Andhra Re-Rolling Works, Hyderabad vs Union Of India & Ors on 5 May, 1986

Equivalent citations: 1986 AIR 1964, 1986 SCR (2)1001, AIR 1986 SUPREME COURT 1964, 1986 TAX. L. R. 2057, (1986) JT 322 (SC), 1986 (18) STL 197, 1986 SCC (TAX) 531, 1986 UPTC 1362, 1986 SCC (SUPP) 263, 1986 UJ(SC) 2 279, (1986) 25 ELT 3, (1986) 9 ECC 282, (1986) 3 SCJ 100, (1986) 3 SUPREME 83

Author: V. Balakrishna Eradi

Bench: V. Balakrishna Eradi, V. Khalid

PETITIONER:
ANDHRA RE-ROLLING WORKS, HYDERABAD

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT05/05/1986

BENCH:
ERADI, V. BALAKRISHNA (J)
BENCH:
ERADI, V. BALAKRISHNA (J)
KHALID, V. (J)

CITATION:
1986 AIR 1964 1986 SCR (2)1001
1986 SCC Supl. 263 JT 1986 322
1986 SCALE (1)1208

ACT:
Central Excise and Salt Act 1944 : s. 3 & Item No. 26AA(i) First Schedule/Central Excise Rules 1944 r. 10 & 10A - M.S. Rounds manufactured by re-rolling untested rails Excise duty - Liability of - Eff ct of Notification No. 89/62 dated May 10, 1962.

HEADNOTE:
Item No. 26AA(i) of the First Schedule to the Central Excise and Salt Act, 1944, at the relevant time provided for levy of excise duty on various semi finished steel items and

all other rolled, forged or extruded shapes and sections, not otherwise specified.

The appellant converted three thousand metric tonnes of untested rails into M.S. Rounds of different specifications by the process of re-rolling, in execution of the contract entered into between him and the fifth respondent. me last delivery of the finished products was effected on February 23, 1966 and the payment received. Nearly eight months thereafter, on October 17, 1966 the Inspector of Central Excise issued notices to the appellant under r. 10A of the Central Excise Rules, 1944 demanding payment of excise duty on the rounds re-rolled. A representation to the Assistant Collector contending that the demand for payment of excise duty was illegal, since the M.S. Rounds had been re-rolled from rails which were exempt from levy of excise duty, was rejected.

The appeal to the Collector and the revision petition to the Central Government were also rejected.

The appellant, thereafter filed a petition in the High Court seeking an appropriate writ quashing the notices of demand on the ground that the M.S. rounds in question were not liable to be assessed to duty under item No. 26AA of the First Schedule to the Act and that in any event the impugned demands were time barred under r. 10 of the Rules and the resort

1002

sought to be made to the provisions contained in r. 10A was not legal or warranted. The High Court negatived all these contentions and dismissed the petition.

In the appeal by certificate to this Court it was further contended that the M.S. Rounds manufactured by the appellant were exempted by Notification No. 89/62 dated May 10, 1962, which granted remission of the excise duty payable under item No. 26AA to the extent of the amount of duty already paid on the articles from which the iron and steel products falling under that item had been made.

Dismissing the appeal, the Court,

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HELD: 1. The M.S. Rounds manufactured out of untested rails by the process of re-rolling fell within the ambit of item No. 26AA(i) of the First Schedule to the Central Excise and Salt-Act 1944, which expressly took within its scope "all other rolled, forged or extruded shapes And sections, not otherwise specified", and were liable to be charged to duty under the said item. [1005 G; 1006 B]

2. The ambit of r. 10 of the Central Excise Rules, 1944 is confined to cases where the demand is being made for a short levy caused wholly by one of the reasons given in that rule. It pre-supposes an assessment which could be reopened on specific grounds within the period specified therein. The time limit of three months mentioned in that rule has no applicability in cases where there has been no assessment of duty before the goods were removed from the factory. Such

cases are covered by the provisions of r. 10A, which is a residuary provision authorising the demand and collection of any deficiency in duty or of any other sum of any kind payable under the Act or the rules without any limit of time. [1006 D; F-H]

Assistant Collector of Central Excise, Calcutta Division v. Rational Tobacco Company of India Ltd., [1973] 1 S.C.R. 822 and D.R. Kohli and Ors. v. Atul Products Ltd., [1985] 2 S.C.R. 832, referred to.

