

SUPREME COURT OF INDIA

Pravara Pulp & Paper Mills

Vs.

Collector of Central Excise

(S V Manohar and D Wadhwa JJ.)

04.11.1997

ORDER

1. The appellant M/s. Pravara Pulp & Paper Mills are manufacturers of craft paper. They filed their price lists for approval of prices for their product "paper" claiming partial exemption from excise duty under Notification No. 128/77 dated 18-6-1977. The same was approved. Accordingly, the appellants paid the concessional rate of excise duty @ 50% of the effective applicable rate of duty. On verification of sale invoices, however, it was found that they had recovered from their customers the full amount of excise duty.

2. A show-cause notice dated 11-12-1981 was issued to the appellants calling upon them to show cause why the excess amount of duty, that is to say, duty in excess of 50% effective rate of duty, recovered in the shape of duty from the buyers, should not be considered as a part of the value of the goods for the purposes of excise. The notice covered the period from 27-1-1981 to 30-6-1981. The appellants contended that since the exemption notification did not contain a condition that its benefit should be passed on to the customers, the appellants could retain for themselves the benefit of the exemption notification. They also pleaded that the demand was time-barred. The Assistant Collector negated these defences and confirmed the demand under the demand notice, for Rs 2,29,981.07. In appeal, the Collector of Central Excise confirmed the finding of the Assistant Collector that the amount of duty recovered by the appellants in excess of the effective rate of duty which they actually paid, shall form a part of the assessable value of the goods. However, he also held that show-cause notice insofar as it pertains to a period prior to six months from the date of issue of the show-cause notice or notice-cum-demand, will not be valid and no amount for the

period prior to the statutory period of six months shall be recoverable; being hit by the time limit prescribed in Rule 10 (now Section 11-A). This order has been confirmed by the Central Excise & Gold (Control) Appellate Tribunal. Hence the present appeal has been filed before us.

3. Under Section 4(4)(d) of the Central Excises & Salt Act, 1944, "value" in relation to any excisable goods is defined as under:

"4. (4)(d) 'value' in relation to any excisable goods,--

(i) * * *

(ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale; Explanation.--For the purpose of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of-

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods. and the effective duty of excise on such goods under each Act referred to in Clause (a) or Clause (b) shall be,--

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to, or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act, in respect of such goods as reduced so as to give full and complete effect to such

exemption; and (ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods."

4. The Explanation to Sub-clause (ii) has been inserted by the Finance Act, 1982 (14 of 1982) with retrospective effect from 1-10-1975 and it applied to the present case.

5. Therefore, in the light of the Explanation, what the appellants are entitled to exclude from the value of the excisable goods is the effective duty of excise payable by them on these goods after taking into account the exemption notification. They can, therefore, exclude only 50% of the duty which they have paid, being the effective duty of excise, from the value of the excisable goods. The balance amount if they have charged it from the customers, will form a part of the value of the goods for the purpose of calculation of excise duty. This explanation has been inserted by the Finance Act, 1982 (14 of 1982) with retrospective effect from 1-10-1975 and it applied to the present case.

6. Learned counsel for the respondents had drawn our attention to a decision of the High Court of Bombay in *TELCO v. CCE*, (1990) 48 ELT 182 (Bom) and a decision of the Full Bench of the Karnataka High Court in *Union of India v. Alembic Glass Industries Ltd.*, (1991) 34 ECC 131 (Kant) where both the High Courts have taken a similar view distinguishing earlier judgments which were rendered prior to the insertion of this explanation. We agree with the reasoning and conclusions drawn by these two High Courts.

7. The appeal is, therefore, dismissed and the order of the Tribunal upholding the order of the Collector (Appeals) is upheld.