

CASE NO.:
Appeal (civil) 4228-4229 of 1999

PETITIONER:
W.P.I.L. Ltd., Ghaziabad

RESPONDENT:
Commissioner of Central Excise, Meerut, U.P.

DATE OF JUDGMENT: 22/02/2005

BENCH:
Ruma Pal & Arijit Pasayat & C.K. Thakker

JUDGMENT:
JUDGMENT

Thakker, J.

These appeals have been filed by the appellant against an Order in Original Nos. 123-29 of 1996 passed by the Assistant Commissioner, Central Excise, Division I, Ghaziabad, confirmed by the Commissioner (Appeals), Customs & Central Excise, Ghaziabad and also confirmed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi ('CEGAT' for short).

The case of the appellant is that it is the manufacturer of power driven pumps and parts thereof designed for handling water. The power driven pumps as well as parts thereof which are used for manufacture of pumps have been exempted from levy of excise duty since 1978. Various notifications had been issued from time to time granting exemption to both, i.e. power driven pumps and also parts of power driven pumps which were used in the manufacture of the power driven pumps. Parts of power driven pumps which were not utilized for manufacture of power driven pumps within the factory were, however, outside the purview of exemption and they were subjected to levy of excise duty.

According to the appellant, with a view to reducing special exemption notifications and consolidating various exemption notifications, in 1994, the Government rescinded 389 notifications with effect from March 1, 1994 and re-issued a consolidated notification incorporating earlier notifications vide Notification No.46/94 dated March 1, 1994. In the said notification, power driven pumps were shown as an exempted item. Due to inadvertence, however, parts of power driven pumps used in manufacture of pumps within the factory which were all along exempted from 1978 were omitted. But there was no change in the Government policy in 1994 which was in vogue since 1978. The omission was, therefore, brought to the notice of the Government by the industries. The Government was also satisfied and amended the notification No.46/94 dated March 1, 1994 by issuing another notification No.95/94 on April 25, 1994 correcting the mistake and clarifying the position that parts of power driven pumps which were used in manufacture of power driven pumps would also be exempted. According to the appellant, the notification No.95/94 dated April 25, 1994 was thus merely clarificatory in nature and an obvious error or omission which remained while issuing notification No.46/94 on March 1, 1994 was rectified by the subsequent notification No.95/94 on April 25, 1994 and hence it was retrospective in operation. The resultant effect, according to the appellant, was that parts of power driven pumps which were to be utilized for manufacturing power driven pumps within the factory would continue to be exempted from payment of excise duty.

Unfortunately, however, show cause notices were issued by the Assistant Collector, Central Excise, Division I, Ghaziabad on October 3, 1994 and October 24, 1994 alleging therein that the appellant had cleared the parts of power driven pumps for use within the factory for the manufacture of

submersible power driven pumps during the period between 1st March, 1994 and 21st April, 1994 without payment of duty which was subjected to central excise duty. The said item was exempted with effect from April 25, 1994 and the appellant was, therefore, liable to pay excise duty for the intervening period, i.e. 1st March, 1994 and 21st April, 1994.

The appellant submitted a reply on October 31, 1994 inter alia contending that it was not liable to pay excise duty. No suppression of facts or mis-declaration was alleged against the appellant and the demand was barred by limitation. It was also stated that notification No.95/94 dated April 25, 1994 was retrospective in nature and exemption ought to be considered and granted from March 1, 1994. There was, therefore, no liability on the part of the appellant to pay any amount.

The Assistant Commissioner, Central Excise, Division I, Ghaziabad, by an order dated March 31, 1996 confirmed the demand against the appellant and directed it to pay the amount mentioned in the said order.

Being aggrieved by that order, the appellant preferred appeals, but the Appellate Authority also confirmed the order passed by the Assistant Commissioner and dismissed the appeals. The appellant preferred appeal before the CEGAT which was also dismissed confirming the orders passed by the authorities below.

We have heard the learned counsel for the parties.

Mr. A.K. Ganguli, learned senior advocate for the appellant submitted that power driven pumps as well as parts thereof had been exempted from payment of excise duty since 1978. It was the consistent practice of the Department and the policy had never been changed. It was also submitted that there was no change of policy even in 1994. What was done by the Government was to reduce the number of special exemption notifications. About 400 such notifications were rescinded with effect from March 1, 1994 and a consolidated notification was issued incorporating earlier notifications by notification No.46/94 on March 1, 1994. In view of the policy since 1978, which was not changed, in 1994, by rescinding several notifications and issuing a consolidated notification exempted items were not made subject matter of payment of excise duty and no demand could be made from the appellant. The Central Government was satisfied about the legitimate grievance voiced by the industries and, accordingly, a notification was issued on April 25, 1994. The subsequent notification was, therefore, merely clarificatory in nature and has to be given retrospective effect. No demand could be made for payment of excise duty for the period between March 1, 1994 and April 21/25, 1994.

