

A

M/S. BASANT INDUSTRIES, AGRA

v.

COLLECTOR OF CENTRAL EXCISE

DECEMBER 9, 1994

B

[R. M. SAHAI AND S. B. MAJMUDAR, JJ.]

C

Central Excises and Salt Act, 1944— Central Excise Tariff— Item No. 30A—Notification No. 85/72 dated 17.3.1972— Oil driven pumps—Supply of components by assessee—Pumps manufactured by third parties—Whether the manufacture was on behalf of assessee—Held: No—Assessee entitled to claim exemption under the Notification.

D

The appellant entered into agreements with different units who were duly licensed under the Central Excises and Salt Act, 1944 for manufacturing pumps and power driven pumps. In October, 1977 the appellant was served with a show-cause notice by the Central Excise Department that it got the power driven pumps manufactured with brand name 'Atul Shakti' from the different manufacturing units who in fact were manufacturing these pumps on behalf of the appellant. The appellant replied that it had given raw materials to independent units who were not under the control or direction of the appellant; the independent units had manufactured according to specification given by the appellant, and therefore, the work carried on by the independent units could not be deemed to be on behalf of the appellant and it could not be denied the benefits of exemption under Notification No. 85/72.

F

On appeal, the Tribunal found that the appellant sent components in the shape of casting which by a little machining and grinding became pumps, and therefore, even though the manufacturing units were independent, yet it did not make any difference in law as the pumps having been manufactured on behalf of the appellant it was not entitled to exemption. The Tribunal further found that some of the independent units charged a sum of Rs. 10 per pump, which was so ridiculously low that no independent unit would manufacture a pump at such a low charge. The present appeal is filed against the Tribunal's order.

G

H

Allowing the appeal, this Court

HELD: 1. The oil driven pumps sold by the appellant having not been manufactured by it, it was entitled to claim exemption under Notification No.85/72 dated 17th March 1972. [449 G]

2. The Tribunal found it as fact that the appellant had no control either over the manufacturing process or manufacturing parties. Once the Tribunal recorded this finding it misdirected itself in entering into the question whether the pump manufactured by third parties was mere assembling of raw material or component supplied by the appellant or it was manufacture. Even assuming that what was supplied was component, that by itself was not sufficient to fasten liability on the appellant. The component unless processed did not result in production of pump. And that having been done by independent units for payment, the finding that it was manufactured on behalf of the appellants without any material cannot be upheld. In fact, no such finding has been recorded by the Tribunal nor any material could be pointed out which could establish that it was the appellant who manufactured the pumps or the independent units from whom it got the pumps manufactured were doing so on behalf of the appellant. The Tribunal in extending the meaning of the expression 'manufacturing' on behalf of the appellant, by introducing the concept of supply of components went beyond the ambit of the Notification.

[449 D to F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 910 of 1987.

From the Judgment and Order dated 27.2.86 of the Customs Central Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A. No. E D (SB) 579/80-BI) O.No.116/86-BI.)

V. Laxmi Kumaran and Kamal Budhiraja for Khaitan and Co. for the Appellant.

A. K. Ganguli, V.J. Francis and V. K. Verma for Ms. Sushma Suri for the Respondent.

The Judgment of the Court was delivered by

R.M. SAHAL, J. Whether oil driven pumps sold by the appellant were exempt under Notification No. 85/72 dated 17.3.1972 or they were assessable to duty under item 30A of the Central Excise Tariff is the short question that arises for consideration in this appeal directed against order passed by the Custom, Excise and Gold (Control) Appellate Tribunal, New Delhi.

