

Collector of Central Excise Vs. Indian Pistons Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-06-1990

Reported in : (1990)LC510Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Indian Pistons Ltd.

Judgement :

1. All these appeals directed against various orders passed by the Collectors of Central Excise (Appeals), Madras and Calcutta against the various appellant Collectors and appellant parties involve an identical issue. The issue is relating to levy of Special Excise Duty (SED) levied in the Finance Bill, 1988 vide its Clause 82 which laid down that there shall be levied and collected a Special Duty of Excise of 5% of the Basic Excise Duty chargeable under Central Excises & Salt Act, 1944. The point to be decided is whether Special Excise Duty (SED) imposed under Clause 82(1) of the Finance Bill, 1988 could be levied on the stock of goods manufactured and lying in stock as on 28-2-1988/1-3-1988, but cleared on or after that date. The Department's view is that though the taxable event is the manufacture or production of excisable goods, the duty can be levied and collected at a later date for administrative convenience in terms of Rule 9-A of Central Excise Rules. The Collector (Appeals), in those cases wherein they disagreed with this view of the department and allowed the appeals or refund claims, had followed certain decisions of the CEGAT. The Collector (Appeals) Madras has referred to and followed the CEGAT decision of the Five-Member

Bench in the case of Vazir Sultan Tobacco Co. Ltd. reported in 1985 (21) ELT 757, TELCO case reported in 1987 (28) ELT 462 as well as the Tribunal's order in Appeal No. 3206/88-B.I in the case of Collector of Central Excise, Hyderabad v. Sri Ram Refrigeration and held that the SED could not be charged on the Pre-Budget stock when the duty became chargeable only w.e.f. 1-3-1988.

2. Before us, the arguments on behalf of the appellant Collectors were presented by the learned SDR, Shri V. Chandrasekaran. He contended that the levy of SED by the Finance Bill, 1988 was not in the nature of a new imposition of duty. It was the continuation of existing SED and in this connection, he referred to 1987 Finance Bill which also levied SED at the rate of 10% of the basic duty of excise charged under Central Excises & Salt Act on all excisable goods but in that case, by way of exemption Notifications 91/87 dated 1-3-1987 and 137/87 dated 12-5-1987, the goods were exempted from such Special Excise Duty. The position was changed in the Finance Bill, 1988 which levied a 5% SED by virtue of Clause 82(1) of that Bill. There was, however, total exemption of all goods from Special Excise Duty leviable under the 1987 Finance Bill by Notification No. 91/87 dated 1-3-1987 and 137/87 dated 12-5-1987 (in force during the month of March, 1988). Therefore, the learned SDR argued that it was not a case of the goods being not excisable at all at the time of their manufacture, being subjected to duty at the time of clearance on the ground that at the time of clearance, the goods were dutiable. Rather, it was a situation where the goods at the time of manufacture were excisable but were exempt, and at the time of clearance were excisable and not exempt. In such a situation, the learned SDR pointed out that the ratio of the recent Supreme court judgement in the case of Wallace Flour Mills Company Ltd. v. Collector of Central Excise, Bombay -1989 (44) ELT 598 will apply.

The Supreme Court, in that case had held that even though the taxable event is the manufacture or production of an excisable article, the duty can be levied and collected at a later stage and that the scheme of the Central Excises & Salt Act read with the relevant rules framed thereunder, particularly, Rule 9-A reveals that while the taxable event is the manufacture and production of an excisable article, the payment of duty is related to the date of removal of the article from the factory. The learned SDR also referred to the case law reported in 1990 (15) ETR 189 in

