

Wallace Flour Mills Co. Ltd

Vs

Collector of Central Excise, Bombay, Division III

Civil Appeal No. 3544 of 1989

(Sabyasachi Mukharji, B. C. Ray JJ)

28.09.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an appeal under Section 35L of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act').
2. The appellant is a manufacturer of various types of food products known as spaghetti, macaroni, vermicelli, etc., falling under Heading No. 1902.10 of the Central Excise Tariff Act. The appellant filed a classification list effective from March 1, 1987, claiming that their pre-budget stocks of non-excisable goods, namely, various types of food products declared in the classification list as aforesaid were entitled to duty free clearance being pre-budget stocks. The Assistant Collector of Central Excise, however, held that the question of clearing pre-budget stocks duty free did not arise because the products in question were excisable though exempted from the duty. There was an appeal from the said order of the Assistant Collector before the Collector of Central Excise (Appeals), Bombay. He dismissed the appeal. The appellant went up in appeal before the Tribunal. It was contended before the Tribunal on behalf of the appellant that the goods in question were not liable to duty under the aforesaid head until February 28, 1987, and the said goods had been made dutiable only by the Finance Bill, 1987-88, with effect from March 1, 1987. It was submitted further that on February 27, 1987, the appellant had in their factory a stock of the said products which were fully manufactured, packed and ready for sale and the inventory of the said stock was prepared by the Superintendent of Central Excise on March 1, 1987. Reliance was placed on several decisions of different High Courts, namely, decisions of the Madhya Pradesh High Court in Kirloskar Brothers Ltd. v. Union of India (1978 ELT 33 (MP HC)), Union of India v. Kirloskar Brothers Ltd. (1978 ELT 690 (MP HC)), decision of the Bombay High Court in Synthetics Chemicals Pvt. Ltd. v. S. C. Coutinho (1981 ELT 414, (Bom HCK)) the decision of the Bombay High Court in New Chemicals Industries (P) Ltd. v. Union of India (1981 ELT 920 (Bom HC)), the decision of the Madras High Court in Sundaram Textiles Ltd. v. Asst. Collector of Customs (1983 ELT 909 (Mad HC)) the decision of the Allahabad High Court in Union of India v. Delhi Cloth and General Mills (1978 ELT 177 (All HC)). On the other hand, the revenue contended that the goods forming the pre-budget stocks were very much excisable goods and that, for the purpose of collecting duty, the date manufacture was not material under the scheme of the Act even though the taxable event is the manufacture. It was, therefore, contended that at the time of manufacture of the goods in question, the goods were excisable goods and in view of Rule 9A of the Central Excise Rules, 1944, though the taxable event is the manufacture and production, the payment of duty is related to and postponed to the date of removal of the articles from the manufactory. The Tribunal accepted the said contention.

3. We are of the opinion that the Tribunal was right. It is well settled the scheme of the Act as clarified by several decisions that even though the taxable event is the manufacture or production of an excisable article, the duty can be levied and collected at a later stage for administrative convenience. The scheme of the said Act read with the relevant rules framed under the Act, particularly Rule 9A of the said Rules, reveals that the taxable event is the fact of manufacture or production of an excisable article, the payment of duty is related to the date of removal of such article from the factory. In that view of the matter, the Tribunal dismissed the appeal and rejected the assessee's contention.

4. Appearing before us in support of the appeal, Mr. Rajiv Dutta, learned counsel for the appellant, contended that, in several decisions, it has been held and referred us to the said decisions referred to hereinbefore, that the relevant date would be the date of manufacture and in this case the manufacture was complete before the introduction of the budget. It was submitted that until February 28, 1987, when, according to Mr. Dutta, the goods had been manufactured, the goods in question were unconditionally exempt from the duty. Under the Finance Bill, 1987-88, the said products were made dutiable at the rate of 15% ad valorem on and from March 1, 1987. But the appellant had in their factory, a stock of the said products which were duly manufactured, according to Mr. Dutta, packed and ready for sale prior to February 28, 1987. In those circumstances, the goods in question, according to Mr. Dutta, would not be subjected to duty at 15% ad valorem. Having considered the facts and the circumstances of the case, we are unable to accept this submission. Excise is a duty on manufacture or production. But the realisation of the duty may be postponed for administrative convenience to the date of removal of goods from the factory. Rule 9A of the said Rules merely does that. That is the scheme of the Act. It does not, in our opinion, make removal the taxable event. The taxable event is the manufacture. But the liability to pay the duty is postponed till the time of removal under Rule 9-A of the said Rules. In this connection, reference may be made to the decision of the Karnataka High Court in *Karnataka Cement Pipe Factory v. Supdt. of Central Excise* (1986 23 ELT 313 (Karn HC)), where it was decided that the words 'as being subject to a duty of excise' appearing in section 2(d) of the Act are only descriptive of the goods and do not relate to the actual levy. "Excisable goods", it was held, do not become non-excisable goods merely by reason of the exemption given under a notification. This view was also taken by the Madras High Court in *Tamil Nadu (Madras State) Handloom Weavers Co-operative Society Ltd. v. Assistant Collector of Central Excise* (1978 ELT 57 (Mad HC)). On the basis of rule 9A of the said Rules, the central excise authorities were within the competence to apply the rate prevailing on the date of removal. We are of the opinion that even though the taxable event is the manufacture or the production of an excisable article, the duty can be levied and collected at a later date for administrative convenience.

5. Having regard to the facts and the circumstances of this case and having regard to the scheme of the excise law, we are of the opinion that the Tribunal was right and that there are no grounds to assail the order of the Tribunal. In the aforesaid view of the matter, the appeal must fail and, accordingly, is dismissed. There will, however, be no order as to costs.

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