
(1996) 12 SC CK 0150

In the Supreme Court Of India

Case No : Civil Appeal No. 2709 of 1989

J.K. Synthetics Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Central Duties of Excise (Retrospective Exemption) Act, 1986 — Section 2
Central Excise Rules, 1944 — Rule 8(1)

Citation : AIR 1997 SC 1696 : (1997) AIRSCW 819 : (1997) 89 ELT 447 :
(1996) 11 JT 733 : (1996) 9 SCALE 720 : (1997) 11 SCC 194 : (1997) 1
Supreme 297

Hon'ble Judges : S. P. Bharucha, J;S. C. Sen, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—The Central Excise Tariff Act, 1985, came into force on 28th February, 1986. It substituted the Schedule in the Central Excise & Salt Act, 1944, whereunder, till then, the excise tariff was prescribed. Prior to 28th February, 1986, exemption notifications issued under Rule 8 of the Central Excise Rules had been in force. They ceased to have effect on the coming into force of the Tariff Act on 28th February, 1986, though not precisely in the same terms. The process of issuance of these exemption notifications took some means. It was realised that by reason thereof manufacturers of exempted items would have to pay duty for the periods between the date on which the new tariff came into force and the dates on which the exemption notifications were issued. It was, therefore, that the Central Duties of Excise (Retrospective Exemption) Act, 1986, was passed. It gave retrospective effect to the exemption notifications. What is relevant for our purpose is Section 2, which, so far as is relevant, reads thus:

2. Retrospective effect for certain notifications. - (1) Every notification issued by the Government of India in the Ministry of Finance (Department of Revenue) on or after the 3rd day of March, 1986, but before the 8th day of August, 1986, in

exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, for the purpose of,-

(a) maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to the 28th day of February, 1986 notwithstanding the changes in the rates of duties of excise made by the Central Excise Tariff Act, 1985 (5 of 1986), the Additional Duties of Excise (Textiles and Textile Articles) Amendment Act, 1985 (6 of 1986), or the Additional Duties of Excise (Goods of Special importance) Amendment Act, 1985 (7 of 1986); or

(b) maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to 1st day of March, 1986 notwithstanding the changes in the rates of duties of excise made by the Finance Bill, 1986, shall, in so far as such notification relates to such goods, be deemed to have, and to have always had, effect on and from the 1st day of March, 1986.

(2) The duties of excise which have been collected, but which would not have been so collected if the said notification had been in force at all material times, shall be refunded:

Provided that no such refund shall be allowed where credit of the duties of excise has been taken under Rule 56A or, as the case may be, Rule 57A of the Central Excise Rules, 1944, or where the goods on which the duties of excise have been paid have been exported under a claim for rebate of such duties.

(The date on which the Central Duties of Excise (Retrospective Exemption) Bill was introduced was 8th August, 1986.)

2. The exemption notification that concerns us in this appeal was issued on 3rd April, 1986, and it reads, so far as it is relevant, thus:

In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts excisable goods of the description specified in column (5) of the Table hereto annexed (such goods being hereinafter referred to as "final products") and falling under such Chapter, heading No. or sub-heading No. of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) as is specified in the corresponding entry in column (4) of the said Table, from so much of the duty of excise leviable thereon under the Central Excise and Salt Act, 1944 (1 of 1944), as is equivalent to the duty of excise leviable thereon under the said Central Excise and Salt Act, or the additional duty leviable under the Customs Tariff Act, 1975 (51 of 1975), as the case may be, already paid on the goods of the description specified in the corresponding entry in column (3) of the said Table (such goods being hereinafter referred to as "inputs") and falling under such Chapter, heading No. or sub-heading No. of the said Schedule as is specified in the corresponding entry in column (2) of the said Table.

TABLE

Sl. No. Chapter, heading no. or sub-heading no. Description of inputs Chapter, heading no. or sub-heading no. Description of final product

(1) (2) (3) (4) (5)

xxx

xxx

xxx

6. 29 Mono- ethylene glycel 54 or Polyester staple fibre and tow, including tops, and polyester filament yarn."

The said notification was amended on 3rd April, 1986, thus :

In the Table annexed to the said notification, after S.No. 6 and the entries relating thereto, the following shall be inserted, namely:

(1) (2) (3) (4) (5)

xxx

xxx

xxx

11. 29 Acrylonitrile 59.03 Acrylic fibre."

It was further amended on 3rd April, 1986 to insert the following:

(1) (2) (3) (4) (5)

17 2907.90 Vinyl acetate monomer 55.01 Acrylic fibre."

3. The appellants manufacture the final products aforementioned. They claimed the benefit of the said exemption notification, as amended, in regard to the inputs aforementioned. The same was given to them on 29th December, 1986, and they were allowed credit in the aggregate sum of Rs. 61,02,946.48. (This sum took into account the amount of Rs. 34,80,971.95 paid as additional duty.) On 3rd January, 1987, a show cause notice was issued to the appellants alleging that the aforesaid credit had been erroneously given, the said notification not having effect retrospectively. The demand therein was confirmed on 7th December, 1987.

4. The appellants challenged the order confirming the demand in a writ petition in the Rajasthan High Court. By the judgment and order under appeal the High Court allowed the writ petition in respect of the excise duty paid on the inputs aforementioned to the extent that they were used for the manufacture for the final products aforementioned. So far as the additional duty was concerned, the High Court declined to give similar relief. It is a little difficult to understand why, but it would appear that the High Court found an absence of satisfactory pleadings.

5. There is no dispute that the said notification has retrospective effect for the period 3rd March, 1986 to 8th August, 1986, by reason of the Central Duties of Excise (Retrospective Exemption) Act, 1986.

6. By the said notification, as amended from time to time, the Central Government exempted excisable goods described as final products in the Table thereof from so much of the excise duty leviable thereon as was equivalent to the excise duty leviable under the Excise Act or the additional duty leviable under the Customs Tariff Act and had already been paid on the goods described as inputs in the correspondent entry of the Table. Excise duty upon the final product was exempted. It was exempted to the extent of the excise duty or the additional duty paid on the input, as the case may be. On a plain reading of the said notification, the appellants were entitled to its benefit both in regard to the excise duty and the additional duty that they had paid on the inputs aforementioned used to manufacture the final products aforementioned.

7. That the same had been paid would appear to be clear from the order by which the appellants had been given credit therefor; that order was not sought to be recalled on the ground that payment of additional duty had not been made but, it would appear, on the ground that the said notification did not have retrospective effect, and this contention of the respondents the High Court rejected.

8. It is , therefore, necessary to modify the judgment and order of the High Court and hold that the appellants are entitled to the benefit of the said notification and, consequentially, to refund of the additional duty that had been paid on the inputs aforementioned used in the manufacture of the final products aforementioned, the precise quantum thereof to be determined by the excise authorities.

9. The appeal is allowed accordingly. No order as to costs.