

**Collector of Central Excise Vs. Peico Electronics and**

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**Court :** Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

**Decided On :** Aug-29-1985

**Reported in :** (1986)(6)LC416Tri(Delhi)

**Appellant :** Collector of Central Excise

**Respondent :** Peico Electronics and

**Judgement :**

1. This is an appeal filed by the Collector of Central Excise, Pune (the appellant) against Order-in-appeal No. B-1626/PN-142/82, dated the 8th October, 1982, passed by the Appellant Collector of Central Excise, Bombay, whereby he allowed the appeal filed by M/s. Peico Electronics & Electricals Ltd., Pune (the respondent) against the Assistant Collector's decision classifying certain plastic parts such as Radio cabinets, knobs etc. manufactured by the respondent under Item 15A (2) of the First Schedule to the Central Excises and Salt Act, 1944 (Central Excise Tariff) and demanding duty of Rs. 4, 12,761.30 on the goods for the period from 28-2-1982 to 19-4-1982. The Appellate Collector held that the goods fell under Item 68 Central Excise Tariff and allowed the appeal.

2. The dispute arising for determination by us is whether articles of plastics such as radio cabinets, knobs etc. fell for classification under Item 15A (2) as held by the Assistant Collector or under Item 68 as held by the Appellate Collector during the period 28-2-1982 to 19-4-1982.

3. We have heard Shri V. Lakshmikumar,, S.D.R. for the appellant and Shri G.P. Jhala, Factory Administrator for the respondent.

4. There is no dispute about the position that such articles of plastics fell under Item 15A (2) before the introduction of the Finance Bill, 1982 in Parliament on 28-2-1982. However, by Notification No.68/71, dated 29-5-1971, these were exempted from duty subject to certain conditions. Item 15A (2) as it stood then read as follows :- "Articles made of plastics, all sorts, including tubes, rods, sheets, foils, sticks, other rectangular or profile shapes, whether laminated or not, and whether rigid or flexible, including lay flat tubings and Polyvinyl chloride sheets, not otherwise specified." By the above referred-to notification, all articles of plastics, other than certain specified ones, were exempted from duty. On 28-2-1982, the Finance Bill, 1982 introduced in Parliament inter alia substituted the following in the place of the above sub-item (2) :- "(2) Articles of materials described in sub-item (1), the following, namely :- Boards, sheeting, sheets and films, whether lacquered or metallised or laminated or not; lay flat tubings not containing any textile materials." The effect was that certain articles of plastics were alone specified in Item 15A (2) unlike in the previous entry which covered all articles of plastics. This change was brought about by Clause 49 of the Finance Bill read with the Third Schedule thereto. The Bill contained a declaration under the Provisional Collection of Taxes Act, 1931, to the following effect :- "It is hereby declared that it is expedient in the public interest that the provisions of clause..., 49, ... of the Bill shall have immediate effect under the Provisional Collection of Taxes Act, 1931." It is essential to note at this stage that the Finance Bill did not bring about any change in the rate of duty specified against Item 15A (2) which continued to be 50% ad valorem as before the Finance Bill.

5. We must take note of two more changes. The first was that on 28-2-1982, the Central Government issued a notification under Central Excise Rule 8(1) amending Notification No. 68/71, dated 29-5-1971.

Notification No. 52/82, is reproduced below :- "In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby makes the following further amendments in the notification of

