Collector of Central Excise Vs. Godrej Soaps Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-21-1989

Reported in : (1990)(26)ECC202

Appellant : Collector of Central Excise

Respondent : Godrej Soaps Ltd.

Judgement :

1. These two appeals came for hearing on merit on 26-10-1989. The respondents did not appear for personal hearing. However, in their letter No. BI/455/4783 dated 20-10-1989, they requested that the matters maybe decided on merits in their absence on the basis of the written submissions sent alongwith that letter. Accordingly, we have heard Shri M.S. Arora, learned JDR for the appellant-Collector and have gone through the records of the case.

2. In their written submissions the respondents have stated that they were manufacturing Glycerin which was exempted from special excise duty upto 18-6-1980. From 19-6-1980, the above product was subject to special excise duty. The respondents had certain finished stock on 18-6-1980 out of the goods manufactured by them prior to 19-6-1980.

Those goods were cleared from the factory after 19-6-1980. The question arose as to whether the respondents were liable to pay special excise duty on the stock which was manufactured prior to 19-6-1980, but was cleared after that date. While the Assistant Collector of Central Excise held that the special excise duty was payable on the goods as the same was cleared after 19-6-1980, the Collector (Appeals) has held that those were pre-budget stock and not liable to attract special excise duty though cleared after 19-6-1980. In support of their Contention that those were pre-budget stock and hence the duty was not payable, the respondents relied on the decisions reported in Kirloskar Brothers Ltd. v. Union of India 1978 (2) ELT-(J-33), Sirpur Paper Mills Ltd. v. Union of India ELT-217 (A.P.), Castrol Ltd. v.Collector(Tri), Collector v. Rallis Chemicals Ltd. 1988(34)-ELT -296 (Tribunal) & Assistant Collector v. Andhra Fertilizer Ltd. -1987 (32) ELT 343 (A.P.).

3. Appearing for the appellant-Collector Shri Arora has confirmed the facts indicated above. He has stated that the Tribunal's decision reported in 1985 (21)-ELT-757(Tribunal) in the case of Vazir Sultan Tobacco Company Limited is against the Department. Special Leave Petition filed by the Department was also dismissed by the Supreme Court. He has, however, stated that the Tribunal's decision in the case of Hindustan Petroleum Corporation Ltd., Madras v. Collector of Central Excise, Hyderabad, reported in 1984 (18)-ELT-409 (Tribunal) was in favour of the Department. This decision was considered by the Larger Bench of the Tribunal in the case of Vazir Sultan Tobacco Company Limited (supra). He has also drawn our attention to Gujarat High Court judgment in the case of Maheshwari Mills Ltd. v. Union of India and Others, reported in 1988 (35)-ELT-252(Guj.) and the Supreme Court judgment in the case of Wallace Flour Mills Company Ltd. v. The Collector of Central Excise, Bombay III, reported in 1989 (2) SCALE 804, which are in favour of the Revenue. He has stated that following the latest judgment of Hon'ble Supreme Court as cited supra, the appeals may be allowed 4. We have considered the records of the case, the written submissions of the respondents and also the arguments of Shri Arora. The issue involved in the present appeals stands settled by the latest judgment of the Hon'ble Supreme Court in the case of Wallace Flour Mills company Ltd. v. The Collector of Central Excise, Bombay III. The facts of the said case as stated in paragraph-2 of the judgment of the Hon'ble Supreme Court are as follows :- "The appellant is a manufacturer of various types of food products known as Sapaghetti, Macaroni, Vermicelli, etc., falling under Heading No. 1902.10 of the Central Excise Tariff Act. The appellant filed classification list effective from 1st March, 1987 claiming that their pre-budget stocks of non-excisable goods, namely, various types of food

products declared in the classification list as aforesaid were entitled to duty free clearance being pre-budget stocks. The Assistant Collector of Central Excise, however, held that the question of clearing pre-budget stocks duty free did not arise because the products in question were excisable though exempted from the duty. There was an appeal from the said order of the Assistant Collector before the Collector of Central Excise (Appelas), Bombay. He dismissed the appeal. The appellant went up in appeal before the Tribunal. It was contended before the Tribunal on behalf of the appellant that the goods in question were not leviable to duty under the aforesaid head until 28th February, 1987, and the said goods has been made dutiable only by the Finance Bill, 1987-88 with effect from 1st March, 1987. It was submitted further that on 27th February, 1987, the appellant had in their factory a stock of the said products which were fully manufactured, packed and ready for sale and the inventory of the said stock was prepared by the Supdt of Central Excise on 1st March, 1987. Reliance was placed on several decisions of the different High Courts, namely, decision of the Madhya Pradesh High Court in Kirloskar Brothers Ltd. v. Union of India (1978 (2) ELT-33), Union of India v. Kirloskar Brothers Ltd. (1978 (2) ELT-690), decision of the Bombay High Court in Synthetic Chemicals Pvt. Ltd. v. S.C. Coutinho (1981 (8) ELT-414), decision of the Bombay High Court in New Chemicals Ltd. v. Union of India (1981 (8) ELT -920), decision of the Madras High Court in Sundaram Textiles Ltd. v. Assistant Collector of Central Excise (1983 (13) ELT-909), decision of the Allahabad High Court in Union of India v. Delhi Cloth & General Mills (1978 (2) ELT-177). On the other hand, the revenue contended that the goods forming the pre-budget stocks were very much excisable goods and that for the purpose of collecting duty, date of manufacture was not material under the scheme of the Act even though the taxable event is the manufacture.

It was, therefore, contended that at the time of manufacture of the goods in question, the goods were excisable goods and in view of Rule 9A of the Central Excise Rules, 1944, though the taxable event is the manufacture and production, the payment of duty is related to and postponed to the date of removal of articles from the manufactory. The Tribunal accepted the said contention." "We are of the opinion that the Tribunal was right, it is well nettled by the scheme of the Act as clarified by several decisions that even though the taxable event is the manufacture of production of an excisable article, the duty can be levied and collected at a later stage for administrative convenience. The Scheme of the said Act read with the relevant rules framed under the Act, particularly rule 9A of the said rules, reveals that the taxable event is the fact of manufacture or production of an excisable article, the payment of duty is related to the date of removal of such article from the factory. In that view of the matter, the Tribunal dismissed the appeal and rejected the assessee's contention." Accordingly, it was held therein that the Tribunal was right and there was no ground to assail the order of the Tribunal. The appeal filed by Wallace flour Mills Company Ltd. was dismissed by the Hon'ble Supreme Court.

5. In the light of the above discussions and following the judgment of Hon'ble Supreme Court delivered in the case of Wallace Flour Mills company Ltd. (supra), we hold that special excise duty was payable on the stock of Glycerin manufactured prior to 19-6-1980, but cleared from the respondents' factory after 19-6-1980. Consequently, we set aside the impugned orders and allow the appeals filed by Revenue.