

## **Mahavir Metal Mart, Bombay vs Union Of India (Uoi) And Anr. on 18 September, 1996**

**Equivalent citations: 1997(90)ELT20(SC), (1997)10SCC458, AIR ONLINE 1996 SC 178, 1997 (10) SCC 458, (1997) 69 ECR 241, (1997) 90 ELT 20, ILR 2017 CHH 696**

**Bench: S.P. Bharucha, K. Venkataswami**

### **ORDER**

1. The appeal challenges the correctness of an order of the Customs, Excise and Gold (Control) Appellate Tribunal in an appeal filed before it by the present appellants. The appellants had a factory at Goregaon and a godown at Gaushala. It was their case that they converted steel sheets and strips into circles at the godown, and converted the circles into stainless steel utensils and surgical and hospital ware at the factory. They claimed the benefit of an exemption notification dated 18-6-1977 issued under Rule 8 of the Central Excise Rules whereby goods falling under Tariff Item 68 cleared for home consumption on or after 1st April in any financial year by or on behalf of the manufacturer from one or more factories were exempted from the whole of the excise duty leviable thereon if a Central Excise Officer of the rank therein stated was satisfied that the sum total of the value of the capital investment on plant and machinery installed in the industrial unit in which the goods were manufactured was not more than Rs. 10 lakhs. It is the first proviso of the exemption notification that is of importance here. It reads thus :

Provided that this exemption shall not be applicable to a manufacture if the total value of all excisable goods cleared by him or on his behalf in the preceding financial year had exceeded rupees thirty lakhs.

2. The appellants were issued with a notice to show cause why duty and penalty should not be imposed upon them since the value of clearances made by them in 1977-78 exceeded Rupees thirty lakhs. The Collector of Central Excise upheld the contention in the show cause notice and directed the appellants to pay duty, fine and penalty. The appellants appealed to the Tribunal. The Tribunal reduced the duty liability and the fine and penalty but it confirmed the Collector's order on the merits. It was contended on behalf of the appellants before the Tribunal that the cutting of circles from steel sheets in the godown did not amount to manufacture and that the value thereof should be excluded from the total value of the clearances for the purposes of the exemption notification. The Tribunal said, however, that even these were excluded from the total value of clearances and the value of the utensils was taken as per their invoices, the total clearances during the preceding financial year (1977-78) would exceed Rs. 30 lakhs. The Tribunal noted that it was the contention of the appellants that the value of clearances of the utensils was only Rs. 29,88,930.04, which was less than Rs. 30 lakhs and, therefore, the benefit of the exemption notification was available to them. The Tribunal did not, however, address itself to this contention which was based on the fact that the value as computed by the Collector included sales tax, general tax and additional tax.

3. Section 4(4)(d)(ii) of Central Excises & Salt Act states that value in relation to excisable goods does not include the amount of excise duty, sales tax and other taxes, if any, payable on goods. Clearly, therefore, the Collector was in error in computing the assessable value of the goods in question by including the sales tax, general tax and additional tax payable thereon. There can be no question but that the calculation of "the total value of all excisable goods" for the purposes of the exemption notification must be such as is prescribed by Section 4.

4. In the result, the appeal is allowed and the order of the Tribunal is set aside. The Excise authorities shall now assess the value of the goods cleared by the appellants for the purposes of the said Exemption notification having regard to this judgment, and if the benefit of the exemption notification is available to the appellants, the respondents shall refund to the appellants the amount of the duty paid by the appellants pursuant to the Tribunal's order. The penalty and fine, if any, paid by the appellants shall be refunded in any event.

5. No order as to costs.