(1985) 08 AP CK 0015

In the Andhra Pradesh High Court

Assistant Collector of Central Excise, Rajahmundry and Another — APPELLANT

Vs

Andra Pradesh Paper Mills Ltd. — RESPONDENT

Date of Decision : 01-08-1985

Acts Referred:

Central Excise Rules, 1944 — Rule 233
Central Excises and Salt Act, 1944 — Section 4, 4(4)

Citation : (1988) 15 ECC 120 : (1987) 32 ELT 684

Hon'ble Judges : Anjaneyulu, J;A. Raghuvir, J

Bench : Division Bench

Judgement

Anjaneyulu, J.—The Assistant Collector of Central Excise and the Superintendent of Central Excise are the appellants herein. Respondent is the A.P. Paper Mills Limited, Rajahmundry, the petitioner in Andhra Pradesh Paper Mills Ltd. Vs. Assistant Collector of Central Excise, Rajahmundry and Another, (hereinafter called `the assessee''). This appeal against the judgment of our learned brother Jeevan Reddy, J. raises a short question : Whether in determining the value in relation to excisable goods u/s 4(4)(d)(ii) of the Central Excises and Salt Act, 1944 (`the Act,'' for Short), the gross amount of Excise duty payable has to be excluded from the normal price or only the net amount of Excise duty which is actually paid shall be excluded. The question has arisen in the following circumstances.

2. By a notification bearing No. 198/1976, dated 16-6-1976, which was later amended under Notification No.216/1976, dated 24-7-1976, the Excise duty payable by manufacturers of paper is reduced by 25% on clearances of their manufacture which are in excess of the clearances in the "base period", subject to the prescribed conditions. The duty is leviable on ad valorem basis in respect of the value determined u/s 4 of the Act. The aforesaid notification was issued by the Central Excise Rule. The assessee claimed that the value of the excisable goods for the purpose of charging Excise duty shall be determined by excluding from the normal price the amount of Excise duty payable without taking into

consideration the amount of duty granted by way of exemption under the aforesaid notification. The authorities declined to accept the above contention of the assessee. According to them the assessee, having secured benefit by way of exemption under the aforesaid notification, did not pass on that benefit to the consumers. It was pointed out that the normal sale price at which the goods were sold by the assessee did not provide for any rebate on account of the exemption secured by the assessee through the aforesaid notification. The authorities consequently held that from the normal price only the actual amount of Excise duty paid shall be excluded and the value of the excisable goods determined u/s 4(4)(d)(ii) of the Act. There is no dispute about the fact that the assessee did not pass on the benefit by virtue of the exemption granted to him by the aforesaid notification to the consumers. The assessee''s contention was that the corresponding benefits should he passed on to the consumers, but that it was granted with the objective of encouraging production etc. The assessee''s claimed was that so long as the notification granting exemption either wholly or partially did not required an assessee to pass on the benefit of exemption in the levy of Excise duty tothe consumers of the goods, the authorities would not be justified in eclining to exclude from the normal sale price the Excise dutypayabvle in accordance with the Schedule rates. Reliance was placed by Ql the assessee on the expression "payable" occuring in Section 4(4)(d)(ii) of the Act and that the said expression cannot be interpreted as "actually paid."

3. In view of the authorities declining to accept the aforesaid contention of the assessee, a writ petition was filed challenging the action of the authorities in determining the value of the excisable goods u/s 4(4)(d)(ii) of the Act by excluding only the amount of duty actually7 paid by the assessee after taking into account the exemption granted. The learned Single Judge accepted the above contention of the assessee. In upholding the assessee''s contention the learned Single Judge has taken note of (a) the language employed in Section 4(4)(d)(ii)(b) the absence of any condition in the notification granting exemption that the corresponding benefit of exemption should be passed on by the assessee to the consumers and (c) that the administrative instructions issued by the Central Board of Excise and Customs acting under Rule 233 of the Central Excise Rules run counter to the specific provisions contained in Section 4(4)(d)(ii) of the Act and cannot therefore be given effect to. In this appeal the appellant questioned the correctness of the above decision of the learned Single Judge.

4. It is not necessary to deal with the matter in any detail as the controversy6y is not set at rest, after the decision of the learned Single Judge, by an Explanation inserted by Clause 47 of the Finance Act, 1982 (Act 14 of 1982) with retrospective effective from 1-10- 1975. It may be useful to extract the entire Explanation inserted.

"Explanation. - For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of --

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregated of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods, and the effective duty of excise on such goods under each Act referred to in Clause (a) or Clause (b) shall be,--

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to or reduction of duty of excise on such goods equal to, any duty of excise already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being inforce, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods."