3. It is only if the appropriate amount of duty had already been paid on the article which formed the raw material for manufacture of the product covered by item No. 26AA, that
1003
the manufacturer will be entitled to a proportionate remission of the duty on the latter product. Inasmuch as the untested rails in the instant case were exempt from duty and no amount whatever had been paid by way of duty on the said article out of which the M.S. Rounds were manufactured, the benefit of the notification No. 89/62 dated May 10, 1962 could not be claimed by the appellant. [1005 G-H; 1006 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 56 of 1972.

From the Judgment and Order dated 5.11.1970 of the Andhra Pradesh High Court in W.P. No. 3354 of 1968. C Anil B. Divan, D.N. Misra, Ashok Sagar and P.K. Rama Narain for the Appellant.

Gobind Das P.P. Rao, Miss Halida Khatun, R.N. Poddar and A.K. Ganguli for the Resondents.

The Judgment of the Court was delivered by BALAKRISHNA ERADI, J. This appeal has been preferred against the judgment of the High Court of Andhra Pradesh dated November 5, 1970 on the strength of a certificate of fitness granted by the High Court.

The appellant is a firm carrying on business of 'Re- rolling' having its factory at Moosapet near Sanatnagar, Hyderabad. A contract was entered into between the appellant and the 5th respondent, whereby the appellant undertook to convert 3000 metric tonnes of second class untested rails into M.S. Rounds of different specifications by the process of Re-rolling. Accordingly, the quantity of 3000 metric tonnes of second class untested rails was supplied to the appellant by the 5th respondent during the period between 29.4.1964 to 23.2.1966 and the appellant duly executed the work and 'delivered the M.S. Rounds and received the Re- rolling charges in accordance with the terms of the agreement. The last delivery of the finished products was effected by the appellant on 23.2.1966.

Nearly eight months thereafter, on October 17, 1966 the Inspector of Central Excise, Ameerpet

issued notices to the appellant dated October 17, 1966 demanding payment of excise duty on the Rounds Re-rolled by the petitioner from untested rails. me demand notices were purported to have been issued under Rule 10-A of the Central Excise Rules, 1944. The appellant filed a written representation to the Assistant Collector, Central Excise, Hyderabad contending that the demand for payment of excise duty on the M.S. Rounds was illegal since they had been Re-rolled from rails which were exempt from levy of excise duty.

The Assistant Collector by his order dated January 17, 1967 rejected the said contention. However, while doing so, he gave a direction to the Inspector of Central Excise to revise the demands in accordance with the rates of duty which were current during the different periods. Pursuant thereto, three revised demand notices dated March 18, 1967 were issued to the appellant. The appellant thereupon preferred an appeal to the Collector, Central Excise, Hyderabad. But that appeal was rejected by the Collector and the demands were confirmed. A Revision Petition filed by the appellant to the Central Government also met with the same fate. Thereafter the appellant filed a Writ Petition in the High Court of Andhra Pradesh seeking an appropriate writ quashing the notices of demand on the ground that the M.S. Rounds in question were not liable to be assessed to duty under Item No. 26-AA of the First Schedule of the Central Excise and Salt Act, 1944 (hereinafter called 'the Act') and that in any event the impugned demands were time barred under Rule 10 of the Central Excise Rules, 1944 and the resort sought to be made to the provisions contained in Rule 10-A was not legal or warranted. Neither of the aforesaid contentions found favour with the High Court and accordingly, the Writ Petition was dismissed. Hence this appeal by the appellant.