the case of Collector of Central Excise, Bombay-11 v. Godrej Soaps Limited in which the Tribunal had held, with reference to the same issue regarding leviability of SED, that the rate of duty as on date of clearance of the goods was applicable and that the fact that at the time of completion of manufacture, duty was not leviable on the goods, will not make any difference. The learned SDR further fully adopted the reasoning given by the Collector of Central Excise (Appeals) Calcutta in his detailed order-in-appeal No. 66/Cal.I/89 dated 22-3-89 in the case of M/s. Hindustan Petroleum Corporation and emphasised that the facts of the present cases are distinguishable from Vazir Sultan Tobac-co Co. decision of the Five-Member Bench of the Tribunal. In that case, the situation was that the imposition of SED by the Finance Bill did not exist previously. In that case the Tribunal was considering the Finance Bill of 1978 which came into effect from 1-3-1978 and for the period prior to that date, there was no enactment levying SED. On the other hand, in the cases before the Tribunal presently, the SED had been imposed under the previous Finance Bill, 1987 but by virtue of exemption notification referred to earlier there was total exemption from SED. The learned SDR urged that therefore, the Finance Bills, 1987 as well as 1988 though different enactments thus provided for a continuity to the levy of SED. Therefore, the ratio of the Supreme Court decision in Wallace Flour Mills Company case is directly applicable and the learned SDR pointed out that it has since been followed by this Tribunal in the Godrej Soaps Limited case.

3. Shri Raghavan Iyer, Advisor (Customs & Excise) represented I.O.C. in all their appeals and made the main presentation of the case against the department. He drew attention to the fact that in Finance Bill, 1988, the SED is imposed by virtue of provisions of Clause 82 of the Finance Bill and there is also a declaration in the Finance Bill under Section 3 of the Provisional Collection of Taxes Act, 1931 in regard to Clause 82. A declaration under Section 3 of the above-said Act would itself indicate that it is a new impost because that section talks of imposition or increase of excise duty by a provision of a Bill and says that where a Bill to be introduced in Parliament on behalf of the Government, provides for imposition or increase of duty of customs or excise, the Central Government may insert 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 that

Act. This itself would show, according to Shri Iyer, that the levy of SED in Finance Bill, 1988 was a new impost since there was a declaration under the Provisional Collection of Taxes Act in respect of Clause 82 of the Finance Bill relating to SED. He further contended that the authority to levy SED is not the same as that for Basic Excise duty which flows from Section 3 of the Central Excises & Salt Act, 1944 and the Central Excise Tariff Act, 1985 which are continuing enactments, whereas SED is levied every year under specific clauses of the Finance Bill. SED was levied by Clause 98 of the Finance Bill, 1987 but was exempted. The same was levied and was enforced by Clause 82 of Finance Bill, 1988 by virtue of declaration under Provisional Collection of Taxes Act. It was contended that the levy of SED is restricted for a particular period ending 31st March of the next year. Therefore, the introduction of SED in the Finance Bill of 1988 was a fresh introduction and a new imposition of duty. The Finance Bill and the Act, 1988 is a distinct enactment from Finance Bill and Act of 1987. The rate of SED also differs in 1988 from what it was in 1987.

The declaration under Section 3 of the Provisional Collection of Taxes Act would also show that without such a declaration, the SED could not have been collected on and from 1-3-1988. Shri Iyer, therefore, put forth five main propositions on which he elaborated; (i) that special duty is also a duty of excise in pith and substance; (ii) being a duty of excise, it has the status of a constitutional concept which has been comprehensively expounded by the Supreme Court, the Federal Court and Privy Council in various decisions; (iii) according to the Supreme court decisions, firstly, excise duty is a levy on goods, secondly, the taxable event is manufacture or production of goods, and thirdly, removal is not the taxable event; (iv) liability to excise duty on any goods arises only if the goods had been manufactured on or after the date of imposition of duty; (v) a contrary interpretation would amount to giving retrospective effect to the Finance Bill/Finance Act for which there is no legal authority.

