Union Of India (Uoi) vs Hindu Undivided Family Business Known ... on 21 August, 1970

Equivalent citations: AIR1971SC2333, 1978(2)ELT389(SC), (1970)2SCC472, [1971]1SCR936

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Bench: K.S. Hegde, V. Bhargava

JUDGMENT

V. Bhargava, J.

1. This appeal by special leave arises out of proceedings started by institution of a suit by the respondents, challenging the imposition of excise, duty on circles of kansi and brass prepared in the process of manufacturing utensils. The facts, which have been found by the High Court of Punjab and Haryana and the lower courts and which are not disputed, are that the respondents carry on business, at Rewari, of manufacturing kansi and brass utensils. For that purpose, they procure copper, tin and zinc. Kansi is prepared as an alley of copper and tin, and brass as an alloy of copper and zinc. These alloys are prepared by melting the metals and mixing them togther. These alloys are then converted into billets. These billets are thus of two kinds, viz., of kansi and of brass. These billets are then sent by the respondents to their agent who runs a rolling mills in Rewari. and the rolling mills roll the billets into uncut circles. Subsequently, these uncut circles are trimmed after further work, on them, they are converted into utensils and sold as such in the market by the respondents. The appellant imposed excise duty at the stage when the rolling mills prepared circles from the billets under Item 26A of the First Schedule read with Section 3 of the Central Excises and Salt Act No. 1 of 1944 (hereinafter referred to as "the Act"). The relevant provisions of the Act are, for convenience, reproduced below :--

> Section 3(1) reads as follows :
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> There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the First Schedule.

2. Item 26A of the First Schedule is as follows :

> "Description of goods Rate of Duty COPPER AND COPPER ALLOYS CONTAINING

NOT LESS THAN FIFTY PER CENT, BY WEIGHT OF COPPER, (1) In any crude form including There hundred rupees per metric ingots, bars, blocks, slabs, tonne. billets, shots and pellets. (2) Manufactures, the following Five hundred rupees per metric namely, plates, sheets, circles, tonne. strips and foils in any form or size. (3) Pipes and tubes Ten per cent ad valorem."

It may be added that we have quoted this item as it stood at the relevant time and have ignored the subsequent amendment under which the rates have been increased.

3. The excise duty was levied by the appellant on the basis that, at the stage when the billets were rolled into circles, the process of manufacture of circles was complete and, consequently, these circles became liable to excise duty at the rate mentioned against item 26A(2) quoted above. The respondents claimed that the product, as it appeared in the form of uncut circles after rolling of billets by the rolling mills, could not be called circles in the sense in which this word is used in item 26A(2); and, further, that the circles were prepared without undergoing any such changes as could be held to amount to manufacture, so that the circles at that stage were not liable to excise duty under this item. The trial court decreed the suit, holding that these circles were not liable to excise duty; and that decree was upheld by the appellate Court and, in second appeal, by the High Court. It is this decision that has been challenged in this appeal by the Union of India, after obtaining special leave.

4. It appears to us that, on a plain reading of the provisions of the Act and Item 26A of the First Schedule, the contention raised on behalf of the appellant must be accepted. Under Section 3. all excisable goods set forth in the First Schedule, which are produced or manufactured in India, are made liable to excise duly at the rates mentioned in the Schedule. Item 26A(2) clearly mentions the manufactures, amongst others, of circles in any form or size. There can be no dispute that what the rolling mills prepared by rolling the billets are circles in some form or the other and in different sizes. The contention that the uncut circles cannot be held to be circles mentioned in this item has, on the face of it, no force at all. Brij Mohan, the karta of the respondent Hindu undivided family business, in his statement himself admitted that the billets are sent to the rolling mills and the same are converted into P-6 and P-7, i.e., circles or penas. P-6 and P-7, according to him, are a kansi circle and a brass circle respectively. He added that the rolling mills never become the owners of either the billets or the circles. It is true that, at some stages, he described these circles are uncut circles; but he did not dispute that P-6 and P-7 are, in fact, circle of kansi and brass. The mere fact that they are uncut at the stage when they are prepared after rolling by the rolling mills cannot, therfore. mean that they are not circles and are not covered by that word as used in item 26A. No doubt evidence has been given that, subsequently, these uncut circles arc trimmed and then converted into utensils. The argument of learned Counsel that only trimmed circles can be treated as circles and as finished product for purposes of item 26A cannot be accepted, because that item itself envisages excise duty being levied on "circles in any form or size." We cannot understand how it can possibly be contended that uncut circles are not circles in any form or size. There is nothing in the item from which an inference can be drawn that the intention of the Legislature was to tax trimmed circles and not uncut circles. If there had been any such intention, the legislature would not have used the expression "circles in any form". Uncut circles are certainly one form of circles. The contention

further fails, because no evidence has been led to show that, in the commercial community, these uncut circles are not known as circles. In fact, as we have indicated above, the evidence of Brij Mohan himself makes it clear that these are described as circles. The only other witness examined by the respondents was Mahabir Prasad who runs one of the rolling mills which do the work of converting billets into circles on behalf of the respondents. According to him, billets are converted into uncut circles which are known as penas. These uncut circles cannot be directly used for preparing the utensils. He added that they have to be converted into circles, implying that the uncut circles have to undergo a further change before they can be described us circles. In cross-examination, however, he admitted that it is correct that the shape of the billets is changed into circles. On further cross-examination, he asserted that he is not the owner of the billets or the circles while they are in the rolling mills. Thus, he himself used the word "circles" without any qualification when describing the articles prepared in his mills as a result of rolling of billets. Taking this evidence together with the fact that the legislature in item 26A. of the First Schedule laid it down that excise duty is to be levied on circles in any form, it has to be held that the circles as prepared in the rolling mills were liable to excise duty.

