

SUREME COURT OF INDIA

Bhor Industries Ltd., Bombay

Vs.

Collector of Central Excise, Bombay

(S Ranganathan, S Agrawal and N Ojha JJ.)

24.01.1991

ORDER

1. This is an application on behalf of Bhor Industries Limited (hereinafter referred to as "the assessee") to "modify and/or clarify" the judgment of this Court dated 31-1-1989 Bhor Industries Ltd. v. CCE, "so as to include the words "PVC films" in the operative part/concluding part of the judgment". In the concluding part of the judgment referred to, this Court has stated thus:

"14. In that view of the matter that there being no contrary evidence found by the Tribunal in this case subsequent to the finding by the Appellate Collector, we are of the opinion that the appeal should be allowed and no excise duty should be charged under Section 15-A(2) of the Central Excise Tariff on the crude PVC sheets"

2. Apparently, when the assessee applied for refund on the strength of this judgment, the Assistant Collector gave a show-cause notice to the assessee calling upon it to explain how it was entitled to a refund on the PVC films manufactured by it since the judgment is confined to excise duty in regard to crude PVC sheets. This line of reasoning is strenuously supported by Shri A. Subba Rao who relied, in particular, on an order of the Appellate Collector dated 14-1-1974 which has been referred to by this Court in its judgment also.

3. We have been taken through the entire pleadings in this case. The controversy which came to this Court was the result of a show-cause notice issued by the Assistant Collector, Central Excise on 15-2-1977. The assessee had filed a classification list describing the goods manufactured by it as "crude PVC films/sheets". The Assistant Collector in the show-cause notice referred to the product, in some places as PVC films and in some places as PVC films/sheets. Before the Assistant Collector, the argument appears to have been that the goods produced by the assessee were PVC films but that they were crude PVC films and not finished PVC films and were, therefore, not marketable products which were at all excisable. The Appellate Collector confirmed the assessment made by the Assistant Collector. In the decretal portion of his order, he stated that, in view of the facts and circumstances mentioned by him, the product "PVC films/sheets" used for internal consumption would attract duty. When the matter came up before this Court, this Court came to the conclusion that the crude commodity produced by the assessee was not marketable. In some portions of the judgment, there is a reference to film/sheet. It is clear that, so far as this Court was concerned, the

matter proceeded on the same basis as before the assessing and the appellate authorities and there was no advertence to any distinction between films/sheets. The question before this Court was whether the goods produced by the assessee and covered by the show-cause notice were excisable products and this question was answered in the negative. It is, therefore, clear that in the final portion of the order of this Court what this Court said and intended to say was that the goods produced by the assessee and covered by the notice and the assessment order were not excisable products. We therefore, do not see how the refund could be refused by the Assistant Collector in the light of the order of this Court.

4. Shri A. Subba Rao contends that there is a lot of difference between films/sheets and that this Court's judgment should not be taken to have expressed any conclusive opinion that these articles are identical or that the films, if any, produced by the assessee would or would not be excisable to tax. We express no opinion on this distinction as we have said already that no such distinction was adverted to before us and that the judgment should be confined to the show-cause notice and the controversy as it came up before this Court.

5. We, therefore, make it clear that the effect of our judgment is that the crude articles produced by the assessee, and in issue in the assessment before us (whether films or sheets) are not assessable to excise duty.

6. We may further make it clear that our judgment does not preclude the Department from raising such contentions as may be open to it in law in regard to future assessments.

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