturing starch which was a "specified goods" would be in any event under the aggregate limit of Rs. 15,00,000/- By two letters dated 30.3.81 Annexure "C and 17.11.81 Annexure "F" Superintendent Central Excise III and Assistant Collector, Central Excise III made it clear to the petitioner that as the value of total clearance was more than Rs. 15,00,000/- and as it related to clearance of specified goods the petitioner "was hit" by Clause (II) of para 2 of notification no. 80/80 dated 19.6.80.

7. Mr. Banerjee contended that his client should come under the clause which - exempts the manufacturer of more than one item of "excisable goods" and declares the said manufacturer is eligible for exemption upto the aggregate value of Rs. 20,00,000/- whereas Mr. Sanyal appearing for excise authorities is for the (respondents nos. 1 & 2) contended that as such was "specied goods" and as the exemption of the "specified goods" was limited to Rs. 15,00,00Q/- petitioner cannot get benefit of exemption limit his total clearance for "Starch" (which is specified goods) which the petitioner manufactures along with gumpowder having exceeded Rs. 15 lakhs. It may be noted here that the petitioner's total clearance was 17 1/2 lakhs for starch and gum powder combined.

8. In order to find out under which clause the petitioner can get the exemption the definition of "excisable goods" may be looked into. "Excisable goods" has been defined u/s 2(d) of the Central Excise and Salt Act, 1944 as "goods specified in the first schedule as being subject to a duty of excise and includes salt". In 15C of the first schedule all sorts of "Starch" including dextrin and other forms of modified starch have been included. The goods were specified vide Notification No. 71/78 E.C. dated 1.3.78 in exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules 1944 the Central Government granted some exemption under certain conditions to a number of "excisable goods" of the description specified in Column (3) of the table which was annexed thereto and falling under such item number of the first schedule to the Central Excise and Salt Act, 1944, as is specified in the corresponding entry in Column (2) of the said Tariff and it may be noted that starch was include as specified goods being item no. 18 in the said table.

9. Mr. Banerjee, Counsel for the petitioner contended that his client manufactured two types of articles e. g. starch and gum powder and first" one (starch) comes

under the category of "specified goods" with the meaning and definition as contained in the notification stated above and the other (gum powder) is not "specified goods" but both articles, he argued, are "excisable goods"; only because one is a specified article does not make it non-excisable or can take it out from the general category of excisable goods to him both these articles being "excisable" belong to the same genus and the "specified goods" is one of the species for which a kind of different exemption had been notified. I find that in the case of specified goods exemption limit is Rs. 15,00,000/- . But in the case of excisable goods falling under more than one item number of the first schedule exemption limit is Rs. 20,00,000/- . It is rather significant that in the case of excisable goods that general exemption of Rs. 20,00,000/- has been made. An anomalous position is bound to arise if one manufactures goods which are "specified" and another type of goods which is not specified but all the same excisable as in this case. In my view by mentioning the number of items in case of excisable goods notification meant to exempt all excisable goods upto a limit of Rs. 20,00,000/- , irrespective of the items that is to say, whatever might be numbers of items in case of excisable goods exemption limit would be Rs. 20,00,000/-, but in the case of specified goods not mentioning the number of items the notification is rigid in its application making it Rs. 15,00,000/- in case of purely specified goods but if it is more than one item one is specified but another is not but nonetheless "excisable" and aggregate amount exceeds 15 lakhs total exemption available would be Rs. 20,00,000/- because "specified goods" do not cease to be "excisable" for which exemption limit is fixed at Rs. 20,00,000/- . If that interpretation is not given the said classification as contained in Clauses (1) and (2) will lose its purpose and meaning.

10. Mr. Banerjee, Counsel for the petitioner argued before me with reference to Maxwell that the statute imposing pecuniary burdens must be construed strictly. He referred to the passage of Maxwell, 12th Ed. page 256 which reads as follows :-

It is well settled rule of law that all changes upon the subject must be imposed by clear and unambiguous language, because in some decree they operate as penalties.

The subject is not to be taxed unless language of the statute clearly imposes the obligation and language must not be strained in order to tax a transaction which had the legislature, thought of it, would have been covered by appropriate words. In a taxing Act one has to look merely to what is clearly said There is no room of intendment. There is no equity about tax, there is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used". In this case under consideration it cannot be said that it is not imposition of duty but simply a case of granting exemption. When one does not get exemption, one is to pay the duty or tax : therefore clear and unambiguous language is very much necessary to exclude a manufacturer from the limit of exemption. He will be under the obligation of payment of tax or duty if he fails to come under exemption and

therefore a case of exemption of duty on certain condition is to be construed on the same principle as in the case of imposition of duty because the latter virtually is a case of imposition of tax or duty on non-fulfilling of certain conditions.

