Motiram Tolaram And Anr. Etc. Etc vs Union Of India And Anr on 5 August, 1999

Equivalent citations: AIR 1999 SUPREME COURT 3121, 1999 AIR SCW 3070, (1999) 112 ELT 749, (1999) 6 JT 48 (SC), 1999 (6) JT 48, 1999 (4) SCALE 666, 1999 (4) LRI 321, 1999 (7) ADSC 430, 1999 (6) SCC 375, 1999 (8) SRJ 263, (1999) 84 ECR 48, (1999) 7 SUPREME 235, (1999) 4 SCALE 666, 1999 (3) BOM LR 751, 1999 BOM LR 3 751

Bench: B.N. Kirpal, A.P. Misra, R.P. Sethi

CASE NO.:
Appeal (civil) 3977 of 1988

PETITIONER:
MOTIRAM TOLARAM AND ANR. ETC. ETC.

RESPONDENT:
UNION OF INDIA AND ANR.

DATE OF JUDGMENT: 05/08/1999

BENCH:
B.N. KIRPAL, A.P. MISRA AND R.P. SETHI

JUDGMENT:

JUDGMENT 1999 Supp.(1) SCR 82 The following Order of the Court was delivered :

Normally it is the assessee who does tax planning but this is a case where one finds that it is the Revenue which has done tax collection planning.

The appellants imported consignments of polyvinyl alcohol on which additional duty under Section 3 of the Customs Tariff Act was sought to be imposed. The contention of the appellants before the authorities was that polyvinyl alcohol when manufactured in India from vinyl acetate monomer, on which appropriate amount of duty has been paid, is subjected to a concessional rate of excise duty of 10% ad valorem, instead of the normal duty of 40%, and, therefore, the appellants should also be required to pay the additional duty at this reduced rate.

When the case came up for hearing before the C.E.G.A.T., it came to the conclusion that the appellants were not entitled to the benefit of the notification whereby reduced rate of duty could be paid. It was held by the Tribunal that Excise Notification of Exemption could not apply while determining the duty payable under Section 3 of the Customs Tariff Act. One other reason given by one of the Members of

the Tribunal in deciding against the appellants was that the rate which is leviable under Section 3 of the Customs Tariff Act is the one which is provided in the Schedule of the Excise Act and, therefore, if there is any exemption which is granted the same would not be applicable.

Before dealing with the contentions raised by the learned counsel before us. we wish to make it clear that on the correct interpretation of Section 3 of the Customs Tariff Act it is now settled that the rate of duty would be only that which an Indian manufacturer would pay under the Excise Act on a like article See Hyderabad Industries Ltd. v. Union of India, (1999) 108 ELT 321 SC at page 326. The aforesaid conclusion of C.E.G.A.T does not appear to be correct.

The Excise Notification on which reliance is placed by the appellants is Notification No. 185 of 1983 which reads as follows:

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts Polyvinly Alcohol, falling under item No. 15A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) and manufactured from Vinyl Acetate Monomer, from so much of the duty of excise leviable thereon under the said Act at the rate specified in the said First Schedule, as is in excess of the amount calculated at the rate of ten per cent ad valorem.

Provided that such Polyvinyl Alcohol is manufactured from Vinyl Acetate Monomer on which the appropriate amount of the duty of excise under Section 3 of the said Central Excises and Salt Act or the Additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has been paid.

This notification shall be in force upto and inclusive of the 30th day of September, 1983."

It was submitted by Shri Dipankar P Gupta as well as Shri Prashant Bhushan and other counsel appearing on behalf of the appellants that in India there was only one manufacturer of polyvinyl alochol and this commodity can be produced only from vinyl acetate monomer and this Indian manufacturer was in fact paying duty at the rate of 10% ad valorem and it is only this duty which can be charged from the appellants. It was contended that for the purpose of Section 3 of the Customs Tariff Act we have to imagine that the appellants are manufacturing that item in India from vinyl acetate monomer on which appropriate duty of excise has been paid and, therefore, it is the concessional rate of duty which should be charged.

Shri C.S. Vaidyanathan, ASG submitted that an exemption notification should be strictly construed and in this connection he placed reliance on the observations of this Court in The Union of India v. The Commercial tax Officer. West Bengal and Others, [1955] 2 SCR 1076 at page 1088.

