Supreme Court of India
Madras Fertilizers Ltd. vs Assistant Collector Of Central ... on 20 January, 1994
Equivalent citations: 1994 (69) ELT 625 SC, JT 1994 (1) SC 150, 1994 (1) SCALE 173, (1994) 2 SCC 295, 1994 1 SCR 189
Author: B P Reddy
Bench: B J Reddy, B Hansaria
JUDGMENT B. P. Jeevan Reddy, J.

1. Tariff Item 14HH of the First Schedule to the Central Excise and Salt Act, 1944 levied duty on fertilizers at the rate of 15 per cent ad valorem. The Tariff item read as follows:

Item No. 14HH - Fertilisers

---------- Item No. Description Rate of Duty ---------- 14HH. fertilizers, all sorts, but excluding natural, 15% ad valorem animal or vegetable fertilisers when not chemically treated ----------

2. On March 1, 1970, the Government, of India Issued a Notification bearing No. 25/ 70 under Rule 8(1) of the Central Excise Rules exempting "mixed fertilizers, falling under Item No. 14HH of the First Schedule to the Central Excise and Salt Act, 1944 manufactured with the aid of power, from two or more fertilizers on all of which the appropriate amount of the duty of excise or, as the case may be, the additional duty under Section 2A of the Indian Tariff Act, 1943 has already been paid, from the whole of the duty of excise leviable thereon." There was an Explanation appended to the said Notification but since it is not relevant for the present purposes, it need not be quoted or referred to. A reading of the Notification shows that excise duty was waived in full in respect of "mixed fertilisers falling under item 14HH" which is manufactured "from two or more fertilisers on all of which the appropriate amount of duty of excise or as the case may be additional duty" has already been paid. The question in these appeals is whether the mixed fertilisers manufactured and sold by the appellant under the trade-name, Vijay (N.P.K. 17-17-17) is entitled to the benefit of the said Notification.

3. The Assistant Collector refused the benefit of the said Notification to the appellant on the ground that the mixed fertilisers (N.P.K.) manufactured by the appellant is not a mixture of two or more fertilisers as required by the Notification but a mixture of fertilisers and other ingredients. He fund that (N.P.K.) is a combination of urea, muriate of potash, phosphoric acid, ammonia fillers and coating agents. Moreover, he held, the ammonium phosphate which goes into the composition of N.P.K. is also a well known fertiliser, though it is not subjected to levy for practical reasons. On appeal, the Collector affirmed the Assistant Collector's order observing, "according to the Notification it was only such mixed fertilisers are exempted which are produced by blending, mixing or granulating duty-paid fertilisers (two or more) with any substance wherein such mixtures are produced by physical actions and without chemical reactions. The fertilisers manufactured by the appellants are definitely complex fertilisers which are obtained by chemical reaction. Such complex fertilisers cannot therefore be considered as simple mixtures for exemption provided in the

notification." The appellant challenged the correctness of the Appellate order by way of revision before the Government of India which allowed the same and remitted the matter for further verification under the following order (dated February 18, 1976): "The order in appeals is based on the contention that the mixture of two or more fertilisers envisaged in the relevant Notification should be by physical action and without chemical reaction and the fertilisers, manufactured by the petitioners are definitely complex fertilisers obtained by chemical reaction and hence they cannot be considered as simple mixtures to attract the exemption in the Notification. The said Notification does not lay down any such conditions and only requires that the mixture can be obtained with the aid of power and the mixed fertilisers should contain not more than one nutrient. Thus the order in appeal is not a proper speaking order on the issue involved and is set aside. The exemption under the said notification is allowed if the conditions thereof are fulfilled".

4. According to the Government of India's order, the fact that chemical reaction takes place during the mixing of fertilizers is no ground for denying the benefit of the said Notification. It was of the opinion that the benefit of the Notification can not be confined to simple mixtures alone, inasmuch as the Notification did not contain any such condition. Having so held, it remitted the matter to the lower authorities to grant the exemption if the conditions of the Notification are fulfilled. Be it noted that the Government of India did not deal with other objections contained in the Assistant Collector's order - presumably because, the appellate order (which was the subject matter of challenge before the Government of India) dealt only with one ground viz., occurring of chemical reaction/ transformation during the course of mixing of fertilizers by the appellant, yielding a new product ammonium phosphate.

5. Pursuant to the orders of the Government of India, the Assistant Collector, by his order dated March 5,1976, extended the benefit of the Notification to the appellant's product - Vijay N.P.K. 17-17-17- subject to the condition that the appellant pays the duty on the components. Within a few months, however, the Assistant Collector appears to have realised that he committed a mistake in extending the benefit of the Notification to the appellant's fertiliser' mixture and accordingly issued a show-cause notice on June 7, 1976 calling upon the appellant to show-cause why the benefit of the Notification be not denied to him for the reasons stated therein. The show-cause notice set out these grounds for the action proposed therein: urea is not used as an independent base fertiliser in the manufacture of the fertiliser mixture (Vijay N.P.K. 17-17-17) by the petitioner. Duty on urea is paid at the intermediary stage only to satisfy the condition of the Notification. Further a mixed fertiliser contemplated by the Notification is a mixture of two or more fertilisers. It does not contemplate formation of a third fertiliser viz., ammonia phosphate in the process of mixing or -ad- mixture of such raw materials as ammonia and phosphoric acid. No duty is paid on the ammonium phosphate. Further, ammonia is cleared free of duty under Notification 145 of 1971 - CE dated January 26, 1971.