the Government of India, Ministry of Finance (Department of Revenue and Insurance) No. 68/71-Central Excises, dated the 29th ' May, 1971, namely :- (a) for the words "articles made of plastics, all sorts", the words "all goods" shall be substituted; (c) for the words "from the whole of the duty' of excise leviable thereon", the; words "from so much of duty of excise leviable thereon as is in excess of eight per cent, ad\_ valorem" shall be substituted." On 22-4-1982, Notification No. 68/71, was superseded by Notification No. 149/82, the relevant portions of which are reproduced below :- "In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 68/71-Central Excises, dated the 29th May, 1971, the Central Government hereby exempts articles made of plastics, all sorts, falling under sub-item (2) of Item No. 15A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), except, - (i) film or sheet of regenerated cellulose and polyester films; whether lacquered or laminated or metallised or not; (ii) rigid plastic boards, sheeting, sheets and films, whether lacquered or laminated or metallised or not; and (iii) flexible polyvinyl chloride sheeting, sheets, films, whether lacquered or laminated or metallised or not, and lay flat tubings not containing any textile material, from the whole of the duty of excise leviable thereon." [The rest of the notification is not reproduced since it is not relevant for our purpose.].

6. Against the above background, we may now examine the dispute., The respondent's claim which was rejected by the Assistant Collector but upheld by the Collector (Appeals) was that "articles of plastics" such as radio cabinets, knobs etc. (to be referred to hereinafter as "non-specified articles of plastics" in contrast to articles specified in Notification No. 68/71), went out of the scope of Item 15A (2) into that of item 68 on the introduction of the Finance Bill on 28-2-1982 because of the declaration under the Provisional Collection of Taxes Act appended to the Bill which gave immediate effect to Clause 49 of the Bill. Such articles became dutiable under Item 68. On the other hand, the appellant's contention is that in so far as there was no increase in the rate of duty on the goods in question as a result of the Finance Bill, the aforesaid declaration did not have the result of giving immediate effect to the change in Item 15A (2). Hence,

between 28-2-1982 and 19-4-1982, non-specified articles of plastics continued to be classifiable under Item 15A (2).

7. We have carefully considered the matter. Section 3 of the Provisional Collector of Taxes Act, 1931 reads as follows :- "Where a Bill to be introduced in Parliament on behalf of Government provides for imposition or increase of duty of Customs or Excise, the Central Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision in the bill relating to such imposition or increase shall have immediate effect under this Act." It is clear from the language of the provision that it has application only in relation to provisions in Finance Bills which provide for imposition or increase of duty of Customs or Excise. In the present case, the Finance Bill, 1982, did not have the effect of either imposing a duty or excise on the subject goods [they were already excisable under Item 15A (2) though by notification, they were exempt], or of increasing the duty of excise therein [the rate specified against Item 15A (2) did not undergo a change as a result of the Finance Bill; it continued to be 50% ad\_valorem]. The respondent's contention that prior to 28-2-1982, the duty was 'nil' because of the exemption which increased to 8% because the goods fell under Item 68, has no force, firstly because Section 3 of the Provisional Collection of Taxes Act talks of imposition or increase of excise duty by a provision of a Bill. That was not the case with the 1982 Finance Bill in so far as the subject goods were concerned. Secondly, because the provisions of Section 3 of the aforesaid Act and the declaration thereunder appended to the Finance Bill did not have the result of giving immediate effect to the change brought about in Item 15A (2) on the introduction of the Finance Bill for, as noted above, Section 3 of the Act and the declaration apply only in case where the Bill imposes or increases excise duty on any goods. We, therefore, hold that non-specified articles of plastics continued to remain under Item 15A (2) till the enactment of the Finance Bill, 1982, whereupon they became classifiable under Item" 68 Central Excise Tariff. The demand for duty from the appellant under Item 15A (2) in respect of non-specified articles cleared by them during the period 28-2-1982 to 19-4-1982 was, therefore, perfectly valid.

8. Shri 3halla, in passing, referred to the Tribunal's decision in Collector of Central Excise, Indore v. Parmali Wallace Ltd. [1985 (4) E.T.R. 41], though he stated the facts were not similar in that case.