The Exemption Notification No. 185 of 1983 provides that the manufacturer of polyvinyl alcohol would not be required to pay excise duty in excess of 10% ad valorem if on the raw material used, namely, vinyl acetate monomer appropriate amount of duty of excise has been paid under the provisions of the Central Excises and Salt Act or additional duty has been paid under Section 3 of the Customs Tariff Act. This is the condition which has to be complied with before reduced duty can be paid.

When under the provisions of the Excise Act an assessee wants to claim benefit of an exemption notification, then the onus is on him to prove and show that the conditions, if any, which are imposed by the exemption notification have been satisfied. In the notification in question, the condition for getting the benefit of the lower rate of duty is that on the raw material used appropriate amount of duty has been paid here. If perchance or for any reason, the manufacturer of polyvinyl alcohol in India is unable to prove or show that the same has been manufactured from vinyl acetate monomer on which appropriate amount of duty of excise has been paid, then the said manufacturer would not be entitled to get the benefit of the said notification. That in fact the sole Indian manufacturer may have been able to prove in every case that appropriate duty-paid raw material has been used in the manufacture of polyvinyl alcohol, does not mean that the requirement of proving the same is dispensed with.

It is no doubt true that for the purpose of Section 3 of the Customs Tariff Act, one has to assume that the importer of polyvinyl alcohol had ` actually manufactured the same in India. One can further assume, possibly without any difficulty, that the said polyvinyl alcohol has been manufactured from vinyl acetate monomer, but it is not possible to assume or presume or imagine that the raw material used is the one on which appropriate amount of duty of excise has been paid in India. The condition which is contained in the said Notification has to be fulfilled in order to get the benefit of the Notification. There is a limit to which one can extend the fiction. It is not possible to assume that on the polyvinyl alcohol which is imported it must be presumed that excise duty has been paid on the vinyl acetate monomer.

It appears to us that the Excise Notification No. 185 of 1983 was deliberately worded in such a way that the importer of polyvinyl alcohol, who may not be able to prove that on the raw material appropriate duty in India has been paid, will not be able to get the benefit of the concessional rate of duty. It has to be borne in mind that the normal duty which is payable on polyvinyl alcohol is 40%. That is the rate of excise duty which would be payable by an Indian manufacturer of polyvinyl alcohol who is unable to show that he has complied with the condition contained in the proviso, namely, use in the manufacture of vinyl acetate monomer on which appropriate amount of duty has been paid. Similarly an importer of polyvinyl alcohol would be required to pay under the Section 3 duty at the rate of 40% because on the polyvinyl alcohol imported duty under Sections 3 of the Central Excises and Salt Act or additional duty under Sections 3 of the Customs Tariff Act has not been paid on the vinyl acetate monomer used in the manufacture of polyvinyl alcohol. If it was possible to have shown that duty-paid vinyl acetate monomer had been used in the manufacture of imported polyvinyl alcohol, then the benefit of Excise Notification No. 185 of 1983 would have been available. It is possible that vinyl acetate monomer manufactured in India is exported and the same is used in the manufacture of polyvinyl alcohol which, in turn, is imported into this country in which

case the importer would be able to show that the condition stipulated in the said notification has been complied with.

It is contended by Shri Prashant Bhushan that on the polyvinyl alcohol imported by the appellants, raw material used was vinyl acetate monomer on which duty under the Indian law has been paid. He submits that the appropriate duty being nil because it was not manufactured in India, therefore it must be regarded as if appropriate duty had been paid relying upon Collector of Central Excise, Patna v. Usha Martin Industries, [1997] 7 SCC 47, and the appellants would be entitled to the benefit of the Notification in question. We are unable to agree with this contention. Vinyl acetate monomer is an item which is manufactured in India and a rate of excise duty is leviable thereon. Oh the polyvinyl alcohol which has been imported, vinyl acetate monomer has-not been subjected to the appropriate amount of duty payable under the Indian law. It is only if this payment had been made that the Notification No. 185 of 1983 would have been applicable. Appropriate amount of duty would mean the duty payable under the Central Excises and Salt Act or under the Customs Tariff Act. Because this condition had not been satisfied in the present case, therefore, the appellants are unable to get the benefit of the said Notification.

For the aforesaid reasons, we do not find any merit in these appeals. The same are dismissed.

No order as to costs.

CIVIL APPEAL NO. 3977 OF 1986 (with Civil Appeal No. 4090/88) For the reasons stated above, these appeals are also dismissed. No order as to costs.