

(1991) 01 CAL CK 0022

Calcutta High Court

Case No: C.R. 11916 (W) of 1981

The Fort William Co. Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Jan. 18, 1991

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 2

Citation: (1992) 40 ECC 96 : (1992) 42 ECR 330 : (1991) 54 ELT 13

Hon'ble Judges: Ruma Pal, J

Bench: Single Bench

Advocate: R.N. Das and D.P. Gupta, for the Appellant; S. Banerjee, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Ruma Pal, J.

The dispute involved in this application revolves around the interpretation of the phrase "specified goods" in Notification No. 198/76 dated June 16, 1976.

2. The facts of the case are undisputed. The Petitioner No. 1 has been manufacturing Wire ropes since 1962. With effect from 1-4-1973 Wire rope was included for the first time as Tariff Item No. 63 in the first Schedule to the Central Excises & Salt Act, 1944 (hereinafter referred to as the said Act) by the Finance Act, 1973.

3. By Notification No. 198/76 dated June 16, 1976, certain exemptions in the payment of Excise duty were granted in respect of 43 excisable goods. Wire rope was included as one of the 43 excisable goods. The exemption was granted in respect of excisable goods cleared in excess of the base clearance by or on behalf of a manufacturer. Paragraph 12(2) of the said Notification, in so far it is relevant provides as follows:

(2) After comparing the clearance of specified goods under sub-paragraph (1) the base period and base clearances, in relation to a factory, shall be determined as under:

(a) xx xx xx xx xx xx

(b) Where the specified goods were cleared from a factory for the first time on or after the 1st day of April, 1973 but not later than the 31st day of March, 1976 the base period shall be the three financial years, i e., 1973-74,1974-75 and 1975-76 and the base clearances shall be one-third of the aggregate of the clearances of such goods during such base period;

(c) Where the specified goods were cleared from the factory for the first time earlier than the first day of April, 1973 the base period shall be the year in which the aggregate of the clearances of such goods during any of the financial years 1973-74, 1974-75 and 1975-76 was the highest and the clearances during such base period shall be the base clearances.

4. The Petitioner claimed computation of the base period and base clearance in accordance with Paragraph 2(2) (b) set out above. The Petitioner having already paid excise duty at the full rate, made applications for refund before the Excise Authorities for the year 1976-77,1977-78 and 1978-79. By reason of the inaction on the part of the respondents in disposing of the application for refund, two Writ applications were filed by the Petitioner in 1980 being C.R. 9556(W) of 1980 and C.R. No. 9557(W) of 1990. Both these will have since been disposed of on 5.7.90. The application for refund was permitted by the Excise Authorities in respect of year 1976-77. As far as the other years were concerned the Excise Authorities refused to allow such applications on the ground that the Petitioner having manufactured Wire goods prior to 1973 was entitled to claim exemption as specified in Paragraph 2(2) (c) of the said notification and not under 2(2)(b) thereof.

5. It is contended by the Petitioner that although the Petitioner No. 1 had manufactured Wire ropes since 1962 the Notification in terms referred to clearance of "specified goods" from the Factory after 1-4-1973. It has further been submitted that the phrase "specified goods" has been referred to in the first part of the notification as follows:

"The excisable goods of the description specified in column (3) of the table hereto annexed (hereinafter referred to as the "specified goods") and falling under such items number of the First Schedule to the Central Excises & Salt Act (1 of 1944)."

6. Excisable goods has been defined in Section 2(d) of the said Act as meaning "goods specified in the First Schedule being subject to a duty of excise and includes Salt". It is argued that, therefore, the goods manufactured by the Petitioner having been became excisable for the first time on April 1, 1973 became "specified goods" within the meaning of the notification with effect from that date. Clearance of

specified goods as far as the Petitioner was concerned took place for the first time on 6-4-1973 and was thus covered by paragraph 2(2) (b) of the said notification.

7. It has also been argued by the Writ petitioner that the respondents having accepted the interpretation of the said notification as put forward by the petitioner for 1976-77 could not change their opinion for subsequent years.

8. It is contended on behalf of the respondents that the phrase "specified goods" was only descriptive and used for the purpose of identification. Secondly, it is contended that the excise authorities had the power to correct any error made by them in any previous year. It has lastly been contended that the application of the writ petitioner was premature as the petitioner had come up after a notice of hearing had been issued by the authorities in respect of the subsequent years.

9. I am of the view that the contention of the petitioner must be accepted. The concerned authority in issuing the notification was alive to the difference between the phrases "specified goods" and "goods" simpliciter. This would be apparent from a reading of the various paragraphs of the notification where the phrase "specified goods" has been used in contradistinction to the word "goods". For example, in the explanation to paragraph 1(b) of the Notification the words used are "any goods". Secondly, the phrase "specified goods" has been specifically referred to in the first part of the notification as meaning excisable goods. If one keeps this meaning in mind, Clause 2(2)(b) would read as follows:

"Where the goods manufactured by the petitioner could not be called excisable goods."

The goods manufactured by the Petitioner could not be called excisable goods prior to 1.4.73.

Thirdly, if there is any ambiguity in the notification, the same must be resolved in favour of the assessee. The object of the exemption notification was to grant reliefs to the manufacturers. The Supreme Court in the case of the [The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha](#), has held -

"The construction to be placed on the term should be one that favours the tax-payer, in accordance with the principle of construction of taxing statutes, which must be strictly construed and in case of doubt must be construed against the taxing authority and (the) doubt resolved in favour of the tax-payer."

10. I am also of the view that the writ petition having been entertained by this Court, it would not be just to reject the petition at this stage on the ground of the availability of an alternative remedy (see [L. Hirday Narain Vs. Income Tax Officer, Bareilly](#),

11. In view of my finding on the question of interpretation of the notification, I do not think it is necessary to deal with other points raised by the Writ Petitioner.

12. Accordingly, I make the Rule issued herein on 25-9-1981 absolute. There will, however, be no order as to costs.

13. Let a Xerox copy of the operative part of the Judgment be handed over to the learned Counsel for the parties on payment of requisite costs and on the undertaking to apply for a certified copy of the order.