

**(1989) 04 CAL CK 0046**  
**In the Calcutta High Court**  
**Case No : C.R. No. 425 (W) of 1982**

Andaman Timber Industries Ltd.

APPELLANT

Vs

Collector of C. Ex.

RESPONDENT

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**Date of Decision :** 26-04-1989

**Acts Referred:**

Central Excise Rules, 1944 — Rule 49, 9  
Central Excise Tariff Act, 1985 — Section 2  
Central Excises and Salt Act, 1944 — Section 3  
Finance Act, 1982 — Section 51

**Citation :** (1989) 25 ECR 398 : (1989) 43 ELT 41

**Hon'ble Judges :** Susanta Chatterji, J

**Bench :** Single Bench

**Advocate :** R.N. Bagoria, S.K Bagaria, Roopa Sheth and O.P. Jhunhunwalla, for the Appellant;

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## Judgement

Susanta Chatterji, J.—The instant Rule was issued on February 12, 1982 and an interim order was passed to the effect that the adjudication proceedings will not continue until the following steps are taken:

- a) Samples are drawn upon giving the petitioner reasonable opportunity and in their presence and the samples so drawn jointly by the petitioner and the respondent authorities should be sent to the National Test House, Alipore under their joint seal for testing;
- b) The samples drawn should reach National Test House within one week after such drawing;
- c) On receipt of the report from the National Test House, copies of such report should be given to the petitioner and the respondent authorities.

It was further directed that order, if any, made in the adjudication proceedings would abide by the result of the Rule. Further, so far as the taking of the materials in future for captive consumption is concerned the petitioner would be

at liberty to do so without payment of any excise duty but they should furnish Bank Guarantee for 50% of the amount of Duty assessed for such materials for each month to the satisfaction of the Collector of Central Excise, Calcutta and such bank guarantee would be furnished within three weeks from the date the Collector would intimate the amount of duty on such materials taken for captive consumption during the month.

2. It appears from the materials on record that the writ petitioner prayed for issuance of a Writ of Mandamus commanding the respondents not to levy and/or demand any Central Excise duty on the U.F. and P.F. solution prepared at the factory of the petitioner and used for the manufacture of plywood thread and to withdraw, cancel or rescind the purported orders and/or decisions or directives of the respondents concerned contained in the circular dated September 24, 1980, the purported notice dated August 18, 1981 and the order passed thereon if any, and the order dated August 28, 1981 and to act in accordance with law and for other consequential reliefs, as stated in the writ petition.

3. The writ petitioner has alleged that for manufacture of plywood, the petitioner processes various inputs such as veneers, cores frames and adhesive or glue compound. The glue compound is a heterogeneous mixture of urea, formalin, groundnut cake powder/tamarind seed powder and caustic and at times urea is substituted by the phenol. It is further disclosed that the said items are used for the purpose of manufacture of plywood and they have no specific identity and cannot be sold in the market as consumables. Further, the said solution itself has no life and is not marketable. The U.F./P.F. solution prepared at the petitioner's factory continued to remain within the stream of production and are processed in an integrated process in manufacture of plywood. Such U.F./P.F. solution are only intermediate inputs and are prepared at an intermediate stage in the course of manufacture of plywood and are not final or finished product and there can be no Central Excise duty and such duty cannot be levied. It is made clear by the petitioner that under the Central Excise Act, provisions and/or Rules thereunder including the provisions of Rules 9 and 49, the Central Excise duty can be levied and/or collected only if the goods are removed from the factory and there is a specific averment in the writ petition that the said solution is not removed from the factory of the writ petitioner, but are used in the manufacture of plywood.

4. It further appears from records that during the pendency of the Rule, certain subsequent events took place and by order dated 10-6-1983, the prayer for amendment of the writ petition was allowed. From the amended writ petition it also appears that the writ petitioner has further prayed for a declaration that the provisions of Section 51 of the Finance Act, 1982 and the Notification being No. 20/82-C.E., dated February 20, 1982 are illegal, void, unconstitutional and of no effect and has further prayed that the respondents cannot levy and/or demand any Central Excise duty on the said U.F./P.F. solution prepared at the factory of the petitioner and also for other necessary directions to refund to the petitioner the amount as stated in the writ petition.