- A The appellant, a partnership firm registered under the Indian Partnership Act, was engaged in the manufacture of combustion and diesel engines bearing brand name 'Atul Shakti' for which it was duly licensed under the Central Excises and Salt Act, 1944 ('Act' for short). It also carried on trading in pumps. It entered into agreements with different units who were duly licensed under the Act for manufacturing pumps and power driven pumps. In October, 1977 the appellant was served with a show-cause notice by the Central Excise Department that they got the power driven pumps manufactured with brand name 'Atul Shakti' from the different manufacturing units who in fact were manufacturing these pumps on behalf of the appellant. In reply it was stated that the appellant had given raw materials to independent units who were not under control or direction of the appellant. According to the appellant, on the raw material supplied by the independent units had manufactured according to specification given by the appellant. Therefore, the work carried on by the independent units could not be deemed to be on behalf of the appellant and the appellant could not be denied the benefit of exemption under Notification No. 85/72. The Tribunal did not agree even though it held that the appellant had no control over manufacturing process and the manufacturing parties but what persuaded the Tribunal to take the view against the appellant was that it found that the appellant sent components in the shape of casting which by a little machining and grinding became pumps. Therefore, even though the manufacturing units were independent, yet it did not make any difference in law as the pumps having been manufactured on behalf of the appellant it was not entitled to exemption. The Tribunal further held that if the claim of the appellant that it had only supplied the raw material was found to be correct, probably there would have been no difficulty in accepting its claim but from the material it transpired that the appellant had supplied components of pumps and this was done in order to get over the legal difficulty and claim exemption under the excise notification. The Tribunal further found that some of the independent units charged a sum of Rs. 10 per pump. It was demonstrative of the fact that the amount was so ridiculously low that no independent unit manufactures a pump for such a low cost.
- F
- G The exemption under Notification No.85/72 dated 17th March, 1972 was available for power driven pumps if the value did not exceed Rs. one lakh. This restriction was extended even if the pumps were got manufactured by others. In other words if value of the pumps sold by the appellant did not exceed Rupees One Lakh whether manufactured by the appellant or on its behalf by others then only it was entitled to exemption.
- H The appellant had cleared goods which exceeded Rupees One Lakh in the

years in dispute. Therefore, it was not entitled to exemption unless the value of pumps manufactured by different parties under the agreement was excluded from its clearance. The appellant did not dispute that it supplied castings, pump tape, shafts, impeller etc. to the manufacturer. The question, therefore, that arose was whether the pumps brought out of all this resulted in manufacture. This word was explained by the Constitution Bench in *M/s Ujagar Prints and Ors. v. Union of India and Ors.*, [1989] 3 SCC 488. It was held that the test to determine leviability under the Act is whether a new commercial commodity has emerged. Since the goods which were manufactured by different units on raw material supplied by the appellant was a new commercial commodity it cannot be said that it did not amount to manufacture. And that was not the dispute in the show cause notice which called upon the appellant to explain as to why the duty may not be levied on it as it was manufactured on its behalf. The ambit of controversy thus was not so much whether pumps were manufactured by different parties but whether it was manufacture on appellant's behalf. The Tribunal in this regard found it as fact that the appellant had no control either over the manufacturing process or manufacturing parties. Once the Tribunal recorded this finding it misdirected itself in entering into the question whether the pumps manufactured by third parties was mere assembling on raw material or component supplied by the appellant or it was manufacture. Even assuming that what was supplied was component, but that by itself was not sufficient to fasten liability on the appellant. The component unless processed did not result in production of pump. And that having been done by independent units for payment the finding that it was manufactured on behalf of the appellants without any material cannot be upheld. In fact, no such finding has been recorded by the Tribunal nor any material could be pointed out which could establish that it was the appellant who manufactured the pumps or the independent units from whom it got the pumps manufactured were doing so on behalf of the appellant. The Tribunal in extending the meaning of the expression "manufacturing" on behalf of the appellant by introducing the concept of supply of components went beyond the ambit of the Notification.

In the result, this appeal succeeds and is allowed. The order passed by the Tribunal is set aside. The question of law raised by the appellant is decided by saying that the oil driven pumps sold by the appellant having not been manufactured by it, it was entitled to claim exemption under Notification No. 85/72 dated 17th March, 1972.