4. As regards the first proposition, Shri Iyer pointed out that the Tribunal in the Vazir Sultan Tobacco Co. case had held that both, basic and special excise duties have the same attribute and had also held that all the conditions for excisability and leviability to duty in respect of basic excise duty would be applicable to SED

also by virtue of Clause 4 of Section 37 of the Finance Bill, 1978 which laid down that the provisions of Central Excise Act and Rules made thereunder including those relating to refund and exemption shall apply in relation to levy and collection of SED.⁵ As regards the proposition at Sr. No. (ii), Shri Iyer submitted that whether it is a duty of excise has to be seen in the light of the various Supreme Court and High Court pronouncements interpreting a duty of excise as figuring in Entry 84, List I in the Seventh Schedule to the Constitution. In this respect, the law as laid down by the Courts, has been reiterated in the case of Bombay Tyre International decided by the Supreme Court -1983 (14) ELT 1896, wherein it was reiterated that while the levy of excise duty is on the manufacture, the point of collection is located where the statute declared it will be.

1. Chotabhai Jethabai Patel & Co. v. Union of India - AIR 1962 SC 1006 R.C. Jall v. Union of India All these judgments were to the effect that excise as a levy is attracted the moment, the manufacturing process is complete and a new commercially known commodity emerges. It is the fact of manufacture which attracts duty even though the duty may be collected at a subsequent stage usually when the article leaves the factory for administrative convenience. This modality is covered by provisions of Rule 9- A of the Central Excise Rules which Shri Iyer submitted, is the stage of assessment of duty. What attracts excise is the event of manufacture and the levy must be on the goods. From this legal position, looking at the situation with reference to SED and coming to his IVth and Vth propositions, Shri Iyer submitted that for the purpose of SED also, the taxable event flows from it being a duty of excise and when once this is so, the liability arises only when the goods are manufactured and accordingly, SED will be attracted in the present case only on those goods which were completely manufactured on or after 1-3-1988. The goods which were completely manufactured prior to that date will not attract SED which was imposed only w.e.f. 1-3-1988. Shri Iyer, in this context, placed reliance on the reported case decided by the Supreme Court in the case of D.R. Kohli v. Atul Products - 1985 (20) ELT 212 where the Supreme Court had observed that payment of excise duty on dyes in that case was possible only if they had been manufactured after the introduction of Item 14-D into the Central Excise Tariff and that in that case the dyes which were used by the respondents therein had been manufactured prior to that date.

Therefore, there could be no levy of duty on the Pre-Budget stock. Shri Iyer further contended that even in the Wallace Flour Mills case decided by the Supreme Court and relied upon by the department, the situation was that the goods concerned in that case were already specified in the Tariff Schedule as being goods subject to duty of excise and only the statutory tariff rate previously was nil.

Subsequently, the nil rate was ended and a statutory rate of duty was prescribed the goods concerned being those falling under Chapter 19 of Central Excise Tariff Act, 1985. The situation is not the same in the case of SED in the present appeals because the SED in the Finance Bill, 1988 was a fresh impost. Shri Iyer further urged that removal cannot be taken to be taxable event because Rule 9-A is only a machinery provision relating to assessment of duty. Shri Iyer contended that the decision of the Tribunal relating to SED in Godrej Soaps Limited case relied upon by the learned SDR is also distinguishable, as it was a case where SED was exempt to begin with, but later, that exemption was withdrawn. On the other hand, the case of Vazir Sultan Tobacco Co. was on all fours with the present appeals, as also the Tribunal's decision in the case of Sri Ram Refrigeration.

7. The learned consultants S/Shri C. Chidamabaram, P.S. Chakraborty, R.Swaminathan, C. Viswanadhan, V.K. Dorairaj, Advocate, R.K. Saxena, Branch Manager, G.S. Ahuwalia and K.V. Kunhikrishnan appearing for the various appellants/respondents adopted the arguments put forth by Shri Iyer. Shri D.P. Bhawe, Chief Tax Manager, HPL while adopting the arguments pointed out that the Collector (Appeals) at Calcutta, while rejecting some of their refund claims had subsequently taken a view in favour of the assessee, following the decision of the Tribunal in Sri Ram Refrigeration case. In reply, Shri Chandrasekaran, the learned SDR pointed out that the Tribunal's decision in Sri Ram Refrigeration was no more good law in the light of the Supreme Court decision in Wallace Flour Mills case. He also contended that Supreme Court decisions which related to the situation where a new item was introduced for the first time in the Central Excise Tariff, as in the case of D.R. Kohli v. Anil Products, are not comparable with the present situation since there was continuing levy of SED and it was not a case of introduction of SED for the first time. Shri Chandrasekaran also argued that for the purposes of levy of SED, the authority is Clause 82 of the Finance Bill and the