5. An application for vacating the interim order as granted was made and therein it is disclosed that in the Finance Act of 1982 by way of insertion of clause (a) under Explanation III of sub-item 15A(1) Artificial or Synthetic resin in the form of liquid or pasty including emulsion, dispersion or solution i.e., subject goods of the writ petition has been covered by T.1.15A(1) with effect from 28-2-1982 as per annexure "C" to the said application for vacating interim order. It has also been disclosed that in the Notification of the Government of India bearing No. 20/82 dated 20-2-1982 amending Rules 9 and 49 of Central Excise Rules, 1944 the Government covered captive consumption of any goods for manufacture of other commodities falling under different items within the same factory as removal within the meaning and scope of Rules 9 and 49 of the said Rules. Further, by Section 51 of the said Finance Act, 1982 the provisions of the aforesaid Notification was given retrospective effect from the date on which Central Excise Rules, 1944 came into force. The respondents contend that the petitioner company manufactures U.F. resin and P.F. resin in liquid form falling under Item No. 15A(1) for use as adhesive for manufacture of plywood falling under Tariff 16(B) and that the change made in tariff description of Item No. 15A(1) in Finance Act, 1982 as per clause (a) of Explanation III the liquid or pasty emulsion, dispersion or solution of artificial or synthetic resin as manufactured by the petitioner for captive consumption in its factory has been duly covered by the said Tariff. Hence on the basis of the case of the petitioner, the subject goods are liable to attract duty under Tariff Item No. 15A(1) as amended by Finance Act, 1982 with effect from 28-2-1982. The respondents further stated in the said application for vacating interim order that the above facts would be supported and fortified from the chemical test report of the subject goods, carried out by the National Test House, Alipore on 4th May, 1982, which is annexed to the said application.

6. At the time of hearing of the Rule, attention of the Court has been drawn to the decision reported in 1981 E.L.T. 108 (Del.) (Indian Plastics & Chemicals Pvt. Ltd. v. Union of India &Ors) wherefrom it appears that Aqueous solution of phenolic resin cannot be regarded as artificial or synthetic resin in liquid form. It can at best be described as "solution of resin" which is not liable to excise duty under Tariff Item No. 15A. It will further appear from paragraphs 14 and 16 of the said decision that the resin may be in different form. Whatever may be the form, the product must necessarily be a resin. Combination of two different substances which are completely harmonious results in the formation of a solution. It was concluded that the product as referred in the said case was only an intermediary product and is not manufactured resin in liquid form and therefore would not be covered by the Item No. 15A. Attention of the Court has also been drawn to a recent decision reported in Union Carbide India Limited Vs. Union of India (UOI) and Others, wherein it was held that in order to attract excise duty, the article manufactured must be capable of sale to a consumer and articles in crude or elementary form are not dutiable as those are merely intermediate products and not goods. Entry 84 of List 1 of Schedule VII to the

Constitution specifically speaks of "duties of excise on tobacco and other goods manufactured or produced in India" and it is now well accepted that excise duty is an indirect tax, in which the burden of the imposition is passed on to the ultimate consumer.

7. Attention of the Court has also been drawn to the reported decision in *Bhor Industries Ltd., Bombay Vs. Collector of Central Excise, Bombay*, wherein it has been made clear that Section 3 of the Central Excises and Salt Act, 1944 enjoins that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or "manufactured" in India. "Excisable goods" u/s 2(d) of the Act means goods specified in the Schedule to the Central Excise Tariff Act, 1985 as being subject to a duty of excise and includes salt. Therefore, it is necessary to find out whether there are goods that is to say, articles as known in the market as separate distinct identifiable commodities and whether the tariff duty levied would be as specified in the Schedule, simply because a certain article falls within the schedule, it would not be dutiable under excise law if the said article is not "goods" known to the market. Marketability, is therefore, an essential ingredient and criterion in order to be dutiable under the Schedule to the Central Excise Tariff Act, 1985.

8. By looking to the materials on record and applying my mind to the principles as laid down in the various aforesaid decision already reported, this Court finds that the allegations and/or contentions made in the writ petition have not been controverted so far as the identity of the chemical to the solution in question. It is also not disputed that such U.F./P.F. solutions are not such commodities having identifiable and as to marketability. Said goods are essentially used in the process of manufacture of the plywood and those are really intermediaries and intermediate products and they are not attracting excise duty as observed in the aforesaid decisions as disclosed above and further those goods have no shelf-life and are not marketable.

9. This Court does not find anything about the unconstitutionality for grant of the declaration with regard to the Rules as challenged in the writ petition. This Court clearly finds that the product as covered by the writ petitioner in this case do not attract excise duty and there is no bar and/or impediment to grant the reliefs prayed for in such regard. Questions of praying for refund of the dues already paid does not appeal to this Court and it finds nothing to grant such relief in a straightway manner. Petitioner may make an appropriate application before the concerned authorities for such purpose and the concerned authorities will take steps to refund the same in accordance with law.

10. For the reasons discussed above, the writ petition is allowed to the extent as aforesaid and the Rule is made absolute to the extent that the impugned orders or circulars contained in the Circular dated September 24, 1980 and the purported notice dated August 18, 1981 and the purported orders dated August 28, 1981, the order dated August 18, 1981 are set aside and/or quashed.

11. Let all assessment orders fixing duty on such solutions pursuant to aforesaid proceedings be also set aside and be not given effect to.

12. There will be no order for costs.