

Ponds India Ltd.

Vs

Collector of Central Excise, Madras

Civil Appeals No. 4411 of 1990

(S. P. Bharucha, Faizanuddin JJ)

27.01.1997

JUDGMENT

BHARUCHA J.

1. These appeals challenge the correctness of a judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal had before it the Revenue's appeals against orders of the Collectors (Appeals) in the cases of a number of assessees, of which the appellants were two. The Tribunal reversed the orders of the Collectors and held that the collection of special excise duty on clearances on or after 1-3-1988, of goods which had been manufactured prior to that date was valid.

2. Special excise duty is levied under the provisions of the Finance Acts. There was no levy for a long period of time of special excise duty until it was levied with effect from 1-3-1978, under the provisions of Section 37 of the Finance act, 1978, which read thus :

"(1) In the ease of goods chargeable with a duty of excise under the Central Excise Act as amended from time to time, read with any notification for the time being in force issued by the Central Government in relation to the duty so chargeable, there shall be levied and collected a special duty of excise equal to five per cent of the amount so chargeable on such goods.

(2) Sub-section (1) shall cease to have effect after the 31st day of March, 1979, except as respects things done or omitted to be done before such cesser, and Section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply upon such cesser as if the said sub-section had then been repealed by a Central Act.

(3) The special duty of excise referred to in sub-section (1) shall be in addition to any duties of excise chargeable on such goods under the Central Excises Act or any other law for the time being in force.

(4) The provisions of the Central Excises Act and the rules made thereunder, including those relating to refunds and exemptions from duties, shall, as far as may be, apply in relation to the levy and collection of the special duties of excise leviable under this section in respect of any goods as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be."

3. The judgment of this Court in the case of CCE v. Vazir Sultan Tobacco Co. Ltd. [(1996) 3 SCC

434 : (1996) 83 ELT 3], dealt with a case where goods had been manufactured prior to 1-3-1978, and cleared thereafter. The judgment reads thus : (SCC pp. 439-42, paras 10-16)

"Rule 9 says that 'no excisable goods' should be removed from the place of their manufacture until excise duty leviable thereon has been paid 'at such place and in such manner' as is prescribed in these Rules. It is relevant to notice that the Rule specifically uses the expression 'excisable goods' - and not 'goods' - and for good reason. The expression 'excisable goods' has been defined in clause (d) of Section 2 to mean 'goods specified in the First Schedule as being subject to a duty of excise and includes salt'. The goods removed must be excisable goods first - which means that the goods were subject to the levy of duty before their removal. Rule 9-A is to the same effect. Sub-rules (1) to (3-A) of Rule 9-A may be set out in their entirety in view of the reliance placed by both the counsel upon them. They read :

'(1) The rate of duty and tariff valuation, if any, applicable to any excisable goods shall be the rate and valuation in force :

(i) in the case of goods removed from the premises of a curer on payment of duty, on the date on which the duty is assessed; and

(ii) in the case of goods removed from a factory or a warehouse subject to sub-rule (2), (3) and (3-A), on the date of the actual removal of such goods from such factory or warehouse.

(2) If the goods have previously been removed from a warehouse to be re-warehoused, and the duty is paid on such goods without their being re-warehoused the rate and valuation, if any, applicable thereto shall be the rate and valuation, if any, in force on the date on which duty is paid or, if the duty is paid through an account-current maintained with the Collector under Rule 9, on the date on which an application in the proper form is delivered to the officer-in-charge of the warehouse from which the goods were removed.

(3) Where any person who has removed excisable goods for export in bond fails to export or to furnish proof of such export to the satisfaction of the Collector or diverts the goods for home consumption, the rate of duty leviable and the tariff valuation, if any, in respect of such goods shall be the rate and valuation in force on the date on which the duty is paid.

(3-A) Where duty becomes chargeable on any material or component parts in respect of which credit of duty had been allowed under Rule 56-A, the rate of duty leviable and the tariff valuation, if any, in respect of such material or component parts shall be the rate and valuation in force on the date on which the duty is paid.'

According to sub-rule (1) of Rule 9-A, the rate of duty (apart from tariff valuation) applicable to any 'excisable goods' shall be the rate in force on the date of actual removal of such goods from the factory or the warehouse, as the case may be. This is the general rule. Sub-rules (2), (3) and (3-A) provide certain exceptional situations which are not relevant for the purpose of these appeals. It is the general rule contained in sub-rule (1) - and in particular clause (ii) of sub-rule (1) - that is relevant here. In other words, the rate of duty as well as the valuation of goods shall be the rate and

the valuation as on the date of actual 'removal'. This rule too opens with the expression 'excisable goods'.

