SUPREME COURT OF INDIA

Madina

Vs.

Collector, Central Excise

C.A.No.1743 of 1974

(M. M. Punchhi and R. M. Sahai, JJ.)

29.08.1990

ORDER

1. This appeal by special leave is directed against the judgment and order dated 4-4-1973 of the Allahabad High Court passed in Special Appeal No. 83 of 1986 affirming an order of a learned single Judge passed on 1-10-1965 in Civil Miscellaneous Writ No. 3234 of 1959.

2. The appellant is a manufacturer of chewing tobacco (Zarda). He holds a licence under the Central Excise Rules, whereunder he is permitted to keep in possession, subject to the observance of rules, unmanufactured tobacco. It appears that no licence is necessary, for possession or sale of manufactured chewing tobacco. Somewhere in May, 1958 the premises of the appellant were inspected by the Deputy Superintendent, Central Excise, Allahabad. Amongst other stock, a quantity of 14,376 lbs. of tobacco, which the appellant termed as manufactured and the Excise Department as unmanufactured, was taken into possession. Besides that there was another quantity of 264 lbs. recovered as undeclared, whether manufactured or unmanufactured.

3. The appellant was issued a show cause notice by the Assistant Collector of Central Excise asking

him to explain the unauthorised possession of the unmanufactured tobacco. In response thereto, the appellant asserted that the recovered tobacco was, in the eye of law, manufactured inasmuch as it had been crushed and coloured towards the manufacture of chewing tobacco ie. Zarda. The Assistant Collector of Central Excise by his order dated 21-8-1958 rejected the contention holding that the alleged manufacture of tobacco did not qualify being complete manufacture as colouring was the very first step in the usual process of manufacture of Zarda and that the same had not been treated further with any other appreciable ingredients. In conclusion, he held that the tobacco seized was in the beginning of the process of manufacture and that there was no document to prove that the tobacco was duty paid. On that basis he imposed a penalty of Rs. 200/- on the appellant declaring the tobacco weighing 14,376 and 264 lbs. as unmanufactured and liable to confiscation. He, however, permitted redemption of the confiscated tobacco on payment of a redemption fine of Rs. 200/-. In addition to duty due thereon to be paid at the appropriate rate.

4. The appellant filed an appeal before the Collector of Central Excise, Allahabad. The issue focussed before him was whether coloured tobacco be treated as manufactured tobacco or unmanufactured tobacco. This proceeded on the footing that if it was manufactured tobacco within Rules 226, 32 and 40 of the Rules it would not attract Excise Duty, for no excise account was necessary under the Rules to be kept in respect of manufactured tobacco, and neither was a transport permit necessary for its transport nor stocking as a licence. That colouring was a manufacture within the meaning of Section 2(f) of the Central Excises and Salt Act, 1944 as asserted by the appellant was negatived because coloured tobacco was not in the state of being traded as a complete commodity. The Collector further held that chewing tobacco when treated with foreign matter and packed in suitable sized containers for retail sale, ordinarily bearing the name of manufacturer and his address, fell within the definition of a manufactured product. As a trade practice, he observed that manufactured tobacco was brought about when its sale was imminent and unless packed in more or less sealed containers was otherwise bound to deteriorate in quality. On these views he rejected the appeal.

5. The appellant then approached the High Court of Allahabad by means of a writ petition. A single Bench of the High Court declined to interfere taking the view that when the tobacco in dispute was in the process of manufacture that by itself did not mean that it was a manufactured product in the eye of law. On special appeal to a Division Bench of that Court the appellant again was unsuccessful for the Bench took the view that whether coloured tobacco became chewing tobacco was a question of fact and could not be interfered with in a writ petition.

6. Besides taking the matter to the High Court, the appellant, it appears, had challenged the appellate order of the Collector of Central Excise in revision before the Central Government. The Government on 26-3-1973 upheld the finding of the Collector. It further took the view that colouring was one of the processes in preparation of chewing tobacco which by itself would not constitute manufacture within the meaning of statute. That order too was addedly challenged in the High Court but with the same result. In reassertion of the challenge, the appeal is before us.

7. Section 2(f) of the Central Excise Act is in the following terms:

"'Manufacture' includes any process incidental or ancillary to the completion of manufactured product; and

(1) in relation to tobacco, includes the preparation of cigarettes, cigars, cheroots, biris, cigarettes or pipe or hookah tobacco, chewing tobacco or snuff."

8. It is clear from the language that for purposes of tobacco manufacture the entire definition has to be read. In other words the question on the facts established would be whether colouring of tobacco is a process, incidental or ancillary, to the completion of the manufactured product known as chewing tobacco. The appellant did not take care to assert anywhere what are the steps which are taken by him to reach the end product known as chewing tobacco. In order to qualify that the state of colouring was a process incidental or ancillary to the completion of the end product the finding of the Assistant Collector of Central Excises is that it was a first step. The Collector of Central, Excise held it a first step. The single Bench of the High Court held it to be not a step to complete the product. The Division Bench left it at that treating it as a question of fact. In this situation and for the scanty material available on the record, we are unable to take the matter any further so as to conclude whether the step of colouring was incidental or ancillary to the completion of the manufactured product known as Zarda. Therefore, for these reasons, we find no case to upset the decision of the Allahabad High Court and leave the order dismissing the writ petition of the appellant undisturbed. As a result this appeal fails. There shall be no order as to costs.

Appeal dismissed.

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