

Bombay High Court

Noble Paints & Varnish Company ... vs Union Of India And Another on 1 January, 1800

Equivalent citations: 1985 (19) ELT 80 Bom

Bench: S Bharucha

JUDGMENT

1. This petition concerns the interpretation of an exemption notification issued under the provisions of the Central Excise Rules, 1944. The notification is dated 30th April, 1975 and reads thus:

"In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts goods falling under Item No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) manufactured in a factory as a job work so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the amount charged for the job work.

Explanation,. - For the purpose of the notification, the expression, "job work" shall mean such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier after the article has undergone the intended manufacturing process on charging only for the job work done by him."

The petitioners received from M/s. Coates of India Ltd. pigments, oils and toners. They subjected them to a manufacturing process. The rotary news ink which was so manufactured was returned by the petitioners to M/s. Coates of India Ltd. The petitioners charged M/s. Coates of India Ltd. for the cost of processing the pigments, oils and toners.

2. For the period 1st April, 1979 to 6th March, 1981 the petitioners did not avail of the exemption granted by the notification due to ignorance of it and paid full excise duty upon the rotary news ink manufactured by them. They became aware of the notification early in March 1981. On 7th March, 1981 they filed a classification list with the Excise authorities basing themselves upon the notification. The classification list was not accepted and the petitioners paid full excise duty under protest. On 2nd April, 1981 the Assistant Collector of Central Excise passed an order rejecting their classification list upon the ground that the exemption under the notification "is admissible only where an article is received by the job worker and after manufacturing process the job worker return that article to the customer which remains the same. In your case the articles sent to you for work is pigment, oil, toners and the finished product returned by you Rotary News Ink."

3. On 7th March, 1981 the petitioners also filed refund applications, one for the period 1st April, 1979 to 7th September, 1980 in the sum of Rs.4,03049.92, and the other for the period 8th September, 1980 to 6th March, 1981 in the sum of Rs.2,10,152.33 on 8th April, 1981 the Assistant Collector rejected both the refund applications. He rejected the application for the period 1st April, 1979 to 7th September, 1980 upon the basis that the claim therein had been made after the expiry of six months from the payment of duty and it was time-barred under Rule 11 of the Central Excise Rules. In regard to the application for the period 8th September, 1980 to 6th March, 1981 the Assistant Collector stated that it appeared that the value of raw material for manufacture of the final

product was required to be included and hence the petitioners were not entitled to exemption under the notification.

4. This petition impugns the order rejecting the classification list and the orders rejecting the refund applications.

5. My attention was drawn to a Trade Notice issued by the Excise authorities in Bombay. It is dated 5th December, 1975 and it clarifies that it is not essential that, for claiming exemption under the notification, the articles received by the job worker and the processed article returned by him should have the same trade description. So long as it could be shown that the job worker was returning an article supplied to him after subjecting it to a manufacturing process, the exemption under the notification was applicable irrespective of the trade nomenclature of the article at the time of receipt and at the time of despatch (after subjecting it to a manufacturing process).

6. In *Anup Engineering Ltd. v. Union of India*, - 1978 E.L.T. 533, the Gujarat High Court stated:

"It is clear that, by this Notification, goods falling under Item 68 of the First Schedule manufactured in a factory as a job work are exempted from excise duty, except to the extent of the duty on charges for the job work. The Explanation set out in the Notification makes clear what is meant by "job work" and job work, in the context of this Notification, means such items of work where the article intended to undergo manufacturing process is supplied to the job worker and that article is returned by the job worker to the supplier after the article has undergone the intended manufacturing process, charging only for the job work done by him. It is clear, therefore, that the article supplied by the customer has to undergo manufacturing process as intended. It is obvious, in the context of the excise law, that, unless a new article known to trade emerges after the manufacturing process is completed, excise duty cannot be levied at all. That is the very basis of taxation under the excise law. In order to exempt job workers from payment of duty except to the extent of duty on the job work charges, this explanation to the Notification makes it clear that the article which undergoes manufacturing process at the hands of the job worker, must be supplied by the customer and the only thing which the job worker has to do is to subject that article supplied by the customer to the intended manufacturing process. The final result after the manufacturing process is completed has to be returned to the customer and the job worker only charges for the job work done by him. Under these circumstances, it is clear that, though excise duty would be otherwise leviable on the value of the article as it leaves the job worker's factory, by virtue of the Notification, excise duty has to be paid only on the charges for the job work and not on the total value of the articles when it leaves the factory of the job worker. No other meaning is possible on the wording on this particular Notification."

I respectfully agree. I understand that an appeal against this Gujarat High Court judgment is pending in the Supreme Court.

7. Considering that excise duty is payable on manufacture, and that in its operative portion the notification uses the words "manufactured in a factory as a job work", and in its Explanation the words "to undergo manufacturing process", it is obvious that the product that emerges after the

manufacturing process will be different from the material used at the commencement of the manufacturing process, and that the notification is meant to apply to such manufacture.

8. The interpretation placed upon the notification by the Excise authorities, namely, that the exemption under the notification is admissible only where the article returned by the job worker to the customer is the same as the article returned by the job worker to the customer is the same as the article received by the job worker, is untenable. It is mystery how the Excise authorities could have so interpreted the notification in the face of Trade Notice dated 5th December, 1975 issued by themselves.

9. Inasmuch as the same interpretation was applied by the Assistant Collector to the refund application for the period 8th September, 1980 to 6th March, 1981, his order thereon must be struck down. The refund application for the period 1st April, 1979 to 7th September, 1979 was rejected upon the ground of limitation. Whereas in this case, excise duty was recovered without authority of law, it must be refunded and this order too must be struck down. The petitioner shall also be entitled to recover excise duty under protest between 7th March, 1981 and 1st April, 1981 when, I am told, the notification rescinded.

10. The Excise authorities shall be entitled to ascertain whether the amounts claimed are correct.

11. The order dated 2nd April, 1981 and the two orders dated 8th April, 1981 are quashed and set aside. The respondents shall refund to the petitioners, after ascertaining the correctness thereof, the amounts claimed in the two refund applications dated 7th March, 1981 and the amount of excise duty paid between 7th March, 1981 and 1st April, 1981. Such refund shall be made within a period of six weeks from today.

12. The respondents shall pay to the petitioners the costs of the petition.

13. Rule accordingly.