

M/s Containers Corporation

Vs

Registrar, The Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi and Others

Civil Appeal No. 2784 of 1984

(G. L. Oza, P. N. Bhagwati JJ)

10.03.1986

JUDGMENT

OZA, J. -

1. This appeal has been preferred by the appellants under Section 35-L(b) of the Central Excises and Salt Act, 1944 against the Order in Appeal No. 215/1984-D dated April 12, 1984 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. The question involved in this appeal is about the rate of duty of excise for the purpose of assessment.
2. The appellants are a partnership firm registered under the Indian Partnership Act and are engaged in the activity of manufacturing metal containers. According to the appellants, they started manufacturing metal containers in the year 1974. On December 30, 1976 they surrendered their licence and switched over to manufacture of metal containers without the aid of power so as to be eligible to the exemption under Tariff Notification No. 94 of 1970 dated May 1, 1970.
3. It is alleged that on November 27, 1980, the seaming machine lying in the factory of the appellants was jammed and therefore a technician Shri Amar Singh Yoddha was called in to remove the jam. This technician advised that the jam could be removed only by giving a jerk by coupling the machine with an electric motor and therefore an electric motor was fitted on to the jammed machine and about this time the officers of the Central Excise Department conducted a surprise inspection and seeing the electric motor fixed on the machine drew an inference that the said machine was being worked with the aid of power. A memorandum was drawn up and the statement of Shri Purshottam Parikh, one of the partners of the appellants was also recorded. By letter dated November 29, 1980, the appellants informed the Collector of the circumstances in which the motor was brought in and fixed on the seaming machine. A notice dated May 19, 1981 was however issued to the appellants to show cause as to why duty should not be charged from them on the ground that the metal containers were being manufactured with the aid of power. A reply was submitted by the appellants and the matter was heard on February 25, 1982. The Investigating Officer was cross-examined and witnesses gave evidence and after concluding the enquiry, the Collector passed an order imposing a fine of Rs 10,000 in lieu of confiscation and a penalty of Rs 50,000 and ordered appropriate leviable duty to be paid on the containers alleged to have been manufactured and removed during the period May 1, 1979 to November 26, 1980.
4. An appeal was filed by the appellants before the Customs, Excise and Gold (Control) Appellate Tribunal, Regional Bench at Bombay but the same was transferred to Delhi and by the impugned order the Tribunal rejected the appeal and confirmed the order passed by the Collector, Central Excise, Baroda.

5. The appellants approached the High Court of Gujarat by way of a special civil application but the High Court by its order dated June 29, 1984 rejected it as non-maintainable and hence the present appeal with special leave obtained from this Court.

6. It is not disputed that the Notification No. 94/70 CE dated May 1, 1970 provided that the manufacture of metal containers falling under Item 46 for which no process is ordinarily carried on with the aid of power is exempted from whole of the duty of excise leviable thereupon. It is also not disputed that the appellants' manufacturing shed has no power connection but there was a power connection in the adjacent shed of a sister concern and one Shri M.S. Parikh who was the proprietor of the sister concern M/s P.G. Orcham was also a partner of the appellants and it was also alleged that at the time of inspection a connection was found from the main power connection of M/s P.G. Orcham to certain machines of the appellants' factory. On a scrutiny of power bills of this concern in whose name the power bills were issued, the Collector, Central Excise found that in 1977 the consumption was zero during 10 months and there was some consumption only in 2 months. In 1978 there was zero consumption in 8 months and some consumption in 4 months. Out of the 4 months of 1979 there was zero consumption in 3 months. However, during 19 months from May 1979 to November 1980 there was zero consumption only in 5 months and consumption ranging from 2 to 66 units in the remaining 14 months. On the basis of these facts it was held that from May 1979 to November 1980 power was used for manufacture of metal containers and therefore the appellants were not entitled to exemption.

7. The appellants have submitted a statement of power consumption for all these years which was considered by the Collector, Central Excise and contended before us that there is no basis to treat the period from May 1979 to November 1980 as a period during which power was used by the appellants for manufacture. It may be noticed that even during this period consumption like 2 units, 7 units, or 14 to 16 or 17 units would not justify an inference that power was used ordinarily for manufacture as it was conceded that even for a 2 hp motor the consumption will be more than 2 units per hour.

8. Looking to the statement of power consumption of M/s P.G. Orcham and comparing this with the production of the appellants there appears to be no justification for drawing an inference that during the period May 1979 to November 1980 the power shown to have been consumed by M/s P.G. Orcham was in fact utilised by the appellants for manufacture of metal containers. A perusal of the chart showing production shows that in some months like December 1979 when the power consumption is shown to be zero, the production was highest and on a perusal of the statement of production when compared with the power bills, it is difficult to see how this power consumption can be correlated with production of metal containers. Learned counsel appearing for the Revenue also could not justify why this period from May 1979 to November 1980 was treated as a distinctive period and how the consumption of power shown in various months during this period could be correlated with production. It is in the circumstances impossible to draw an inference that during this period, power was used by the appellants for manufacture of metal containers.

9. We accordingly allow the appeal and set aside the orders of the Tribunal and the Collector. There will be no order as to costs.

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