

Premier Tyres Ltd.

Vs

Collector of Central Excise, Cochin

Civil Appeal No. 943 of 1986

(O. Chinnappa Reddy, V. Khalid JJ)

09.02.1987

JUDGMENT

CHINNAPPA REDDY, J. -

This appeal is directed against a judgment of the Customs, Excise the Gold Control Appellate Tribunal in regard to the manner and sequence in which certain notifications under Rule 8 sub-rule (1) of the Central Excise Rules granting exemptions from duty have to be worked out. By a notification dated August 1, 1974 the Central Government, in exercise of its powers under sub-rule (1) of Rule 8 of the Central Excise Rules, exempted :

Tyres for motor vehicles falling under sub-item (1) of Item No. 16 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon as in excess of fifty five per cent. ad valorem.

Thereafter on June 16, 1977, another notification was issued in the following terms :

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 the Central Government hereby exempts all excisable goods (hereinafter referred to as the "said goods") on which the duty of excise is leviable and in the manufacture of which any goods falling under Item No. 68 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred to as the inputs) have been used, from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs. Notification No 205/77 dated September 28, 1977, subject to the conditions that the manufacturer furnishes to the proper officer a statement showing the quantity of the inputs used in the manufacture of every unit of the said goods.

Provided that where the duty of excise leviable on the said goods is less than the amount of duty of excise paid on the inputs, the extent of exemption shall be restricted to the duty of excise on the said goods.

A further notification was issued on July 14, 1978 and this was in the following terms :

In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts tyres and tubes, excluding flaps falling under Item No. 16(1) and 16(3) of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred to as the specified goods)

from so much of the duty of excise leviable thereon (read with any relevant notification issued under the said sub-rule (1) of Rule 8 and in force for the time being) as is in excess of

(a) eighty-seven and a half per cent, of such duty, if produced in any factory which commenced production of the specified goods for the first time earlier than the 1st day of April 1976; and

(b) seventy-five per cent. of such duty, if produced in any factory which commenced production of the specified goods for the first time on or after the 1st day of April, 1976, subject to the conditions that :-

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4. There is no controversy regarding evaluation. According to the assessee as well as the department effect has first to be given to the notification dated August 1, 1974 and the duty calculated in terms of that notification. There is also no controversy at this stage. The controversy begins thereafter. According to the department, thereafter, effect has to be given first to the notification dated June 16, 1977 and then to the notification dated July 14, 1978 whereas according to the assessee effect has to be given, in the first instance, to the notification dated July 14, 1978 and then to the notification dated June 16, 1977. The department's contention was accepted by the Tribunal. In this appeal, Dr. L. M. Singhvi, learned counsel for the appellant argued that on principle the effective duty has to be first determined by applying the notification dated July 14, 1978 first and the duty paid on the inputs should be set off under the notification dated July 16, 1977 against the duty determined as payable after applying the notification dated July 14, 1978. In support of his argument, the learned counsel relied upon a recent judgment of this Court in Assistant Collector of Central Excise v. Madras Rubber Factory Limited (1986 Supp SCC 751). We are afraid that in the fact of the language of the notifications, it is not possible to agree with the submission of Dr Singhvi. We have already extracted the notifications dated June 16, 1977 and July 14, 1978. The notification dated July 14, 1978, it is to be noticed, has superadded the words "read with any relevant notification issued under the said sub-rule (1) of Rule 8 and in force for the time-being." These superadded words show conclusively that the notification dealing with exemption to the extent of the duty paid on the inputs, which was already in force, had to be given effect before giving effect to the notification dated July 14, 1978. This was the submission of Shri A Subba Rao, learned counsel for the department and it is difficult to see any escape from it. This case upon which reliance was placed by Dr Singhvi does not appear to have any relevance to the question at issue. There, the court was concerned with the determination of the assessable value and not with the present question relating to the order of priority in which the notifications granting exemption from duty had to be applied. There, what the court decided was that excise duty cannot be computed without proper determination of the assessable value namely assessable value exclusive of permissible deductions. That principle cannot come in aid of the question involved in this appeal. The learned counsel also argued that to give effect first to the notification dealing with exemption to the extent of the duty paid on inputs and thereafter to the notification dated July 14, 1978 would mean that the assessee would not be getting full credit for the entire duty paid on the inputs but only to a percentage of it and that there would, therefore, be double taxation at least to that extent. There is no general principle that there can be no 'double taxation' in the levy of excise duty. The court may lean in favour of a construction which will avoid double taxation but in the present case there does not appear to be any lean question of construction at all. On the language of the notification dated July 14, 1978 only one result can follow. That is the view taken by the Tribunal in the order under

appeal. We agree with that view of the matter. The appeal is dismissed with costs.

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