

I.D.L. Chemicals Ltd.

Vs

Union of India and Others

Civil Appeals No. 1589 of 1991 With No. 1590 of 1991

(S. P. Bharucha, K. T. Thomas JJ)

24.07.1996

ORDER

1. The appellants manufacture explosives from ammonium nitrate melt 80% at a plant in Rourkela, Orissa. The said ammonium nitrate is purchased from SAIL, which also has a plant in Rourkela.
2. On 11-6-1969 an exemption notification under the Central Excises and Salt Act, 1944, (No. 164 of 1969) was issued by the Central Government exempting ammonium nitrate from the whole of the excise duty leviable thereon if it was intended to be used in the manufacture, inter alia, of explosives, provided that the procedure set out in Chapter X of the Central Excise Rules, 1944, was followed. The appellants applied for a licence under the said Chapter X in respect of the said ammonium nitrate for use in the manufacture of explosives. The licence having been granted, the appellants enjoyed the benefit of the said exemption notification.
3. At all relevant times, ammonium nitrate was classified as a fertiliser under Tariff Item 14-HH. On 16-4-1977 a show-cause notice was issued to SAIL by the Superintendent in the Office of the Assistant Collector of Central Excise, Rourkela, to show cause why ammonium nitrate should not be reclassified under Tariff Item 68. On 10-8-1977, the Assistant Collector, having examined the case, came to the conclusion that there was no need to so reclassify ammonium nitrate.
4. On 6-1-1978, the Central Board of Excise and Customs wrote to the Collector, Central Excise, Bhubaneswar, on the subject of ammonium nitrate melt 80% used in the manufacture of explosives and its classification as a fertiliser. The letter stated that the matter had been examined in consultation with the Ministry of Chemicals and Fertilisers and that Ministry had stated that ammonium nitrate was not classified as a fertiliser in the Fertiliser Control Order and that in the event of ammonium nitrate being accepted as a fertiliser without further processing, the item would have to be included in the Fertiliser Control Order before it could be marketed as a fertiliser. Hence, the said ammonium nitrate fell outside the purview of Tariff Item No. 14-HH. This being so, the question of exemption of duty under the said exemption notification did not arise. Not being a fertiliser known in commercial trade parlance, ammonium nitrate merited assessment under Tariff Item 68 and would be liable to the appropriate duty thereon.
5. Based upon the said letter of the Central Board, the Superintendent, Central Excise, Rourkela, wrote to SAIL and demanded excise duty upon the said ammonium nitrate under Tariff Item 68 at the rates prevailing from time to time with effect from 1-3-1975. On 7-2-1978, SAIL, in turn, demanded payment of the said amount of excise duty from the appellants.
6. On 27-7-1978, the Central Board issued a show-cause notice to SAIL to review the order of the

Assistant Collector dated 10-8-1977 aforementioned. The matter was contested by SAIL in a reply dated 8-11-1978. By an order (No. 6/80 of 1980) made in November 1980, the Central Board set aside the order of the Assistant Collector dated 10-8-1977, and reclassified the said ammonium nitrate under Tariff Item 68 with effect from 1-3-1975. On 16-12-1980 SAIL wrote to the appellant demanding the excise duty on the said ammonium nitrate in accordance with the order of the Central Board dated November 1980, with effect from 1-3-1975, to 23-1-1978, in the sum of Rs. 34,52,919.23. On 2-2-1981 the appellant filed a writ petition (No. 183 of 1981) which challenged the order of the Central Board dated November 1980 and the demand made pursuant thereto.

7. In the meantime, on 21-7-1979, a notification was issued whereby ammonium nitrate was excluded from Exemption Notification No. 164 of 1969 with effect from 21-7-1979. This notification was challenged by the appellants before the Orissa High Court in a writ petition (No. 86 of 1980). In the alternative, it was prayed that, in any event, up to the date of the notification, ammonium nitrate remained entitled to the exemption refund of duty amounting to Rs. 50,14,202 collected for the period 24-1-1978 to 20-7-1979 was sought.

8. On 5-2-1990 the earlier writ petition (No. 86 of 1980) was dismissed on the ground that the notification dated 21-7-1979 was not unconstitutional. The alternative prayer was not considered.

9. On the same date, the High Court passed an order in the later writ petition (No. 183 of 1981) referring the appellants to a civil suit to claim monies from SAIL under Section 64-A of the Sale of Goods Act.

