(1995) 02 SC CK 0017

In the Supreme Court Of India

Case No : Civil Appeal No. 3152 Of 1988

Collector of Central Excise, Baroda APPELLANT

Vs

Ojas Corporation RESPONDENT

Date of Decision : 01-02-1995

Acts Referred:

Central Excise Rules, 1944 — Rule 8(1)
Central Excises and Salt Act, 1944 — Section 5A

Citation : (1996) 63 ECR 523 : (1996) 82 ELT 447 : (1995) 3 SCC 399 Supp

Hon'ble Judges : A. M. Ahmadii, C.J;Sujata V. Manohar, J;N. P. Singh, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. The respondent is a small-scale industry engaged in the manufacture of laundry soap without the use of power. They, however, use the trimmings for converting them into soap chips with the aid of a machine run on power. No duty is charged on the soap manufactured without the use of power, but the Revenue raised a duty demand in respect of the chips on the ground that it amounted to manufacture of soap with the aid of power. This demand was successfully resisted by the respondents and the Tribunal upheld their contention that once the manufacturing of soap comes to an end, no duty can be claimed on soap chips made in the same factory subsequently. The Exemption Notification No. 28 of 1964, dated 1-2-1964 reads as under :

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1964, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 37/62 Central Excises, dated 24-4-1962, the Central Government hereby exempts soap in or in relation to the manufacture of which no process has been carried on with the aid of power or of steam for heating and falling under Sub-item II of Item No. 15 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), from the whole of the duty of excise leviable thereon.

2. On a plain reading of this notification, even if we were to assume that the making of soap chips amounts to manufacture of soap unless it is further shown that the said manufacture is with the aid of power or of steam for heating, the said notification shall not attract duty. What is important to note is that the activity attracting duty under this notification is when power is used for heating and not otherwise. In the present case, there is no evidence to show that in the manufacture of soap chips the aid of power for the purpose of heating is taken. Therefore, on a plain reading of the notification itself we are inclined to think that the attempt to visit the respondent with the demand for duty cannot be sustained.

3. In the result, we see no merit in this appeal and dismiss the same, but with no order as to costs.