We have perused this decision. The goods in that case-wood-based compreg board and articles thereof-were classifiable and dutiable under Item 68 Central Excise Tariff till 28-2-1982, when, consequent on the introduction of the Finance Bill, 1982, compreg was brought within the purview of Item 16B, Central Excise Tariff, liable to duty at 20% ad\_ valorem i.e. at a rate higher than that applicable to Item 68, Central Excise Tariff. There was a declaration, as in the case before us, under the Provisional Collection of Taxes Act. The contention of the respondents was that, notwithstanding the aforesaid changes, the goods continued to attract duty only at the rate specified in Item 68 and inforce at the time of manufacture of goods (i.e. before 28-2-1982) and not at 20% ad valorem, under item 16B, which according to the revenue, was applicable as at time of removal of the goods. In other words, according to the respondents, the amendment only had the, effect that whatever was henceforth (from 28-2-1982) manufactured and fell within the amended description in Item 16B, would be classifiable under that item. Whatever had been manufactured and had attracted the charge of duty in terms of Section 3 of the Central Excises and Salt Act, would not be affected by the change in classification. The Tribunal did not accept this contention and held that the changes had immediate effect and the goods, though manufactured prior to 28-2-1982, were classifiable and dutiable under Item 16B, when they were cleared. The facts and circumstances of the case before us are not analogous. The effect of the budget changes was to shift certain articles of plastics from Item 15A (2) to Item 68, Central Excise Tariff. The rate of duty under the former was higher and the latter lower. In terms, we have found the changes did not take immediate effect. The case cited is of no help to the respondent.

9. In the result the impugned Order of the Collector (Appeals) is set aside and the appeal allowed.

10. I agree and have little to add except to say that the Parimali Wallace case Collector of Central Excise v. Parimali Wallace [1985 (4) ETR 41] is easily

distinguishable from the facts of the instant case.

That was a case where Section 3 of the Provisional Collection of Taxes Act, 1931, was, clearly applicable seeing that the change in the Tariff classification proposed in the Finance Bill, 1982 necessarily entailed an "increase of duty" of excise. In the instant case, the change proposed did not entail an "increase of duty" of excise.

11. This is apart from the larger question of the essential difference between the incidence and charge to duty on a levy being imposed and a determination of the applicable rate of duty once the goods are already leviable to duty. A duty of excise is a levy upon manufacture. Removal is relevant only for its assessment and qualification. Once the goods had already been levied to duty, a variation in the tariff description or classification does not imply a fresh levy, even if the results in change in the rate of duty. Such change has a relation to the rate' of duty rather than the levy itself or its incidence.

12. These aspects had been discussed in the Tribunal's Order No.103/1985-D, in Appeal No. 184 of 1980-D, The Vazir Sultan Tobacco Co.

Ltd. v. Collector of Central Excise, Hyderabad [1985 (21) ELT 757 (Tribunal)] at length and need not be further adverted to here.

Section 3 of the Provisional Collection of Taxes Act, 1931, in the case of imposition or increase of a duty of Customs or Excise, confers a statutory right on the Central Government to make a declaration for giving immediate effect to such imposition or increase. Once the Central Government makes a declaration in exercise of this statutory right, the requirements of said Section 3 are fulfilled, and it would be beyond the pole of controversy as to whether the declared provisions results in imposition or increase of duties or not. The Appellate Tribunal cannot sit in judgment over exercise of this statutory right unless it set aside the declaration.

It appears that the attention of the Hon'ble Tribunal was not drawn to the provisions of Section 4 of the Provisional Collection of Taxes Act, 1931, which reads as under : (1) A declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced." In the present

case it is an admitted position that subject amendments were made by Clause 49 of the Finance Bill, 1982, in respect of which a declaration under Section 3 of the Provisional Collection of Taxes Act, 1931, was also made by the Central Government [See para 4 of the decision]. On the face of this admitted position and the mandatory provision of the aforesaid Section 4, there is no escape from the conclusion that the changes brought about by the said Clause 49 of the Finance Bill, 1982, would be effective from 1-3-1982 unless the declaration in this respect is set aside.

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