Amar Dye-Chem Limited And Anr. vs The Union Of India (Uoi) And Ors. on 8 December, 1972

Equivalent citations: AIR1974SC636, 1978(2)ELT427(SC), (1973)3SCC589, AIR 1974 SUPREME COURT 636, 1973 3 SCC 589, 1974 TAX. L. R. 1786, 1973 SCC (TAX) 304

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Bench: A. Alagiriswami

JUDGMENT

A. Alagiriswami, J.

1. This appeal by certificate is against the judgment of the High Court of Bombay which allowed the appellant's petition in part and rejected their prayer for refund of the balance of Excise Duty of Rs. 90,803.78p. The first appellant is a manufacturer, among other things, of dyes derived from coal tar and coal tar derivatives. The second appellant is its Managing Agent.

2. Prior to 1st March, 1961, "dyes derived from coal tar and coal tar derivatives used in any dyeing process all sorts" were not subject to Central Excise. By the Finance Bill of 1961 the above articles were inserted in the 1st Schedule to the Central Excises and Salt Act as Item 14D. The Provincial Collection of Taxes Act, 1931 was made applicable to this levy of all dyes derived from coal tar and coal tar derivatives manufactured after the mid-night of 28th February, 1961 became liable to the new ad valorem Excise Duty of 15 per cent.

3. The dispute between the Central Excise Officers and the appellants elated to a quantity of 47,068.50 kg. of dyes derived from coal tar and coal ???ar derivatives. This quantity consisted of 8 different Items. The departmental Officers having refused to treat the whole of this quantity as manufactured before the mid-night of 28th February, the appellants filed a petition before the Bombay High Court out of which this appeal arises. The High Court allowed the petitioners' claim in respect of a quantity of Rs. 15,109.6 kg. and refused relief in respect of the balance. Though at a certain stage the parties relied upon what was called a Trade Notice bearing No. 21 (MP) General, 1961 dated 6th March, 1961 issued by the Collector of Central Excise, which purported to lay down that goods will not be considered as fully manufactured unless at mid-night of 28th February, 1961 they were ready for delivery, the argument before the High Court as well as this Court centered around the point whether the process of manufacture had been completed before the midnight of 28th February.

4. The definition of the word 'manufacture' in Central Excises and Salt Act, 1944, Section 2, Clause (f) is as follows :

* * * * *

5. The argument on behalf of the Central Excise authorities was that the goods which are the subject matter of dispute were still to undergo processes incidental or ancillary to the completion of the manufactured product, whereas the argument of the appellants was that all that remained was to pulverise and blend the manufactured product, that the manufacture was already completed and the process of pulverising and blending would not be a process incidental or ancillary to the completion of a manufactured product. It was also sought to be argued on behalf of the Central Excise Authorities that the blending, which was admitted by the appellants, really resulted in the creating of a new product. It was also argued that the dyestuff which was in the from of lumps before the pulverising and the blending was not a marketable commodity and that it was not a dyestuff as understood by trade. On the other hand it was argued on behalf of the appellants that they had sold the dyestuff in lumps also without pulverising and blending and that, therefore, the pulverising and blending which they carried out was not a process incidental or ancillary to the completion of the manufactured product. It was urged that by this definition what was intended was the conversion of an intermediate product into a final product and not a product which really resulted only in physical changes i.e. from lumps to powder. On the other hand on behalf of the Central Excise authorities it was argued that Sub-clauses (i) to (iv) of Clause (f) would show that even where the conversion consisted only of physical change it was still a manufacturing process. The appellant's answer to this way that these clauses are specifically put in because but for their specific inclusion, they would not be manufacturing processes.

6. In this case the High Court took the view that the completion of a chemical process does not by itself result in the production of a new substance as known to the mercantile community and the consumers. However, we find no material on record to support this conclusion. Nor do we have any material as to what sort of blending was done by the appellants. The material on record is not sufficient to enable us to come to a conclusion one way or the other. There was a certificate given by an expert on behalf of the appellants and there were copies of two letters written by departmental chemists, which accidentally fell into the hands of the appellants, to the effect that before the mid-night of 28th February, 1961 these goods were in a chemically completely manufactured stage. The argument has throughout proceeded on the basis that it is not enough that the goods in question are chemically in a completely manufactured stage and that if there are physical changes brought about later it will still be a manufacture. It was even mentioned by the respondents that the dye stuff in lumps were not subject to excise duty.

7. In this state of the evidence we do not propose to express an opinion one way or the other. We consider it advisable that the matter should be remanded back to the Bombay High Court to enable both parties to produce evidence on the disputed questions. There will be an order accordingly. Needless to say that to the extent that the appellants got some relief from the Bombay High Court that will stand undisturbed. The order on costs to the parties in this appeal will follow and be provided for in the order which the Bombay High Court might ultimately make.