

(1981) 09 BOM CK 0084

Bombay High Court

Case No: Misc. Petition No. 702 of 1978

Two Star and another

APPELLANT

Vs

Assistant Collector of Customs,
Central Excise, Bombay and
another

RESPONDENT

Date of Decision: Sept. 22, 1981

Acts Referred:

- Central Excise Rules, 1944 - Rule 8(1)

Citation: (1981) 8 ELT 865

Hon'ble Judges: M.L. Pendse, J

Bench: Single Bench

Judgement

1. The petitioner No. 1 is a firm of small manufacturers of domestic electrical appliances such as round ovens, geysers, pressure release valves, etc. and petitioner No. 2 is a partner of the firm.

2. The petitioners sell their goods, amongst several other purchasers, to M/s. Bajaj Electricals Limited. The Bajaj Electricals Limited purchases the goods from various manufacturers and sells the goods under their brand name. On April 25, 1975, an agreement was arrived at between petitioner No. 1 on one hand, and Bajaj Electricals Limited on the other, whereby the petitioners agreed to supply the goods manufactured by them which the purchaser desired to sell under their brand name. In pursuance of the agreement, the petitioners have sold the goods to the Bajaj Electricals Limited from time to time.

3. The Government of India had granted relief from the payment of excise duty by way of exemption to small manufacturers. The Government of India published Notification No. 176/77 on June 18, 1977 in exercise of the powers under sub-rule (1) of Rule 8 of Central Excise Rules, 1944 exempting the goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act and cleared for home

consumption on or after April 1 of any financial year by or behalf of the manufacturer from one or more factories. The advantage of Notification was available provided the Assistant Collector was satisfied that (1) the sum total of the value of the capital investment made on the plant and machinery is not more than Rs. 10 lakhs and (2) that the total value of all excisable goods cleared by the manufacturer in the preceding financial year does not exceed Rs. 30 lakhs. The Government of India published notification No. 71/78 on March 1, 1978 and by this notification, it was provided that in respect of the first clearance of excisable goods for home consumption up to an aggregate value not exceeding Rs. 5 lakhs and cleared on or after April 1 in any financial year would be exempted from the whole of the duty leviable thereon subject to the following conditions :

"(a) the exemption would not be available to a manufacturer during the financial year 1978-79, if the aggregate value of the specified goods cleared during the period commencing from April 1, 1977 and ending on February 28, 1978 and exceeded Rs. 13.75 lakhs."

It is not necessary to make a reference to the other part of the notification. The petitioners are entitled to the advantage of this notification as the requirements were duly satisfied. The petitioners received letter dated April 17, 1978 from the Assistant Collector, Central Excise, "F" Division, Bombay, inter alia, pointing out that the declaration made by the petitioners claiming for exemption is not correct and the petitioners are not entitled to the advantage of the Notification. The Assistant Collector observed that the manufacture of domestic electrical appliances by the petitioners was for and on behalf of the M/s. Bajaj Electricals Limited and the value thereof exceeded Rs. 13.75 lakhs for the relevant period from April 1, 1977 and February 28, 1978. The Assistant Collector observed that the claim of the petitioners to clear the manufactured goods upto the value of Rs. 5 lakhs under nil duty would not be entertainable and the petitioners were called upon to show cause before passing the order.

4. The petitioners sent their reply by letter dated April 22, 1978 and pointed out that the petitioners qualified both the conditions, viz. (1) of small scale manufacturers and investment in the plant and machinery of less than Rs. 10 lakhs and (2) the turnover for the period from April 1977 to February 1978 is only Rs. 6,30,960.80 and does not exceed Rs. 13.75 lakhs as provided by the Notification. The petitioners also pointed out that they are not the manufacturers for and behalf of Bajaj Electricals Limited and the mere fact that the brand name is used by the Bajaj Electricals Limited in respect of the goods sold by the petitioners is not sufficient to hold that the manufacture was for and on behalf of the Company. The Assistant Collector passed the impugned order on April 28, 1978 holding that the petitioners have manufactured the electric appliances for and on behalf of Bajaj Electricals Limited and also sold under their brand name, with their assessable values. The Assistant Collector held that the appliances are to be treated as manufactured and cleared for

and on behalf of Bajaj Electricals Limited and the petitioners are not entitled to the exemption of payment of duty or clearance for home consumption up to a value of Rs. 5 lakhs. That order is under challenge in this petition filed under Article 226 of the Constitution of India.

5. Shri Bhatt, the learned counsel appearing in support of the petition urged that the only ground on which the Assistant Collector held that the goods manufactured by the petitioners were for and on behalf of Bajaj Electricals Limited is that the goods purchased by Bajaj Electricals Limited were sold with the brand name, "Bajaj". Shri Bhatt submits that the agreement between the petitioners and Bajaj Company nowhere indicates that the manufacture of goods was for and on behalf of the company. Shri Bhatt is right in his submission. The agreement nowhere indicates that the company had any control over the manufacture of goods or has given financial assistance or supplied raw materials for the purpose of manufacture. The agreement between the parties is clearly at an arms length and the mere fact that the goods sold by the petitioners are further re-sold under the brand name of the company is not sufficient to conclude that the manufacture was for and on behalf of the Company. The reliance by Shri Bhatt on the decision of this court in the case of *Ceramics and Electrical Industries Private Limited v. Union of India and others* reported in 1981 E L T 358 and that of Delhi High Court in the case of *Poona Bottling Company Limited and another v. Union of India and others* reported in 1981 E L T 381, is appropriate. It is now well-settled that the mere fact that the goods were sold under the brand name of the purchaser is not suffice to conclude that the manufacture was also for and on behalf of the Company.

6. Shri Dalal, the learned counsel appearing on behalf of the Department, urged that the goods were manufactured according to the specifications and quality of the samples approved by the Company and it was agreed between the parties that the accounts would be settled at the expiry of every three months after taking into consideration the fluctuation in the prices and these circumstances indicate that the manufacture was for and on behalf of the Company. It is not possible to accept this submission. The material on record is not sufficient to conclude that the petitioners were manufacturing the electric appliances for the company. The reasons assigned by the Assistant Collector to deny the advantage of the exemption notifications are totally incorrect and the impugned order cannot be sustained.

7. Accordingly, the petition succeeds and the rule is made absolute and the impugned order dated April 28, 1978 annexed as Ex. C to the petition is quashed. Shri Bhatt submits that in pursuance of the order, the petitioners have paid the duty under protest and have filed refund applications during the pendency of the petition. The Department shall dispose of the refund application within a period of two months from today. In the circumstances of the case, there will be no order as to costs. The Bank guarantee furnished by the petitioners in pursuance of the interim order stands discharged. The discharged Bank guarantee to be returned to

the petitioners.