effect thereof is that wherever, goods are subjected to basic excise duty, SED attaches itself, and for the purposes of SED, therefore, it is not necessary to go into the question whether there had been manufacture or not and other criteria for determining dutiability which essentially relates to basic excise duty leviable under Section 3 of the Central Excises & Salt Act, 1944.

8. We have carefully considered the submissions made by the learned SDR, Shri Raghavan Iyer, Adviser (Customs & Excise) as well as the Consultants, Advocates and the representatives of the parties herein.

The issue to be decided is whether Special Excise Duty (SED) levied by virtue of Clause 82 (1) of the Finance Bill, 1988 could be levied on the stock of goods which had been fully manufactured prior to 1-3-1988 but which were cleared on or after that date. The department holds that the SED was rightly charged and collected on such goods at the time of their clearance after 1-3-1988 and reliance has been placed on the latest Supreme Court judgment in the case of Wallace Flour Mills v.CCE, 1989 (44) ELT 598 (SC) wherein the Supreme Court held that the goods produced during exemption period but cleared when there was no exemption are dutiable. On the other hand, the assesseees who were appellants/respondents in these cases have sought to rely upon the ratio of the Five Member Bench of this Tribunal in the case of Vazir Sultan Tobacco Co. Ltd., 1985 (21) ELT 757 to say that the SED imposed on 1-3-1988 for which there was also a declaration under the Provisional Collection of Taxes Act, 1931 was a new impost and as such on the goods which were fully manufactured prior to the date of such impost no SED can be levied at all, because SED was levied under Clause 82 (1) of the Finance Bill for the year 1988 which as a separate enactment will not have applicability to the previous year in which SED was imposed by the provisions of 1987 Finance Bill Clause 98 thereof.

Examining these contentions it is noted that since 1963 SED was levied upto 1971 by various Finance Acts passed from time to time. The levy of SED was discontinued from 1972 until 1978 when it was again revived by the Finance Act, 1978. Thereafter it continued to be levied from year to year. The provisions levying SED in these various Finance Acts were in almost identical terms. In order to

decide the issue before us we may have to look to the provisions of the Finance Bill of 1987 and 1988. In the 1987 Finance Bill Clause 98 provided for levy of SED @ 10% of the basic duty chargeable upto 31-3-1988. However, all goods were exempted from this levy by notification. Now it is relevant and necessary for the purposes of this case to find out the object and intention behind the levy of SED in 1987 Finance Bill. In the Finance Minister's Speech of the 1987-88 budget it was said by the Finance Minister "Provision in the Finance Bill is also being made for continuation of the levy of auxiliary duty of Customs and SED." This levy was having a life span till 31-3-1988. Earlier to that, in the 1986 Finance Bill, Clause 53 thereof provided for levy of SED @ 10% of the basic duty chargeable upto 31-3-1987. However all goods were exempted from this levy by a Notification No. 172/86 dated 1-3-1986. In this context, the Finance Minister's announcement in 1987 budget that provision was being made for continuation of SED is significant for the purposes of the present appeals before us, because it indicates the object of the levy as a continuation of SED although it may be noted that both in 1986 and 1987 Finance Act, the SED was not actually charged and collected because of exemption. In this context, it is possible to infer that it was the intention to maintain SED as a continuing levy. Such intention can rightly be inferred from the speech of the Finance Minister, as quoted above, and it is now well-settled that the speech made by the mover of the Bill on the floor of the House of Parliament explaining the reasons for its introduction can be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the objects or purpose for which legislation is enacted see K.P. Varghese v. I.T.O., 1981 131 I.T.R. 597 (SC). The Special Duty of Excise was imposed by Clause 82 of the Finance Bill, 1988 @ 5% certain essential commodities and other priority items were exempted. The Finance Minister mentioned this in his speech while moving the Bill as follows : "91. In view of the continuing pernicious effects of the drought and the natural calamities, I propose to continue with these surcharges for one more year. In addition, it is now proposed to levy a surcharge by way of Special Excise Duty at the rate of 1/20th of the Basic Duty of Excise. The incidence of this surcharge will generally be small; for example, it will be only one quarter of one percent i.e. 0.25%, where the basic duty is 20%.