5. In view of the authorities declining to accept the aforesaid contention of the assessee, a writ petition was filed challenging the action of the authorities in determining the value of the excisable goods u/s 4(4)(d)(ii) of the Act by excluding only the amount of duty actually paid by the assessee after taking into account the exemption granted. The learned Single Judge accepted the above contention of the assessee. In upholding the assessee''s contention the learned Single Judge has taken note of (a) the language employed in Section 4(4)(d)(ii) the absence of any condition in the notification granting exemption that the corresponding benefit of exemption should be passed on by the assessee to the consumer and (c) that the administrative instructions issued by the Central Board of Excise and Customs acting under Rule 233 of the Central Excise Rules run counter to the specific provisions contained in Section 4(4)(d)(ii) of the Act and cannot therefore be given effect to. In this appeal the appellant questioned the correctness of the above decision of the learned Single Judge.

6. It is not necessary to deal with the matter in any detail as the controversy is now set at rest, after the decision of the learned Single Judge, by an Explanation inserted by Clause 47 of the Finance Act, 1982 (Act 14 of 1982) with retrospective effect from 1-10-1975. It may be useful to extract the entire Explanation inserted.

"Explanation.- For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of --

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods, and the effective duty of excise on such goods under each Act referred to in Clause (a) or Clause (b) shall be, --

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to or reduction of duty of excise on such goods equal to, any duty of excise already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with referenc to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemptions; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods."

7. The above Explanation inserted with retrospective effect from 1-10- 1975 makes it clear that in computing the amount of duty of excise payable on the goods under assessment shall alone be taken into account. The Explanation also contains a clear elucidation of what is meant by "the effective duty." It is not denied that the above Explanation inserted with retrospective effect from 1-10-1975 applies to the present case. That being so, it is no longer possible for the assessee to contend that instead of the effective Excise duty the Excise duty payable without taking into account the exemption granted has to be excluded from the normal price. Learned counsel for the assessee fairly conceded that because of the above Explanation inserted by the Finance Act of 1982 with retrospective effect from 1- 10-1975 the assessee''s contention is no longer tenable. It is, however, submitted that the principles of determination of the value as envisaged by sub-clause (ii) of Clause (d) cannot be prejudicially affected by an Explanation introduced. According to the learned counsel, although the Explanation was inserted to exclude only the effective amount of Excise duty from the normal price, still the Explanation fails to achieve the purpose because it cannot verride the provisions contained in sub-clause (ii). We cannot agree. The Explanation constitutes a part of the sub-clause (ii) inserted by the legislature and served the purpose of explaining what was required to be excluded from the normal price under sub-clause (ii). We are unable to accept the contention of the learned counsel that the Explanation cannot override the principles otherwise se out in sub- clause (ii). After the amendment from 1-10-1975 sub-clause (ii) will have to be read along with the Explanation and if so read there can be little doubt that what can be deducted from the com-duty price is the actual amount of Excise duty paid and not what is otherwise payable. We may point out that the above Explanation has been inserted after the learned Single Judge disposed of the writ petition in favour of the assessee. As the Explanation is now before us and has retrospective effect from 1-10-1975, we have to give effect to the Explanation. Doing so, we find the assessee''s contention unacceptable.

8. For the aforesaid reasons, we allow this appeal and hold that in computing the amount of duty of excise deductible from the cum-duty price, the effective amount of duty of excise payable on the goods under assessment shall alone be taken into account. In the circumstances, there shall be no order as to costs.

9 . W.P. Nos. 5807/80 and 6371/82.- The point involved in these writ petitions is identical to the one that has arisen for our consideration in W.A. No. 181/80. Our

decision in the above appeal governs these cases also. Learned counsel for the petitioners contended that in view of the statutory position obtaining prior to the introduction of the above Explanation through the Finance Act of 1982, the petitioners did not file appeals against the determination of the value by the authorities. It is represented that even if regard be had to the Explanation inserted by the Finance Act, 1982 with retrospective effect from 1-10-1975 the computation of the value calls for some adjustments. Learned counsel, therefore, represented that an opportunity may be given to the petitioners to file appeals against the value computed . Having regard to the above representation, was direct that the petitioners may file appeals within 30 days from today against the determination of the value by the authorities. The appeals, when filed, shall be admitted and dealt with according to law.

10. It is further represented that the petitioners had furnished certained bank guarantees regarding the disputed amount of duty. Pending disposal of the appeals, which the petitioners may filed, the bank guarantees shall remain effective. The question of encashing the bank guarantees, and if so, to what extent, shall be determined after the disposal of the appeals filed by the petitioners. If the petitioners fail to file appeals within the period of 30 days from today, it will be open to the authorities to realise the disputed duty by encashing the bank guarantees.

11. Subject to the above the writ petitions are disposed of No costs.