The description of goods given in Column No. 1 of the First Schedule to the Act against Item No. 26-AA(i) as it stood at the relevant time was in the following terms :-

> " Semi finished steel including blooms, billets, slabs, sheet bars, rods, coils, wires, joists, girders, angles, channels, tees, beams, zeds, trough, pilling and all other rolled, forged or extruded shapes and sections; not otherwise specified.
>
> In execution of the contract entered into between the appellant and the 5th respondent, the appellant had converted 3000 metric tonnes of untested rails into M.S. Rounds of different specifications by the process of Re- rolling. This undoubtedly amounted to manufacture. Since Item No. 26-AA(i) expressly takes within its scope "all other rolled, forged or extruded shapes and sections, not otherwise specified", the M.S. Rounds manufactured by the appellant by the process of Re-rolling were clearly liable to excise duty under the said item. C We find no substance in the contention urged on behalf of the appellant that the M.S. Rounds manufactured by it were covered by the exemption granted by the Notification No. 89/62, dated May 10, 1962. The relevant portion of that Notification was In the following terms :- n "The Central Government hereby exempts with effect from 24th April, 1962 iron and steel products falling under item No. 26-AA of the First Schedule to the Central Excise and Salt Act, 1944 if made from another article falling under the said item and having already paid the appropriate amount of duty, from so much of the duty of excise as is equivalent to the duty payable on the said article.

The effect of this Notification was only to grant a partial remission of the excise duty payable under Item No. 26AA of the First Schedule to the extent of the appropriate amount of duty which was already paid on the articles from out of which the steel products falling under Item No. 26-AA had been made. In the case before us the M.S. Rounds were manufactured by Re-rolling untested rails on which no excise duty whatever had been paid. It is only if the appropriate amount of duty had already been paid on the article which formed the raw-material for manufacture of the product covered Item No. 26-AA, that the manufacturer will be entitled to a proportionate remission of the duty on the latter product. Inasmuch as the untested rails were exempt from duty and hence no amount whatever had H been paid by way of duty on the said article from out of which the M.S. Rounds were manufactured, it is obvious that the benefit of the Notification cannot be claimed by the appellant.

We have therefore, no hesitation to uphold the view expressed by the High Court that the M.S. Rounds manufactured by the appellant fell within the ambit of Item No. 26-AA and were liable to be charged to duty under the said item.

The next point urged on behalf of the appellant is that the demand for duty was bad since it was made beyond the period of three months which is the time limit specified in Rule 10 of the Central Excise Rules, 1944. m e High Court has categorically found that in the present case no assessment or levy of duty had been made at the time when the goods were removed from the factory of the appellant. As pointed out by this Court in Assistant Collector of Central Excise, Calcutta M vision v. National Tobacco Company of India Ltd., [1973] 1 S.C.R. 822 Rule 10 pre-supposes an assessment which could be re-opened on specific grounds within the period specified therein. The relative scope and applicability of Rules 10 and 10-A were considered in detail by this Court in the said decision and it was explained "that Rule 10 should be confined to cases where the demand is being made for a short levy caused wholly by one of the reasons given in that rule so that an assessment has to be reopened. The said decision has been followed in the recent pronouncement in the case of D. R. Kohli and Ors. v. Atul Products Ltd., [1985] 2 S.C.R. 832.

Applying the tests laid down in the aforesaid rulings it is clear that the time limit of three months specified in Rule 10 has no applicability at all in the present case since there has been no assessment of duty before the goods were removed and it is not a case of short levy occasioned by any of the reasons specified in the said Rule. The case is, therefore, covered by the provisions of Rule 10A, which is a residuary provision authorising the demand and collection of any deficiency in duty or of any other sum of any kind payable to Central Government under the Act or the Rules without any limit of time. Hence the High Court was clearly right in rejecting the contention of the appellant that the demand notices issued to it under Rule 10-A were illegal and unsustainable.

The appeal accordingly fails and is dismissed with costs.

P.S.S. Appeal dismissed.