92. Essential commodities and other priority items which are presently exempt from excise duty will continue to remain exempt. I am also exempting from this surcharge, certain other essential goods of common consumption, namely, sugar, matches, cotton fabrics, vanaspati, refined vegetable oil, tea, coffee and kerosene." The argument that the SED levied by the Finance Bill of 1988 is a new impost does not have much force in the background of the discernable element of continuity of this levy which we have referred to above as reflected by the Finance Minister's speech. It is also observed that the nature of the duty and its quantification as a percentage of the basic duty of excise and its nomenclature continued to be the same.

Moreover, the SED as im-posed under the 1987 Finance Bill/Finance Act would have worked itself out only at the end of March, 1988. In such a context, it may be justifiable to conclude that this was a situation of excisable goods being exempted from duty at the time of manufacture, and being not exempted at the time of clearance, attracting duty thereby in terms of Rule 9-A of Central Excise Rules, which is made applicable to SED also by Sub-clause (4) of Clause 82 of 1988 Finance Bill and Sub-clause (4) of Clause 98 of Finance Bill, 1987. The Five-Member Bench order in Vazir Sultan Tobacco Co. Ltd. case is one arising out of the Finance Act of 1978 when the SED which had been discontinued since 1972 was again revived. Factually, therefore, the present appeals are not on all fours with the Vazir Sultan Tobacco Co.

case. In such a view of the matter, the observations of the Tribunal in the Vazir Sultan Tobacco Co. case in Para 44 thereof, "Once the goods are excisable, it is the rate of duty applicable on removal that governs assessment and quantification of the duty leviable, since exemption from duty has a relation to the applicable rate of duty rather than the charge to duty itself, becomes applicable to the facts of the present appeals. In the circumstances, the ratio of the Supreme Court decision in Wallace Flour Mills case becomes applicable where the Supreme Court held that excisable goods do not become non-excisable goods merely by reason of the exemption given under a notification and the Supreme Court further held that on the basis of Rule 9-A of Central Excise Rules, Central Excise authorities were within their competence to apply the rate prevailing on the date of removal. We

find, applying the ratio, that in these appeals before us, the goods had been manufactured when exemption from SED was available by virtue of notifications under 1987 Finance Act, but at the time of clearance the goods were not so exempted by virtue of 1988 Finance Act, and therefore, collecting duty on the goods at the rate prevailing on the date of removal applying Rule 9-A will be valid. The argument, that this could not be so because the Finance Act of each year by which the SED was imposed were separate enactments in themselves, though attractive, cannot be accepted in the context of the legislative intention as revealed by the announcement on the floor of the House by mover of the Finance Bill to which we have already referred, and also considering that the nomenclature, nature, quantification and modality of collection of the duty remained identical throughout. We also observe that the other case law relied upon by the assessee, namely, that of the Tribunal in the Sri Ram Refrigeration case is no more good law in the light of the subsequent Supreme Court judgment in the Wallace Flour Mills case, and we also observe that this Tribunal on this very issue already found the ratio of the Supreme Court decision in Wallace Flour Mills case applicable, and had followed the same, in respect of CCE Bombay-III v. Amar Dye Client, 1990 (26) ECC 199 (SB) and also in the case of CCE Bombay-II v. Godrej Soaps Ltd. 1990 (26) ECC 202 (SB). In the circumstances, therefore, we hold that the collection of SED on the clearances on or after 1-3-1988 on goods which had been fully manufactured prior to that date is valid and in accordance with law. The appeals are disposed of in the above terms.