

SUPREME COURT OF INDIA

Collector of Central Excise,

Vs.

J.K. Synthetics

(S Bharucha, V Khare and D Mohapatra JJ.)

14.10.1999

ORDER

S.P. Bharucha, V.N. Khare and D.P. Mohapatra, JJ.

1. The Customs authorities are in appeal from a judgment rendered by the Customs, Excise and Gold (Control) Appellate Tribunal.
2. The respondents manufacture polyester chips, polyester staple fibre and tow from Mono-Ethylene Glycol (MEG). They imported the same and claimed that they were not liable to pay any additional duty of Customs thereon because the MEG was exempt from the payment of excise duty by virtue of a notification dated 4th May, 1987 issued under Rule 8 of the Central Excise Rules, 1944. The said notification provided that "MEG was exempt from the payment of the whole of the duty of excise leviable thereon which is specified in the said schedule provided that such Mono-Ethylene Glycol is used in the manufacture of polyester chips or polyester staple fibre and tow, including tops or polyester filament yarn and the procedure set out in Chapter X of the Central Excise Rules, 1944 is followed. The claim was rejected by the Assistant Collector and, in appeal, by the Collector. The Tribunal, in further appeal, upheld the respondents' claim.
3. It appears from the judgment of the Tribunal that the Departmental Representative appearing on behalf of the Customs authorities submitted before it that the respondents could not claim the benefit of the said notification, but there is no discussion of this aspect. It was also urged on behalf of the Customs authorities that, in any event, the respondents had not satisfied the condition of the said notification because they had failed to follow the procedure laid down in Chapter X of the Central Excise Rules. On this aspect there is a discussion in the order of the Tribunal and it has been held, based on facts, that there had been substantial compliance with the said procedure by the

respondents.

4. The Tribunal having found on facts that there was substantial compliance, of the procedure under Chapter X of the Central Excise Rules, it must be held that the respondents satisfied the condition of the said notification.

5. The question then is in regard to the availability of the said excise" notification for the purposes of the additional duty of Customs. Section 3 of the Customs Tariff Act, 1975 provides for the levy of the additional duty of Customs. It says that an "article which is imported into India would, in addition to duties of customs levied under the Customs Act, be liable to a duty (hereafter in this section referred to as the additional duty) equal to the excise duty for the time being leviable on a like article if produced or manufactured in India...". The said excise notification exempts the MEG from the whole of the excise duty leviable thereon. There being, therefore, no excise duty leviable on the MEG, there is no additional duty that the MEG can be made liable to, having regard to the plain words of Section 3 of the Customs Tariff Act.

6. This position has been adverted to by this Court in *Students of Dattatraya Adhyapak Vidyalaya v. State of Maharashtra and Ors.* , and *Hyderabad Industries Limited and Anr. v. Union of India and Ors.*

7. Reference was by learned Counsel for the Customs authorities to the judgment of this Court in *Union of India and Ors. v. Modi Rubber Ltd.* and the conclusion therein that the expression 'duty of excise' in notifications under the Central Excises and Salt Act, 1944 applied only in respect of duty under that enactment. That judgment does not consider the terms of Section 3 of the Customs Tariff Act, 1975. The two judgments aforementioned specifically relate thereto.

8. The appeal is, accordingly, dismissed. No order as to costs.