5. In support of the decision given by the High Court to the contrary, learned Counsel for the respondents relied on two decisions on this Court in Union of India v. Delhi Cloth & General Mills [1963] Supp. I. S. C. R. 586 and South Bihar Sugar Mills Ltd., etc. v. Union of India and Ors. . In our opinion, neither of these cases supports the contention raised on behalf of the respondents, and it appears that the ratio of the first decision has been misunderstood by the High Court and the lower courts. In the case of Union of India v. Delhi Cloth & General Mills [1963] Supp. I. S. C. R. 586 the contention on behalf of the Union of India was that, in the course of manufacture of Vanaspati, the vegetable product from raw groundnut and 'til' oil, the respondents used to bring into existence at one stage, after carrying out some processes with the aid of power, what is known to the market as "refined oil", and this "refined oil" falls within the description of "vegetable non-essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power," and so is liable to excise duty under Item 12 of the First Schedule. The Court examined the process of manufacture of Vanaspati and found that vegetable non-essential oils as obtained by crushing containing the impurities were first produced as raw vegetable non-essential oils. They had then to undergo the process of refining which consisted of adding an aqueous solution of an alkali which will combine with the free fatty acids to form a soap and settle down with it a large amount of suspended and mucilaginous matter; after settling the clear supernatant layer is drawn off and treated with en appropriate quantity of bleaching earth and carbon is then filtered. In this process, the colouring matter is removed and the moisture that was originally present in the neutralised oil will also be removed. At this stage, the oil is a refined oil and is suitable for hydrogenation into vegetable product. What was sought to be taxed was the refined oil at this stage; but that contention was rejected, because the Court held that the oil produced at that stage is not known as refined oil to the consumers in the commercial community and can be described as refined oil only after deodrization. Since the process of deodorization is not carried out before that stage, no refined oil had come into existence and, consequently, the oil could not be taxed as such. That case has no applicability to the case before us where the tax is to be imposed on circles in any form. When; the rolling mills have rolled the billets, what comes into existence are circles known as such, even though they are in uncut form. The product at that stage fully satisfies the description contained in

Item 26A(2).

6. Similarly, the decision in South Bihar Sugar Mills Ltd. v. Union of India and Ors. is of no help on this point, because, again, the gas, which was subjected to excise duty, was held by the Court not to be carbon dioxide, while only carbon dioxide was liable to duty. It was held that the product that came into existence was a mixture of gases containing only a percentage of carbon dioxide and could not, therefore, be held to be carbon dioxide alone which could be subjected to excise duty under Item 14-H of the First Schedule.

7. Dr. Barlingay, relying on these two decisions of this Court, urged a further point that, when the billets were rolled into circles, no process of manufacture was carried out and, consequently, excise duty could not be charged under item 26A which imposes the liability only when goods like circles are manufactured. Reliance was placed on the interpretation of the word "manufacture" given in both the cases where it was indicated that manufacture implies the bringing into existence of a new substance known to the market. According to the respondents, the conversion of billets into circles did not bring any new substance into existence,, nor did it bring into existence any completed product, so that there was no process of manufacture which alone could render the circles liable to excise duty. This argument again appears to be based on a misunderstanding of the law. There is, first, the circumstance that, in item 26A itself, the legislature has laid down that excise duty shall be leviable on billets at a lower rate and on manufactures of circles at a higher rate. This provision itself makes it clear that the legislature was aware that billets are converted into circles, and it was decided that excise duty should be leviable at both stages. When the legislature used the word "manufacture" in connection with circles, after having taken account of the fact that billets were already subjected to excise duty, it is obvious that the process, by which the billets were converted into circles, was held by the legislature to amount to manufacture. The word "manufacture" is defined in Section 2(f) of the Act as including any process incidental or ancillary to the completion of a manufactured product. The rolling of a billet into a circle is certainly a process in the course of completion of the manufactured product, viz., circles. In the present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word used in Item 26A(2). In the other two cases which came before this Court, the articles mentioned in the relevant items of the First Schedule were never held to have come into existence, so that the completed product, which was liable to excise duty under the First Schedule, was never produced by any process. In the case before us, circles in any form are envisaged as the completed product produced by manufacture which are subjected to excise duty. The process of conversion of billets into circles was described by the legislature itself as manufacture of circles.

8. A second aspect is that, so far as the respondents are concerned, they start the process of manufacture of utensils by initially taking metals in crude form as raw materials. Two different kinds of metals in each case are mixed together to prepare alloys of kansi and brass. These alloys are then brought into the form of billets and, later on, the billets are rolled into circles. It cannot be contended that the whole of this process cannot be described as manufacture of circles. In this process of manufacture of circles, there are two stages. At the first stage, billets are produced and, at the second stage, circles. In any case, it has to be held that the circles thus prepared are the result of the process of manufacture. The end-result of this process of manufacture is the production of

circles in some form which is envisaged as the goods to be subjected to excise duty. The excise duty was, therefore, correctly levied "by the appellant.

9. As a result, the appeal succeeds and is allowed. The suit of the respondent shall stand dismissed. The costs of the appeal of respondent 1 shall be borne by the appellant.