

(1986) 11 AP CK 0014
In the Andhra Pradesh High Court

Duncans Agro Industries Ltd. and Another	APPELLANT
Vs	
Assistant Collector Of Central Excise, Rajahmundry and Another	RESPONDENT

Date of Decision : 24-11-1986

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4
Finance Act, 1982 — Section 4

Citation : (1987) 32 ELT 350

Hon'ble Judges : Reddy Rama Rao, J;B.P. Jeevan, J

Bench : Division Bench

Judgement

Jeevan Reedy, J.—Common questions of law arise in this batch of Writ Petitions, hence they are disposed of under a common order. Indeed, the points raised by the petitioners are concluded by the decision of a Bench of this Court dated 1-8-1985, in Writ Appeal No. 181/1980, etc. Learned Counsel for the petitioners, however, argued that the said decision proceeds on a concession made by the counsel for the petitioners which, as a fact was never made and that, therefore, the petitions are entitled to urge all the contentions that are open to them, in this batch of writ petitions. We have perused the judgment of the Bench. We do not agree with the counsel for the petitioners that the judgment is based upon a concession, or that it does not pronounce upon the main question arising therein which is also the question arising herein. Before however we elucidate our view, we think it necessary to state the facts relevant to the question. It would be sufficient for our purposes if we mention the facts in W.P. No. 3474/1982.

2. The petitioner is a manufacturer of cigarettes. Cigarettes is an excisable commodity, the duty thereon being levied ad valorem; (vide Item 4 of the First Schedule to the Central Excises and Salt Act, 1944 - hereinafter referred to as "the Act"). Clause (a) of sub-section (1) of Section 4 of the Act provides that excise duty is to be calculated on the basis of wholesale cash price of the commodity concerned. Clause (d) of sub-section (4) of Section 4 defines the expression "value". It provides, inter alia, that value does not include the

amounts of the duty of excise, sales-tax or other taxes, if any payable on such goods. The result of these two provisions is that where the wholesale price includes the excise duty, excise duty is to be levied on the sale price includes the excise duty, excise duty is to be levied on the sale price less the excise duty payable, but which is included in the wholesale price. Rule 8 of the Rules made under the Act empowers the Central Government to exempt the duty, either wholly or partly, on any of the excisable goods. Various notifications, were issued under Rule 8 some of which deal with cigarettes, whereunder the excise duty provided in the Schedule is partly exempted. Similar notification was also issued in respect of paper. Question arose, how to determine the value where such a notification under Rule 8 has been issued partly exempting the duty.

3. One of us (Jeevan Reddy, J) in *Andhra Pradesh Paper Mills, Rajahmundry v. Assistant Collector, Central Excise, Rajahmundry and Another* - 1980 ELT 210 (A.P.), held, overruling the contention of the department, that the exemption notification cannot be taken into consideration while determining the value. The contention of the department was that where the duty has been partly exempted, only the effective duty must be taken into account, and not the duty payable under the Schedule. It was also contended that unless the benefit of exemption is passed on by the manufacturer to the consumer, he is not entitled to claim that exemption notification should not be taken into account while determining the assessable value. These contentions, as stated above, were negatived in view of the language employed in Section 4, and the notification issued under Rule 8. This was also the view taken by the Delhi High Court in *Modi Rubber v. Board of Central Excise and Customs* - AIR 1978 Delhi 352 : 1978 ELT 563. Some other High Courts also took a contrary view in *B.K. Paper Mills v. Union of India* - 1984 (18) ELT 701 delhi, and *Mangalore Chemicals and Fertilizers Ltd. v. Assistant Collector* - 1986 (23) ELT 48 SC. Be that as it may, the decision of this Court in *A.P. Paper Mills, Rajahmundry v. Assistant Collector, Central Excise* - 1980 ELT 210 was appealed against by the department in Writ Appeal No. 181/80, referred to above. By the time the Writ Appeal came up for hearing before the Bench, the Parliament amended Section 4 by Finance Act, 1982 (Act No. 14 of 1982) with retrospective effect from 1-10-1975. By this amendment an Explanation was added, which reads thus: "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 the 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
- (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 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".

4. It would be evident from a reading of the Explanation that for the purpose of determining the value, the amount of the duty of excise payable on any excisable goods shall be the "effective duty" payable on the goods, and not the tariff rate mentioned in the First Schedule to the Act. In view of the said amendment, which was given retrospective effect from 1-10-1975 the Bench allowed the appeal and held 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 along shall be taken into account. The Bench specifically repelled the argument that though the Explanation was inserted with the object of excluding only the effective amount of excise duty from the normal price, it fails to achieve the said purpose inasmuch as it cannot override the provisions contained in sub-clause (ii) of clause (d) of sub-section (4). It was held that the Explanation constitutes an integral part of sub-clause (ii) and serves the purpose of excluding the normal price therefrom. The Bench also rejected the argument that the Explanation cannot override the principle set out in sub-clause (ii), by saying that, after the amendment, the Explanation and sub-clause (ii) will have to be read together and if so read, there can be little doubt that what can be deducted from the "cum-duty" price is only the actual amount of excise duty paid, and not what is payable under the First Schedule. The contention of the learned counsel for the petitioners that the said judgment is based upon a concession, is based upon the following observations, which precede the said discussion. After setting out the amendment, its retrospective nature, and its object, the Bench observed as follows:

"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".

The Bench then proceeded to deal with the contentions as stated above. In our opinion, all that the above passage means is that the counsel did not dispute the applicability of the Amendment Act to that case, and no more. In any event, the contentions raised were expressly dealt with in the said judgment.

5. Even otherwise, we are not satisfied that the Explanation does not achieve the purpose for which it was enacted. The position before the amendment, as rightly pointed out by the Delhi High Court in C.W. No. 399/82 and bench, dated 30-4-1986 involved three stages, viz., determination of the assessable value; computation of the amount of duty payable under the Act; and the calculation of the amount of exemption. Once the exemption operated, the duty payable, in effect, became smaller; but there was no statutory language which authorised the authorities to go back again to re-determine the assessable value taking into account the exemption notification by re-opening the determination already made. The statute and the exemption notification operated successively in three different states of calculation, and it was not possible to integrate one into the other, so as to make such a re- determination of the assessable value possible. This was the view taken by some High Courts, including this Court, which the parliament thought it necessary to rectify by means of the said amendment. Now, the Explanation makes it clear beyond any doubt that, for the purpose of sub- clause (ii), duty of excise payable means the effective duty of excise payable on such goods, and not the duty payable under the First Schedule. We are unable to see any ambiguity, or any basis for saying that the said Explanation fails to achieve the object which it set out to achieve. The words are clear; the language is plain. In such a situation, we see no reason to read doubts into it, so as to practically nullify the amendment and restore the pre-existing position. The object of the Court should be to give effect to the intention of the Parliament as expressed by the plain language, and not to nullify it by giving effect to hyper-technical arguments. After the amendment the authorities have to deduct only the effective duty, which means the duty prescribed by the First Schedule to the Act, read along with the exemption notifications, if any.

6. We are also unable to appreciate the argument that the application of the new formula is likely to bring about unequal consequences. This submission has neither been properly raised in the writ petitions, nor any material produced to substantiate the same before us. We do not, therefore, think it necessary to go into this question.

7. For the above reasons, the writ petitions fail and are, accordingly, dismissed with costs. The petitioners cannot claim the relief sought for in these writ petitions, in view of the aforesaid Amendment Act which has been given retrospective effect from 1-10- 1975.