11. According to Maxwell one is to look at the language used. What is the language used in this case ? "Excisable goods" which has an unambiguous definition includes "specified goods". Mr. Sanyal does not dispute that the specified goods are not excisable goods. He wants to argue in the following way. I set out his own language. "Clause (II) of para 2 of the notification dated 1.3.81 is independent of Clause I of para 2 of the said notification. In Clause (I) of para 2 of the said notification if the value of clearance of all excisable goods manufactured by the manufacturer for home consumption exceeds Rs. 20,00,000/- in value, the manufacturer loses the benefit. In Clause (II) of para 2, out of those excisable goods as under the provisions of Salt. Act 1944 certain "excisable goods" have been specified in the notification and relating to those goods for home consumption exemption limit is restricted to Rs. 15,00,000/- , and as the petitioner was manufacturing "specified goods" his limit according to him is restricted to Rs. 15 lakhs. One does not dispute that those two clauses are independent.

12. One cannot also dispute with the interpretation that some excisable goods have been taken out and characterised as "specified goods" for the purpose of limit of exemption. But in my view the point is short -- whether specified goods are excisable goods. If the relevant provisions of the Central Excise and Salt Act 1944 with its first schedule and the notification under consideration are perused, it leaves no doubt that specified goods did remain excisable goods and the notification could very well see and could anticipate that there might be cases where one can manufacture two items of goods -- one specified and other excisable but not specified and the value of it might exceed Rs. 15 lakhs but might not exceed Rs. 20 lakhs and notification meant to lay down that in that case it will not come under the exemption meant for "specified goods" but will come under general head of "excisable goods" making the exemption limit for excisable goods fixed at Rs. 20,00,000/- and this meaning and construction of the said notification further corroborated by the fact that in case of "excisable goods" higher exemption limit of Rs. 20 lakhs has been permitted if the manufacturer manufactures more than one item but this is conspicuously absent in the clause dealing with the exemption limit of specified goods which restricts the exemption upto Rs. 15,00,000/- In my view the respondents nos. 2 and 3 were not correct in interpreting that as the petitioner was manufacturing unspecified goods as well and as it exceeded the limit of Rs. 15,00,000/- he will not come under the category of clause (2) which is as follows :-
Who manufactures excisable goods falling under more than one Item Number of the said First schedule and the aggregate value of clearance of all excisable goods by him or on his behalf for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs.

13. Mr. Sanyal further contended that the writ application is not maintainable inasmuch as there was provision for appeal against the order of Superintendent, Central Excise III, Calcutta Division. But two decisions have been cited by Mr. Banerjee to refute that contention -- one is reported in 1982 E.L.T. Cal 129 at page 134 (Collector of Central Excise, Cal. & Ors.) which was more or less akin to the case under consideration before me in its facts. There also as it is in this case excise duty was paid under protest. The Division Bench held "the relief that the respondent company may get in respect of a particular year is not an effective and adequate relief for in the next year respondent company has to again ask for refund and prefer an appeal if the application for refund is rejected... there can be no dispute that unless an alternative remedy can give full and effective relief to the aggrieved party, it will not stand in the way of his moving this Court under Article 226 of the Constitution."

14. In another judgment (Associated Pigments Ltd. v. Collector of Central Excise, Calcutta & Ors.) reported in 1983 E.L.T. 876 (Cal.) Justice Chittatosh Mukherjee inter alia held on the facts and circumstances of the case "it will have been futile with the petitioner who preferred the revisional application against the appellate order of the appellate Collector of Central Excise before filing the writ application. The learned Judges who issued these rules have already exercised their discretion to maintain those writ petitions. Therefore, if the petitioner has established its case on merits I cannot throw out the writ application on the above preliminary grounds." So the preliminary ground raised by Mr. Sanyal that as there was provision for appeal writ application will not lie, loses its force because the reason given by Mukherjee, J. in the case cited above is undisputable and I follow the same.

15. As discussed above, I am quite convinced that on the plain reading of the notification under consideration in the background of other notifications in this regard along with the definition of "excisable good" in the context of incidents which make certain goods as "specified goods" that the petitioner is to get the relief of exemption upto a limit of Rs. 20 lakhs as contained in notification no. 80/80C dated 19th June, 1980 and the orders passed by the respondents nos. 1 and 2 holding on facts and circumstances which have been dealt with previously that the petitioner would not get exemption to the limit of Rs. 20,00,000/- is erroneous. Under the circumstances, it is ordered that the rule is made absolute. Writ in the nature of mandamus be issued directing the respondents and each of them to rescind, recall, cancel and withdraw the said orders dated 30th March, 1981 passed by the respondent no. 1 and the order dated 17th November, 1981 passed by the respondent no. 2 Annexure "C & "F" herein and also a writ of certiorari be issued quashing those two orders dated 30th March, 1981 and dated 17th November, 1981 passed by the respondent Nos. 1 and 2 respectively. The respondent will release and for refund the amount of Rs. 1,35,185/- subject to scrutiny and verification as has been stated hereinafter and the respondents be directed to refund the petitioner all excise duties paid by the petitioner under protest as stated in the petition. For this

purpose within two months from this date the petitioner would produce before the respondent no. 1 necessary papers to establish the actual amount of excise duty paid under protest and the appropriate authority within four months thereof to complete verification and issue necessary refund order in favour of the petitioner.

There will be no order as to costs.