6. In response to the notice the appellant showed cause, whereafter the Assistant Collector, by his order dated 7.1.77 denied the benefit of the Notification to the said product of the appellant on the ground that a review of the process of manufacture establishes that it does not satisfy the conditions prescribed in this Notification. He found specifically that the said mixture is not a mixture of two or more fertilisers alone and that more than one non-fertilizer agent goes into the manufacture of the said mixture. He also found that the ammonium phosphate which is obtained by mixing of certain

fertilisers and certain non-fertilizer agents is itself a fertiliser on which no duty is paid. Accordingly he concluded that the said product is not a mixture of fertilisers as contemplated by the Notification. He further held that the Notification contemplates a mixtures of two or more fertilisers wherein chemical transformation does not take place whereas in the case of the appellants' product, such a chemical transformation does take place as a result of which the original substances lose their identity and get transformed into a new product.

7. The appellant approached the Madras High Court by way of writ petition against the aforesaid order of the Assistant Collector dated January 7, 1977. The main contention urged by the petitioner was that inasmuch as the impugned order of the Assistant Collector denies the benefit of the Notification on a ground which has been specifically negatived by the Government of India in its revisional order dated February 18, 1976, it is unsustainable in law. A learned Single Judge agreed with the appellant's contention and allowed the writ petition against which the State preferred a writ appeal. The Division Bench allowed the writ appeal an dismissed the writ petition. The Division Bench held that the appellant was not right in contending that the Assistant Collector's order dated January 7, 1977 is based on the only ground which had been negatived by the Government of India in its order dated 18.2.1976. So far as merits are concerned, the Division Bench held that the decision of this Court in Coromandel Fertilisers Ltd. v. Union of India and Ors. concludes the issue against the appellant. The Division Bench further observed that it was open to the Assistant Collector to rectify the mistake committed by him in his order dated 5.3.1976 and that the contention that he has no jurisdiction to do so is unacceptable. The correctness of the order of the Division Bench is assailed in these appeals.

8. Sri Uttam Reddy, the learned Counsel for the appellant urged the following contentions:

1. The order of the Assistant Collector dated March 5, 1976 is in implementation of the order of the Government of India dated February 18, 1976. Once the Assistant Collector passed the said order he became functus officio. He had no jurisdiction to revise or revoke the said order thereafter. Even otherwise, it is clear that the order of the Assistant Collector dated January 7, 1977 reiterates the very ground negatived by the Government of India, viz., chemical transformation in the process of mixing of fertilisers. The said ground, having been expressly negatived by the Government of India in its revisional order dated February 18, 1976 is not available to the authorities. The order of the Government of India having become final, and also being inter parts, is binding upon the department and they can not question its correctness relying upon the decision of this Court in Coromandel Fertilisers assuming that it applies to the facts of this case. Even otherwise, the fact that this Court may have taken a different view on merits in Coromandel Fertilisers is of no relevance so far as the appellant is concerned. As a matter of fact, the decision of this Court in Coromandel deals with a different product which was a mixture of components different than the components concerned in the appellant's product.

2. The Division Bench of the High Court was in error in holding that the order of the Government of India in revision did not foreclose the controversy. All the grounds now urged by the Assistant Collector were before the Government. It allowed the appellant's claim. The last sentence in its order "The exemption under the said Notification is allowed if the conditions thereof are fulfilled", meant

only that the authorities ensure that duty is paid on the components. The said sentence did not mean that authorities could raise the very same objections again which were raised by them on the earlier occasion. All those objections must be deemed to have been rejected by the order of the Government of India. The said order in revision has to be read as a whole and understood reasonably. If so read and understood, it must be held to have left no room to reagitate the very same objections over again. All that the authorities were required to be satisfied was regarding the payment of duty on components and nothing more.