10. Mr. Salve, learned counsel for the appellants, has drawn our attention to the Exemption Notification No. 164 of 1969 dated 11-6-1969, which, as aforesaid, exempts fertilisers of the description stated in the Table therein from the whole of the excise duty leviable thereon under Tariff Item 14-HH of the First Schedule to the Central Excises and Salt Act, 1944. The Table lists ammonium nitrate and specifies that ammonium nitrate shall be entitled to such exemption if it is intended to be used in the manufacture of explosives. The notification also provides that no exemption thereunder would be admissible unless the procedure set out in Chapter X of the Central Excise Rules, 1944 was followed. Rule 192 of Chapter X states that where the Central Government has by notification under Rule 8 sanctioned the remission of duty on excisable goods used in a specified industrial process, any person wishing to obtain remission of duty on such goods shall make application to the Collector in the proper form stating the estimated annual quantity of the excisable goods required and the purpose for and the manner in which it is intended to use them and declaring that the goods will be used for such purpose and in such manner. There can be no doubt that the remission of duty is available to the user of the goods in relation to the use for which the goods are intended. Mr. Salve also drew our attention to the bond which is required to be furnished by a person licensed to obtain excisable goods to be used for specified industrial purposes. It recites that the signatory has been permitted to purchase from time to time goods of the stated quantity of the goods for use for the manufacture of the commodities specified therein. It is one of the conditions of the bond that excise duty, should it be demanded on the goods should be paid within ten days of demand. Mr. Salve submitted that, in the context, the burden of payment of excise duty under Tariff Item 68 upon the said ammonium nitrate fell upon the appellants and they were affected thereby. It was, therefore, permissible for them to challenge the correctness of the order of the Central Board which directed the said ammonium nitrate to be so classified. Mr. Salve submitted that the High Court was in error in not entertaining the later writ petition (No. 183 of 1981) and relegating the appellants to a civil suit. Whereas Mr. Salve did not press the prayer in the earlier writ petition (No. 86 of 1980) challenging the notification dated 21-7-1979, which had been held by the

High Court to be constitutional, he was, he submitted, entitled to press the prayer that ammonium nitrate should have been treated as entitled to exemption under the exemption notification until the new notification came into effect on 21-7-1979, which prayer the High Court had not considered.

11. Our attention was drawn by Mr. Salve to the judgment of this Court in *Asstt. G.M., Central Bank of India v. Commr., Municipal Corpn. for the City of Ahmedabad* [(1995) 4 SCC 696]. This Court held that a tenant is entitled to impugn in an appeal an increase in property tax because, under the relevant statute, the burden of such increase may be passed by the landlord to the tenant and also because there was, in the case with which it was concerned, an agreement between the landlord and the tenant whereunder the obligation to discharge and pay the property tax was cast upon the tenant. Mr. Salve submitted that the principle of the judgment would apply to the case before us.

12. Mr. Vellapally, learned counsel for the respondent-Union of India, very fairly and rightly, did not dispute that the burden of the increase in excise duty, by reason of the reclassification of the said ammonium nitrate, would fall upon the appellants, and that, therefore, the appellants were entitled to agitate the validity of such reclassification and this could not be done in the civil suit that was contemplated by the High Court.

13. There is, in our view, no doubt that the reclassification of ammonium nitrate by the order of the Central Board dated November 1980, casts upon the appellants the obligation to pay the excise duty that is leviable as a result. Such obligation does not arise merely by reason of an agreement between SAIL and the appellants but also by virtue of the provisions of Chapter X of the Central Excise Rules, 1944. The appellants suffer adverse civil consequences and have, therefore, the locus to challenge the reclassification. There is no forum other than the High Court under Article 226 where they can do so, and the High Court was in error in not entertaining the later writ petition (No. 183 of 1981) and referring the appellants to a civil suit. Insofar as the earlier writ petition (No. 86 of 1980) is concerned, the High Court ought, for the same reason, to have dealt with the contention of the appellants that ammonium nitrate remained exempt from excise duty by reason of the exemption notification until 21-7-1979, when ammonium nitrate was removed from the purview thereof.

14. Upon the basis set out above, the judgments and orders of the High Court in appeal must be set aside, except insofar as the one judgment and order deals with the constitutionality of Notification No. 225 of 1979 dated 21-7-1979. Both writ petitions (Nos. 183 of 1981 and 86 of 1980) shall stand restored to the file of the High Court for being considered on merits, Writ Petition No. 183 of 1981 in its entirety and Writ Petition No. 86 of 1980 insofar as it contends that ammonium nitrate remained exempt from excise duty until 21-7-1979 and seeks relief consequential thereon.

15. The appeals are allowed accordingly. No costs.