

SUPREME COURT OF INDIA

Collector of Central Excise, Bombay

Vs.

M/s. Shalimar Chemical Industries Pvt. Ltd.

C.A.No.2159 of 1991

(B.N. Kirpal, Ruma Pal and Brijesh Kumar JJ.)

11.01.2001

JUDGMENT

B.N. Kirpal, J.

1. The challenge in this appeal is to the judgment of the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) which had come to the conclusion that the respondent was entitled to the benefit of an exemption notification dated 1st March, 1984 insofar as it related to manufacture of the goods described therein.

2. It is not in dispute that the respondent does not itself manufacture Benzene, Toluene and Xylene but it produces the same in accordance with the procedure set forth in Chapter X of the *Central Excise Rules, 1944* which allows the removal of the goods without payment of excise duty by the applicant on the applicant satisfying the conditions which would entitle it to the exemption.

3. By the notification of 1st March, 1984, the effective rate of duty on various items mentioned in the said notification was reduced. The notification provides that such reduction of the rate of duty would be subject to the specified intended use or the conditions laid down in the corresponding entry in column (5) of the notification. The proviso to this notification with which we are concerned in this case reads as follows:

"Provided that where any such exemption is subject to the intended use, the exemption in such case shall be subject to the following conditions, namely:-

(i) that it is proved to the satisfaction of an Officer not below the rank of the Assistant Collector of Central Excise that such goods are used for the intended use specified in column (5) of the said Table; and

(ii) where such use is elsewhere than in the factory of production; the procedure set out in Chapter X of the *Central Excise Rules, 1944*, is followed."

4. Item No. 6.10 makes reference to Benzene, Toluene and Xylene alongwith other items with which we are not concerned and in column (5) against the said items it is provided that these goods should be intended for use "as solvent or diluent or thinner for the manufacture of paints, varnishes, lacquers and allied materials....."

5. In the instant case, the respondent did not produce the User Certificate showing the manufacture of paints, varnishes, lacquers etc. from the Benzene which was obtained by it and as such its claim for the benefit of this notification dated 1st March, 1984 was not accepted. The appeal to the Collector having failed, the respondent filed a Second Appeal before CEGAT and the Tribunal came to the conclusion that the notification of 1st March, 1984 was similar to the earlier notification of exemption of 1973 relevant portion of which was as under :-

"an officer not below the rank of Assistant Collector of Central Excise is satisfied that the Motor Spirit is intended for use as solvent or diluent or thinner for the manufacture of paints, varnishes, lacquers and allied materials or for use in painting; for the manufacture of adhesives, rubber solution, water proofing compositions and similar products, in the production of plastics; for degreasing or cleaning."

6. The Tribunal then proceeded to hold that the respondent had obtained L-6 licence for manufacturing solvent based on Benzene and Toluene and all types of thinners and there was no justification to insist on the end use certificate in terms of the notification of 1984. It was held that what was important was that Benzene, Toluene, etc. should be intended for use in the manufacture of paints, varnishes, etc. and the respondent was entitled to the benefit thereof.

7. We are unable to agree with the aforesaid conclusion of the Tribunal. A bare reading of the notification dated 1st March, 1984 leaves no manner of doubt that the Assistant Collector of Central Excise had to be satisfied, on proof being adduced, that the goods mentioned in the said notification were such goods that are used for the intended use specified in column (5). The intended use specified in column (5) of Benzene, Toluene and Xylene was *inter alia* for use as solvent or diluent or thinner for the manufacture of paints, varnishes, lacquers and allied materials. It was incumbent upon the respondent to satisfy the officer that there had been actual use of Benzene, etc., in the manufacture of paint, varnish, etc. One mode of satisfying the officer was to produce the end user certificate which was not done. No other evidence was also led to show that the conditions laid down by the said notification of 1st march, 1984 had been satisfied. In the absence of any proof with regard to the actual user of Benzene, etc., in the manufacture of paint, varnish, lacquer, etc., no relief could have been granted to the respondent under this notification.

8. For the aforesaid reason, this appeal is allowed and the judgment dated 24th October, 1990 of CEGAT is set aside. There will be no order as to costs.