9. We may first deal with the submission of the learned Counsel for the appellant with respect to the meaning and effect of the order of the Government of India dated February 18, 1976. The order deals only with one aspect viz., that chemical reaction or transformation, if any, taking place on the mixing of fertilisers is no ground to deny the benefit of the aforementioned Notification to mixture of fertilisers. The order does not deal with any oilier condition specified in the exemption Notification. It would, therefore, not be reasonable to read the said order as holding finally that the fertiliser mixture manufactured by the petitioner satisfies all the conditions of the said Notification. Nor are we prepared to accede to the learned Counsel's contention that the remitting of the matter to the lower authorities was confined only to verification of payment of duty on fertilisers going into the manufacture of said mixture. The contention of the learned Counsel does not even stand to logic. The payment of duty on components is also a condition of the Notification just as the other condition that the mixture to become entitled to benefit of exemption should be a mixture of fertilisers alone. There is nothing in the order of the Government of India to indicate that it contemplated verification of only one condition or one condition of a particular nature. On the contrary, it spoke of "conditions" of the Notification being satisfied. When the Government of India remitted the matter to the lower authorities to grant exemption if the conditions of the Notification are satisfied, it necessarily meant the conditions other than the one specifically dealt with by the Government of India in its order. We are, therefore, of the opinion that after the remand it was open to, indeed it was the duty of, the excise authorities to satisfy themselves that all the other conditions of Notification are satisfied.

10. It is equally difficult to agree with the learned Counsel for the appellant that once the Assistant Collector passed his order dated March 5, 1976 pursuant to the Government of India's order dated February 18, 1976, he became functus officio and that he had no power to reopen the matter. The Government of India remitted the matter to the Assistant Collector to grant exemption if the conditions of the Notification arc satisfied. If the Assistant Collector granted an exemption contrary to law it was always open to him to rectify the said error. Sub-rule (5) to Rule 173-B of Central Excise Rules empowers the excise authorities to do so. Rule 173(B) provides for approval of the list of goods by the proper officer. The approval inter alia includes rate of duty leviable on each such goods. Sub-rule (5) reads: "(5) When the dispute about the rate of duty has been finalised or for any other reasons affecting rate or rates of duty, a modification of the rate or rates of duty is necessitated, the proper officer shall make such modification and inform the assessee accordingly." H may be noted that before revising his order dated March 5, 1976, the Assistant Collector gave a notice to the appellant stating the grounds on which he proposed to revise and modify his earlier order. The decision cited by Sri Uttam Reddy in support of this submission viz., Collector of Central Excise v. Pallappa 1964 Madras 111 has no relevance whatsoever. That was a case where the appellate

authority set aside the order of the original authority levying penalty without saying more. It was held that in such a situation, the original authority has no power to initiate de novo proceedings for levy of penalty. We arc unable to see any analogy whatsoever with that case herein. The learned Counsel also cited Union of India v. Kamalakshi Finance Corporation Ltd. to stress the judicial discipline required of the Excise Officers to obey the order of the superior tribunals and courts. Again, we see no relevance of the said principle in the facts of that case.

11. It has been held by this Court in Coromandel Fertilisers that ammonia is not a fertiliser but falls within the purview of "gases" mentioned under Tariff Item 14H, whereas fertilisers fall under Tariff Item 14HH. In view of the said judgment it can no longer be contended by the appellant that ammonia (which is one of the chemicals used to manufacture N.P.K.) is a fertiliser. Sri Uttam Reddy requested that an opportunity may be given to the appellant to establish that ammonia is also a fertiliser. We do not think we can accede to the said request. The show-cause notice issued on January 7, 1977 did expressly put the appellant on notice specifically that some of the raw materials like ammonia and phosphoric acid are not fertilisers. The final orders stated the said fact more clearly. In any event, in view of the decision of this Court in Coromandel it is not open either to the appellant or to any authority to say that ammonia is a fertiliser -more so when the judgment of this Court is based upon the Tariff entries themselves.

12. Lastly, the learned Counsel for the appellant relied upon para 11 of the judgment in Coromandel Fertilisers. It appears that the counsel for Coromandel Fertilisers referred to the fact that a similar manufacturer of mixed fertilisers, namely the appellant herein, has been given the benefit of the said exemption Notification under the orders of the Assistant Collector dated March 5, 1976 and that there was no reason to deny the said benefit to Coromandel Fertilisers. The said argument was dealt with by this Court in the following words:

Mr. Setalvad made a grievance that the authorities concerned had allowed the benefit of the Notification under similar circumstances to a rival company. If the grievance of the appellant is true, the appellant may no doubt have reasons to feel sore about it. We have, however, to point out that the grievance of the appellant, even if it is well founded, does not entitle the appellant to claim the benefit of the Notification. A wrong decision in favour of any particular party does not entitle any other party to claim the benefit on the basis of the wrong decision.

13. We do not think that the said observations help the appellant in any manner. It is not for us to say whether the mixture of fertilisers concerned in Coromandel Fertilisers is similar to the mixture manufactured by the appellant. It is sufficient to say that the mixture manufactured by the appellant does not satisfy all the conditions prescribed by the relevant Notification and that unless all the conditions are satisfied, the benefit does not flow. It was also admitted before us by the learned Counsel for the appellant that the explanation appended to the exemption Notification is not relevant herein.

14. For the above reasons, the appeals fail and are accordingly dismissed with costs. Advocate's fee assessed at Rs. 5,000/- consolidated.