Mr. Pathak, learned Additional Solicitor General appearing for the respondent, on the other hand, submitted that the authorities below were right in holding that by notification dated March 1, 1994, parts of power driven pumps were not exempted and the exemption was granted by notification dated April 25, 1994 and hence demand for payment of excise duty for the period between issuance of two notifications was legal, valid and well-founded. It was also argued that the subsequent notification granted benefit in respect of parts of power driven pumps and was not clarificatory in nature. The benefit of the said notification, therefore, could be claimed by the industries only from the date of issuance of notification and not for any period prior to that date. He, therefore, prayed for dismissal of the appeals.

Having heard the learned counsel for the parties, in our opinion, the submission made on behalf of the appellant is well-founded and must be accepted. In this connection, our attention was invited by the learned counsel for the appellant to various notifications issued by the Central Government from time to time. One such notification was No.57/78 issued on March 1, 1978. It reads as under -

"Power Driven Pumps

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts power driven pumps falling under Item No.30A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), and specified in the Table annexed hereto from the whole of the duty of excise leviable thereon.

TABLE

Power driven pumps primarily designed for handling water, namely :-

- (i) Centrifugal pumps (horizontal or vertical pumps);
- (ii) Deep tube-well turbine pumps ;
- (iii) Submersible pumps; and
- (iv) Asial flow and mixed flow vertical pumps.

[vide M.F.(D.R.) Notification No.57/78-C.E., dated 1-3-1978]"

Similar notification was issued on February 10, 1986 being Excise Notification NO.79/1986 as several other notifications. By Excise Notification No.155/86 dated March 1, 1986 relating to specified goods under Chapter 84, it was stated;

"SPECIFIED GOODS [CHAPTER 84]

In exercise of the powers conferred by sub-rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts the goods specified in column (3) of the Table hereto annexed and falling under the Heading No. or sub-heading No. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) specified in the corresponding entry in column (2) of the table, from so much of the duty of excise leviable thereon which is specified in the said Schedule as in the excess of the amount calculated at the rate specified in the corresponding entry in column (4) of the said Table.

THE TABLE

S.No.	Heading No.	Description of goods	Rate
	or sub-heading		
	No. of the		
	Schedule to the		
	Central Excise		
	Tariff Act, 1985		
(1)	(2)	(3)	(4)
1.	84.13 (i)	Power driven pumps primarily designed for handling water, namely :-	Nil
		(a) Centrifugal pumps (horizontal or vertical pumps);	

(b) Deep tube-well turbine pumps;

(c) Submersible pumps;

(d) Axial flow and mixed flow

vertical pumps.

(ii) Other power driven pumps Ten per cent
ad valorem"

The contention of the appellant, in our opinion, therefore, is well-founded that both power driven pumps as well as parts of power driven pumps used for manufacturing of pumps within the factory were exempted from payment of excise duty. We are also satisfied that notifications were rescinded and consolidated notification was issued on March 1, 1994 with a view to reduce number of notifications. No demand hence could have been made against the appellant in respect of parts of power driven pumps by issuing show cause notices. The submission of the appellant is well-founded that the Government was satisfied about the policy which was in vogue not to impose excise duty on parts of power driven pumps used in the factory premises for manufacture of power driven pumps and to clarify the position, the subsequent notification dated April 25, 1994 was issued. This is also clear if one reads at both the notifications Nos. 46/94 dated March 1, 1994 and 56/94 dated April 25, 1994. They read thus : -

"TABLE

S. No.	Chapter heading No. or sub-heading No.	Description of goods	Rate	Conditions
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(1)	(2)	(3)	(4)	(5)
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1.	84.13	Power driven pumps primarily designed for handling water, namely :-	Nil	
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(a) Centrifugal pumps (horizontal or vertical pumps);

(b) Deep tube-well turbine pumps;

(c) Submersible pumps;

(d) Axial flow and mixed flow
vertical pumps.

(Notification No. 46/94 dated 1.3.94)"

(1)	(2)	(3)	(4)	(5)
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"4a.	72,73	Goods other than namely :-	Nil	If the said goods
	82,83,	(a) Electrical stampings		are used within the

84 or and laminations factory of product-
85 (b) Bearings ion in the manu-
(c) Winding Wires facture of goods
specified in S. No.
4 above."

(Notification No.95/94-CE, dated 25.4.1994)

In our opinion, therefore, the authorities were in error in upholding the demand and in directing the appellant to pay excise duty.

The learned counsel for the appellant is also right in relying upon a decision of this Court in Collector of Central Excise, Shillong v. Wood Craft Products Ltd., [1995] 3 SCC 454. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.

In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing notification No.46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification. The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory notification No.95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

For the foregoing reasons, in our opinion, the appeals deserve to be allowed and are allowed accordingly. Deposit, if any, made by the appellant in pursuance of the order passed by the authorities below will be refunded to it. In the facts and circumstances of the case, however, there shall be no order as to costs.