

# SUPREME COURT OF INDIA

Union of India

Vs.

Supreme Steels and General Mills

C.A.Nos.52-54, 56-58, 60-61 and 63 of 1998

(S.P. Bharucha, Y.K. Sabharwal and Brijesh Kumar JJ.)

15.10.2001

## JUDGMENT

### **Brijesh Kumar, J.**

1. The above noted bunch of cases, comprising of civil appeals, S.L.Ps and writ petitions relate to charge of excise duty on notified goods on the basis of capacity of production, as introduced by newly added Section 3A in the *Central Excise Act 1944*, by means of Finance Act 26 of 1997. Vires of Rule 96ZO of the Central excise Rules has also been challenged on the ground that it is inconsistent with the provisions of the Act. In pursuance of the above noted provisions certain notifications were also issued by the Central Govt., their validity is also under challenge. A number of writ petitions had been filed in the Delhi High Court as well and in some of them orders of interim relief, dated 28.10.197 had been passed giving rise to filing of the appeals by the Union of India in this Court.

2. Learned Counsel for the parties informed that now the matter remains confined to a period of three years only as the scheme so introduced, has since been dropped. Shri Joseph Vellapally and the other learned counsels appearing on behalf of the manufacturers have stated that they do not challenge the validity of Section 3A, introduced in Central EXcise Act 1944. On the other hand it has been submitted that the excise duty may be charged according to the said provision, on the basis of actual production but for the period of whole year. Shri Harish Salve, learned counsel appearing for the Union of India submitted that there is no dispute with the offer made and also that the assessment shall be made for whole period of one year namely the financial year. No dispute thus remains on the point and the excise duty shall accordingly be assessed in respect of matters not yet closed and still pending before the concerned authorities.

3. In so far Rule 96ZO is concerned, Shri A.K. Ganguli, learned counsel appearing on behalf of the manufacturers submitted that the part of sub-rule 3 which provides that in case excise duty is paid according to the said sub rule in that event the manufacturer shall not avail of the benefit under sub-section (4) of Section 3A of the *Central Excise Act 1944* is bad. The relevant part of sub-rule (3) of Rue 96ZO reads as under.

"(3) Notwithstanding anything contained elsewhere in these rules, if a manufacturer having a total furnace capacity of 3 metric tones installed in his factory so desires, he may, from the first day of September 1997 to the 31st day of March 1998 or any other financial year as the case may be pay a sum of rupees five lakhs per month in two equal instalments the first instalment latest by the 15th day of each month, and the second instalment latest by the last day of each month, and the amounts so paid shall be deemed to be full and final discharge of his duty liability for the period from the 1st day of September 1997 to the 31st day of March 1998, or any other financial year as the case may be subject to the condition that the manufacturer shall not avail of the benefit, if any, under sub-section (4) of the section 3A of the *Central Excise Act 1944* (1 of 1944) :

Provided that for the month of September 1997 the Commissioner may allow a manufacture to pay the sum of rupees five lakhs by the 30th day of September 1997:

(emphasis supplied)

Provided....."

The submission is that final liability for payment of excise duty would be assessable at the end of the year; therefore in case a liability on the basis of actual production is less the manufacturer should be allowed the benefit of sub-section 4 of Section 3A of the Central Excise Act 1944. It is contended that sub-rule 3 of Rule 96ZO cannot take away any benefit which may accrue to the manufacturer under the provisions of the Act. The argument however does not appeal to us. It was absolutely optional for the manufacturer to opt for payment of excise duty in accordance with sub-rule 3 of Rule 96ZO) on the basis of total furnace capacity installed as provided therein. The manufacturer cannot opt twice during one financial year first closing to pay in accordance with sub-rule 3 of Rule 96ZO and thereafter to switch over to actual production basis under Section 3A(4) of the ACT, in case it is less than the duty payable under sub-rule 3 of Rule 96ZO. The said sub rule is quite clear that the option under it is available subject to the condition that once having opted for it, benefit if any under sub-section 4 of Section 3A of the Central Excise Act 1944 shall not be available. We find that the controversy sought to be raised stands finally settled by a decision of this Court reported in *Commissioner of Central Excise and Customs v. M/s Venus Casting (P) Ltd.*<sup>1</sup> it has been clearly held that two procedures namely one as provided under sub-section (4) of Section 3A of the Central Excise ACT and the other as provided under sub-rule 3 of the Rule 96ZO of Central Excise Rules are alternative procedures and the assessee has to opt for one. Once having done so he cannot claim the benefit of the other."

4. In view of what has been indicated above in this order all the cases of the bunch stand finally disposed of accordingly. Costs easy.

<sup>1</sup>*JT 2000(4) SC 77*