

SUPREME COURT OF INDIA

Collector of Central Excise

Vs.

Polysat Corporation

(M J Rao, S Bharucha and V Khare JJ.)

26.10.1999

ORDER

S.P. BHARUCHA, M. JAGANNADHA RAO AND V.N. KHARE, JJ.

1. These appeals are by the Revenue against an order of the Customs, Excise and Gold (Control) Appellate Tribunal. The goods in question are articles of plastic. They were at all relevant times excisable goods, but when they were manufactured, they were wholly exempt from excise duty by virtue of a Notification (68/71). When cleared, however, that notification had been amended by another Notification (52/82) which provided for a levy of excise duty thereon at the rate of eight per cent. The Tribunal came to the conclusion that the goods having been entitled to a full exemption from the payment of excise duty when they were manufactured, they would not attract excise duty at the rate of eight per cent as in force when they were cleared.

2. Our attention has been drawn by learned Counsel for the Revenue to the judgment of this Court in Wallace Flour Mills Co. Ltd. v. Collector of Central Excise, Bombay 1989 (3) SCC 592 where it has been held, "Excise is a duty on manufacture or production. But the realization of the duty may be postponed for administrative convenience to the date of removal of goods from the factory. 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 the later date for administrative convenience." The judgment in Wallace Flour Mills was referred to with approval, by a Bench of three learned Judges in Collector of Central Excise, Hyderabad v. Vazir Sultan Tobacco Co. Ltd., Hyderabad.. It was said :

That was a case where the goods were excisable goods prior to 1-3-1987, though by virtue of an exemption notification, the rate of duty was nil. This does not mean that they were not excisable

goods. They were excisable goods Nil rate of duty is also a rate of duly. With effect from 1-3-1987, the said goods became excisable to duty at the rate of fifteen per cent ad valorem. It is in the above circumstances that the Court held, on the basis of Section 3 and Rule 9A, that though the goods were produced or manufactured prior to 1-3-1987, still they attracted duty at the rate prevailing on the date of their removal, i.e. fifteen per cent.

3. We are in no doubt that the Tribunal was in error in the view that it took. The said goods were excisable to excise duty under the tariff that then prevailed. When manufactured, an exemption notification wholly exempted the said goods from the payment of excise duty. When they were cleared from the respondents' factory, the exemption notification had been modified so that they were liable to duty at the rate of eight per cent. For the purpose of determining whether the said goods were excisable, what is relevant is the date of their manufacture. On that date they were exigible to excise duty. As to the rate of duty that the said goods must bear, what is relevant is the date of their clearance. On that date they were liable to duty at the rate of eight per cent by reason of the amended exemption notification.

4. The appeals are allowed. The order under appeal is set aside. No order as to costs.