Shri Vellapally contended that if the above interpretation is adopted, it may lead to an enigmatic situation. He explains his apprehension thus : the special excise duty is levied only for the period 1-3-1978 to 28-2-1979. Take a case where the goods are manufactured on or before 28-2-1979 are removed on or after 1-3-1979, what would be the rate of duty (and which would be relevant date for valuation purposes); the assessee may say that on the date of removal, neither the levy is in force nor are Rules 9 and 9-A and, hence, he need not pay any special excise duty on such goods. We do not see any valid basis for this apprehension. In the situation contemplated by Shri Vellapally, the date of removal has to be taken as 28-2-1979. It cannot be otherwise. If Rules 9 and 9-A are held inapplicable, it would logically follow that the moment the goods are manufactured, the levy becomes payable and, in the circumstances, the last date of levy can reasonably be taken to be the date of removal. Of course, an absurd consequence would follow if it is held that in the above situation, no special excise duty is payable if the removal is on or after 1-3-1979. Such an absurd consequence could not be presumed to have been intended by Parliament.

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Before we conclude, it is necessary to notice a few facts having a bearing upon the relief to be granted in these matters. The special excise duty was being levied from 1963 up to 1971 by various Finance Acts passed from time to time. It was discontinued from 1972 until 1978 when it was revived by the Finance Act, 1978. Thereafter, it was being levied from year to year by annual Finance Acts. The provisions of these Finance Acts, insofar as the levy of special excise duty is concerned, are identical. In the Finance Acts of 1987 and 1988, however, the rate of special excise duty was raised to ten per cent but then notifications were issued exempting the duty on all goods in toto. In other words, with effect from 1-3-1986, there was, in effect, no special excise duty until 28-2-1988. With effect from 1-3-1988, the duty was again imposed @ 5%, while exempting certain essential commodities and other priority items from the said impost. We have held hereinabove that the goods manufactured/produced before 1-3-1978 but cleared on or after 1-3-1978 are not exigible to special excise duty. At the same time, we have also expressed the view that the goods manufactured/produced on or before 28-2-1979 but cleared thereafter would be liable to pay the said duty at the rate and valuation in force as on 28-2-1979."

4. For the period 1-3-1987, until 28-2-1988, special excise duty had been levied under a provision in the Finance Act, 1987, similar to that quoted, but during this period, by reason of a notification issued under the provisions of Rule 8 of the Central Excise Rules with simultaneous effect, there was a total exemption from the levy. By the Finance Act, 1988, special excise duty was also levied; there was no exemption notification, so that it was payable. The question in these appeals is whether the goods which had been manufactured prior to 28-2-1988 and cleared after 1-3-1988, ("the said goods"), were subject to the payment of special excise duty.

5. The counsel for the appellants submitted that, on the principle of the judgment in the case of Vazir Sultan Tobacco Co. Ltd. [(1996) 3 SCC 434 : (1996) 83 ELT 3], the said goods manufactured by the appellants prior to 28-2-1988, and cleared after 1-3-1988, were not liable to the fresh special excise duty levied by the Finance Act, 1988. In the submission of the learned counsel for the Revenue, they were, for Rule 9-A was applicable.

6. Under the terms of the Finance Acts, special excise duty is so levied as to cease to have effect at

the close of the financial year. It is an annual levy. It may or may not be levied in the following year.

7. As we understand the judgment in the case of Vazir Sultan Tobacco Co. Ltd. [(1996) 3 SCC 434 : (1996) 83 ELT 3], this is the view taken : The date of manufacture is the date upon which the levy attaches to the goods; the date of payment is deferred to the date of clearance, the rate being the rate which is effective on the date of clearance. Where goods have been manufactured while the levy of special excise duty is operative and have not been cleared until the last date of that levy, the goods must be deemed to have been removed on that last date.

8. In the instant case, therefore, the said goods must be deemed to have been cleared on the last date of the levy of the special excise duty that was in force when they were manufactured; that is to say, they must be deemed to have been cleared on 28-2-1988. On that day the said goods were, by reason of the exemption notification aforementioned, wholly exempt from the special excise duty. The appellants were, therefore, not liable to pay any special excise duty upon the said goods.

9. It is not possible to accept the Revenue's contention that the said goods would be liable to bear special excise duty as levied after 1-3-1988, for the reason that the special excise duty that operated subsequent to 1-3-1988 was a new levy under a different statute and distinct from that which operated during the period 1-3-1987 until 28-2-1988. Rule 9-A does not operate in such circumstances.

10. The appeals are, accordingly, allowed and the judgment and order under appeal is set aside insofar as it relates to the two appellants.

11. No order as to costs.