

R. K. Audim and Others

Vs

Special Steel Ltd., Bombay and Another

Civil Appeal No. 313 of 1967

(J. M. Shelat, C. A. Vaidialingam JJ)

22.01.1971

JUDGMENT

VAIDIALINGAM, J. -

1. This appeal by certificate is directed against the order of the Bombay High Court, dated December 9, 1966 in Appeal No. 110 of 1965. By the said judgment the Division Bench confirmed the order of the learned Single Judge in Miscellaneous petition No. 131 of 1964 quashing the notice, dated November 9, 1963 issued under Rule 10-A of the Central Excise Rules, 1944.
2. The first respondent is a public limited company incorporated under Companies Act, who manufactures steel wires. On April 24, 1962 they had on hand 4077 Metric Tonnes of imported steel wire rods. Out of this quantity 1173 Metric Tonnes had been imported and duly cleared from the customs prior to April 24, 1962. The balance appears to have been purchased by the first respondent from the Iron and Steel Controller, Calcutta, prior to April 24, 1962. No excise duty was leviable on these rods or steel wires. But the excise duty was leviable on steel ingots. Item No. 26-AA was inserted in the schedule to the Central Excises and Salt Act, 1944 (hereinafter to be referred as the Act) whereby certain iron and steel products specified therein were made subject to excise duty.
3. By notification No. 70 of 1962, dated April 24, 1962 issued under Rule 8(1) of the Central Excise Rules (hereinafter to be referred as the Rules), certain exemptions were granted. By another Notification No. 90 of 1962 issued under the same rule on May 10, 1962 certain iron and steel products were exempted.
4. The first respondent had manufactured steel wires out of the imported steel wire rods and had substantially removed them from their manufacturing premises between the period May 4, 1962 and June 21, 1963. There is no controversy that at the time of clearance of the said steel wires, the same were assessed to duty which was paid and thereafter the first respondent was permitted to clear and remove them from their manufacturing premises. There was a demand by the Inspector of Central Excise on July 6, 1962 for further payment at the rate of Rs. 39.35 per metric tonnes. But on representations made by the first respondent to Assistant Collector of Central Excise, the notice dated July 6, 1962 was withdrawn. Nevertheless on November 9, 1963 appellant issued a notice under Rule 10-A calling upon the first respondent to pay a sum of Rs. 1,69,258.20 being the additional excise duty stated to be payable by them on the goods already cleared. The first respondent protested against this demand. The demand was also followed by a letter of the first appellant calling upon the first respondent to pay the additional duty demanded.
5. The respondents filed Miscellaneous Petition No. 131 of 1964 in the High Court of Bombay

under Article 226 to quash the demands contained in the notice dated November 9, 1963. Before the learned Single Judge both the sides appear to have accepted that the decision of the Division Bench in Appeal No. 69 of 1963 will govern this case also. Accordingly the writ petition was allowed and the appeal taken before the Division Bench was also dismissed on December 9, 1966.

6. The question that arises for consideration is whether the notice dated November 9, 1963 issued under Rule 10-A is valid. According to the appellants Rule 10-A applies whereas according to the respondents Rule 10 applies and the demand having been made far beyond the period provided therein is illegal.

7. We have discussed the scope of the rules in Civil Appeal No. 1467 of 1967 ((1971) 1 SCC 337) in which we have just now delivered the judgment. For the reasons stated therein we hold that Rule 10-A is not applicable and as such the High Court was justified in quashing the demand dated November 9, 1963. We may further state that even on the restricted interpretation sought to be placed on Rule 10 by the appellant it will be seen that the case on hand is one where a duty was levied and paid by the party. What is sought to be done is to recover an additional duty on the ground that the original imposition was at a lower rate due to the misapprehension of the Department. Such a case also will be covered only by Rule 10 and not by Rule 10-A.

8. The appeal fails and is dismissed with the costs of the first respondent.

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