

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, BARODA .

Vs.

RESPONDENT:
M/S. M.M. KHAMBHATWALA

DATE OF JUDGMENT: 09/05/1996

BENCH:
VENKATASWAMI K. (J)
BENCH:
VENKATASWAMI K. (J)
MANOHAR SUJATA V. (J)

CITATION:
1996 SCC (5) 100 JT 1996 (5) 515
1996 SCALE (4) 466

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

K.VENKATASWAMI, J.

This appeal is preferred against the order of the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the CEGAT') dated 27.7.87.

The short point that arises for our consideration in this appeal is whether the appellant was right in treating the respondents as manufacturers of agarbatti, amlapodi and dhup etc. even though they were manufactured in various premises of the household ladies outside the factory of the respondents.

Briefly the facts are as follows :

During the year 1980-81 the respondent were manufacturers of goods falling under erstwhile Tariff Item 14F of the Central Excise Tariff under a Central Excise Licence obtained for the purpose, The total clearances of such goods during the said year amounted to Rs.14,88,268.00. In addition they were also manufacturing goods falling under Tariff Item 68 in their own factory and were availing of the exemption from duty and licensing control under Notification No. 105/80-CE dated 19.6.80. The value of such goods during the relevant year manufactured amounted to Rs. 3,21,605.00. Apart from the above two items, respondents were getting agarbatti, amlapodi and dhup etc. falling under tariff Item 68 manufactured on their behalf without the aid of power in the premises, other than their factory premises. The total of such goods manufactured from outside during the relevant year amounted to Rs. 26.754.00.

In the classification list No.1/81 dated 22.6.81 effective from 13.4.1981 filed under Tariff Item 14F the respondents claimed exemption for the first clearance of Rs. 7.5 lakhs under Notification No. 80/80-CE dated 19.6.80 for the year 1981-82. As the value of total clearances of goods falling under 14F and those manufactured from outside

the factory on their behalf without the aid of power as mentioned above during the previous year namely 1980-81 exceeded Rs. 20 lakhs, the Superintendent of Central Excise issued a Show Cause Notice on 29.5.81 calling upon the respondents to explain why the exemption claimed by them under Notification No. 80/80-CE in respect of Tariff Item 14F goods should not be disallowed. After considering the explanation, the Assistant Collector of Central Excise, Ahmedabad by order dated 5.3.82 withdrew the above Show Cause Notice on the ground that the clearances of all excisable goods did not exceed Rs. 20 lakhs in the previous year namely 1980-81. This view was taken on the footing that the value of agarbatti, amlapodi and dhup etc. manufactured on behalf of the respondents in premises other than their factory premises were not to be included in the value of total clearances.

That order of the Assistant Collector was taken up for review by the Collector of Central Excise, Baroda under Section 35A of the Central Excises and Salt Act and a notice dated 5.8.82 proposing to set aside the Assistant Collector Order was given. After considering the reply to the Show Cause Notice, the Collector set aside the order of the Assistant Collector holding inter alia that the total clearance of goods falling under Item 14F and the goods falling under Tariff Item 68 including those manufactured from outside the factory exceeded Rs. 20 lakhs and consequently the respondents were not entitled to exemption from duty in the respect of first clearance of Rs. 7.5 lakhs of the goods falling under Tariff Item 14F during the year 1981-82. Aggrieved by that, the respondents preferred an appeal to the CEGAT and the CEGAT after considering the submissions placed before it by the Departmental Representative and the counsel for the assessee and after verifying the records came to the conclusion that the decision reached by the Collector while reviewing the order of the Assistant Collector was not correct and, therefore, set aside the Collector's order and restored the order of the Assistant Collector.

Aggrieved by that the present appeal has been filed by the revenue.

The learned counsel appearing for the appellant placing heavy reliance on the fact of the respondents having paid 'wages' to the house-hold ladies for manufacturing agarbatti, amlapodi and dhup etc. contended that the goods manufactured by such house-hold ladies though in their own premises must be taken as manufactured in the factory of the respondents. It is not in dispute that levy of excise duty is attracted on the incident of manufacture. Therefore, counsel on both sides paid much attention to this aspect to substantiate their respective contentions.

The learned counsel appearing for the respondents, however, submitted that though respondents paid 'wages' to the house-hold ladies, it was on the basis of number of pieces manufactured, that no power was used by those ladies for manufacturing those goods and there was no supervision over the manufacture of those goods and that the goods so manufactured were sold from the premises of the cottage manufacturers. It is further emphasized that those goods did not go to the factory premises of the respondents. It is contended by the learned counsel that the manufacturers in this case are undoubtedly the house-hold ladies, notwithstanding the fact that raw-materials for manufacture of those goods were supplied by the respondents. In the facts and the circumstances of the case, according to the learned counsel for the respondents, by no stretch of

imagination the respondents could be the manufacturers of goods manufactured by house-hold ladies as mentioned above. He also contended that the error committed by the Collector of Customs was that he proceeded on the assumption that the house-hold ladies manufactured the goods as 'hired labourers' which assumption is contrary to the undisputed facts available in this case. In support of his submission, he placed reliance on two judgments of this Court in *Ujjagar Prints etc. vs. Union of India & Others* (1988 (38) ELT 535) and *Empire industries Ltd. and Others vs. Union of India and Others* (1985 (20) ELT 179).

We have considered the submissions advanced before us by the learned counsel on both the sides. We find force in the arguments of the learned counsel for the respondents: on the admitted facts which we will set out immediately the respondents cannot be considered as manufacturers in the premises of house-hold ladies as described above without the aid of power. The undisputed facts are that the respondents supplied raw materials for rolling incense sticks etc. to outside manufacturers and paid wages to them on the basis of number of pieces manufactured. Such manufacture was without the aid of power. There was no supervision over the manufacture. Incense sticks were put in pockets and such pockets were sold from the premises of the house-hold ladies and they did not go to the factory premises of the respondents. No doubt the sale proceeds went to the respondents but that will not change the character of manufacture. If the conclusion is that the house-hold ladies were the real manufacturers then the decision of the Tribunal cannot be faulted. CEGET after considering the materials before it concluded that the respondents are not the manufacturers of agarbatti, amlapodi, dhup etc. Manufactured by various cottage type manufacturers on job work basis. On the facts narrated above, we do not think that the assumption of the Collector that the respondents got the goods in questions manufactured by 'hired labourers' can be sustained. On the other hand we find, on the facts, the house-hold ladies are the manufacturers of the goods in question and the liability to excise duty will be attracted on their manufacture of the goods and therefore, it cannot be clubbed with the goods manufactured in the factory premises of the respondents to deny the exemption claimed.

In *Empire Industries* (supra) this Court held:

"The taxable event for Central Excise is the manufacture of excisable goods and the moment there is a transformation into a new commodity commercially known as a distinct and separate commodity having its own character, use and name, whether be it the result of one process or several processes 'manufacture' takes place and liability to duty is attracted. The sale or the ownership of the end-product is absolutely irrelevant for the purpose of taxable even under the Central Excise."

In *Ujjagar Prints* (supra) the Constitution Bench had held that the view taken in *Empire Industries* (supra) case is an eminently plausible view and does not suffer from any fallacy.

On the facts of this case and in the light of the pronouncements of this Court on the question of liability to

excise duty, we do not think that there is any case for interference with the order of the CEGAT.

We answer the point against the appellant.

The appeal fails and is dismissed accordingly. No costs.

JUDIS