
(1990) 04 AP CK 0002
In the Andhra Pradesh High Court

New Tobacco Company Ltd.	Vs	APPELLANT
Superintendent Central Excise		RESPONDENT

Date of Decision : 06-04-1990

Acts Referred:

Central Excise Rules, 1944 — Rule 22(2A), 224(2A), 9, 9A
Central Excises and Salt Act, 1944 — Section 3

Citation : (1990) 2 ALT 519 : (1991) 31 ECC 406 : (1991) ECR 173 : (1990) 48 ELT 338

Hon'ble Judges : Sardar Ali Khan, J;S. Parvatha Rao, J

Bench : Division Bench

Advocate : P.R. Ramachandra Rao, for the Appellant; I. Koti Reddy, S.C. for C.G., for the Respondent

Judgement

Sardar Ali Khan, J.—New Tobacco Co. Ltd., the petitioner herein, prays for issue of a writ of mandamus directing the respondents to refund an amount of Rs. 5,21,477.25 declaring that Rules 9A and 224 (2A) of the Central Excise Rules, 1944 as illegal, unconstitutional and void being inconsistent with Section 3 of the Central Excises and Salt Act, 1944 (Act No. 1 of 1944).

2. The petitioner - company manufactures cigarettes. Cigarettes fall under Item No. 4(2) (ii) of the First Schedule to the Central Excises and Salt, Act, 1944, hereinafter referred to as "the Act." The company had 31794 M. Cigarettes in its bonded stock room manufactured prior to 28-2-1983. The rate of duty on cigarettes as on 28-2-1983 was 440 Adv. and Rs. 32.00 per one thousand cigarettes. If the stock of cigarettes was cleared on or before 28-2-1983, the duty liable to be paid would have been Rs. 21,31,515.75 but the petitioner-company cleared the above said stock, manufactured prior to 28-2-1983, on 12th, 14th and 15th of March, 1983. A change in the rate of duty has been effected in 1983 Budget by virtue of Notification No. 36/85-C. E., dated 1-3-1983 thereby imposing a higher rate of duty on cigarettes. The petitioner- company states that the company was compelled to pay Rs. 26,52,993/- in accordance with the rates mentioned in Notification N. 36/85-C. E., dated 1-3-1983, the

excess amount being Rs. 5,21,477.25 in accordance with the higher rates prescribed in the Notification No. 36/85-C. E., dated 1-3-1983. The petitioner-company claimed refund of the excess amount allegedly illegally collected by the authorities. The Assistant Collector of Central Excise, Rajahmundry Division, issued a show cause notice dated 25-1-1984 calling upon the petition-company to show cause why the refund claimed should not be rejected. The petitioner-company submitted its explanation on 24-3-1983, although they were cleared on 12th, 14th and 15th of March, 1983, they should be charged only at the rates prevalent on 28-2-1983.

3. Therefore, the point to be considered in this writ petition is whether the excise duty levied at the higher rate in pursuance of Notification No. 36/85-C. E., dated 1-3-1983 on the cigarettes manufactured by the company on or before 28-2-1983, although they were removed subsequently on 12th, 14th and 15th of March, 1983, is valid or not.

4. Section 3 of the Central Excise and Salt Act, 1944 is the charging section which provides as hereunder :

"3. Duties specified in the Schedule to the Central Excise Tariff Act, 1985 to be levied:-

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 and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the Schedule to the Central Excise Tariff Act, 1985."

5. A reading of this section clearly indicates that it enunciates the principle that excise duty shall be levied and collected in such manner as may be prescribed on all excisable goods which are produced or manufactured in India. The provisions of Section 3, therefore, refer to a taxable event which comes into being when goods are produced or manufactured within the Sovereign boundaries of India. In so far as the question of levy and collection of such excise duty is concerned, it is provided that it may be levied and collected in such manner as may be prescribed. Section 3, therefore, is a pure and simple charging section. It determines the production or manufacture of goods as taxable event when such production or manufacturing is done within the boundaries of India. The Central Government in exercise of the powers conferred by Sections 6, 12 and 37 of the Central Excise and Salt Act, 1944, has framed rules for the purpose of providing for the assessment and collection of the duties imposed by the Act. The relevant rule, which calls for consideration for the purpose of the instant case, is Rule 9A which may be re-produced as hereunder :

"9A. Date for determination of duty and tariff valuation :-

(1) The rate of duty and tariff valuation, if any, applicable to any excisable goods shall be the rate and valuation in force.

(i) in the case of goods removed from the premise of cure on payment of duty, on the date on which the duty is assessed; and

(ii) in the case of goods removed from a factory or a warehouse, subject to sub-rules (2) (3) and (3A), on the date of the actual removal of such goods from the factory or warehouse."

6. It is evident that the object and scope of Rule 9A is to determine the date for imposition of duty and tariff valuation. Under Rule 9A (1) (ii) it is stated that in the case of goods removed from a factory or a warehouse, subject to sub-rules (2), (3) and (3A), such date shall be the date of actual removal of such goods from such factory or warehouse. The petitioner-company seeks to challenge the validity of Rule 9A on the ground that it is inconsistent with Section 3 of the Act and, therefore, should be struck down as being illegal, unconstitutional and void. Section 3 is a charging section which determines a taxable event and it also provides that the duty shall be "levied and collected in such manner as may be prescribed". Rule 9A operates in a complementary manner to Section 3 when it provides that in the case of goods removed from a factory or warehouse, the date for determination of duty and valuation shall be the date of actual removal of such goods from such factory or warehouse. We are, therefore, of the opinion that Rule 9A is complementary to the provisions of Section 3 rather than going beyond the scope of Section 3 as such. Its primary object is to indicate a taxable event which occurs on the production or manufacture of goods within the territory of India. The other matters are left to be prescribed in such manner as may be provided under the Act. A taxable event, unless there are indications to the contrary, cannot by itself be deemed to be the date for the determination of the duty and tariff valuation. Rule 224 (2A), assailed in the writ petition, provides that where a licensee intends to remove goods from a factory or a warehouse after 5-00 P.M. on the date appointed for the presentation of the annual or any supplementary budget of the Central Government to Parliament, he may make an application in this behalf in writing to the Central Government undertaking to pay duty at the enhanced rate, if any, that may be applicable touch goods with effect from the date immediately following the date aforesaid and to comply with such conditions as the Central Government may specify and if the Central Government considers it necessary or expedient it may permit the removal of such goods on such conditions as may be imposed thereon. Rule 224 (2A) is, therefore, purely of a procedural nature which lays down the procedure to be followed by a licensee who intends to remove the goods from a factory or a warehouse after 5-00 P.M. on the eve of the presentation of the annual or any supplementary budget in the Parliament. However, it may be emphasized here that even under Rule 224 (2A) it is clear that the date of removal of the goods from the factory or warehouse, as the case may be, is recognised as the relevant date for the purpose of assessing the goods to excise duty.

7. The learned counsel for the petitioner has relied on a decision reported in Union of India (UOI) Vs. Kirloskar Brothers Ltd., wherein it was held that excise

duty being a tax on manufacture or production, the material time for liability for excise duty u/s 3 will be the date of manufacture or production. It also happened in that case that the notification withdrawing the exemption came into effect from 16-3-1972 and had no retrospective operation. It was held that the excisable articles which were in stock till 16-3- 1972 were exempt from excise duty which would be payable on excisable articles produced or manufactured on or after 17-3-1972. In our opinion the principle of this case is also clear in so far as the question of liability to pay excise duty is concerned, which arises only on the manufacture or production of such goods. The production or manufacture of the goods is deemed to constitute a taxable event. Therefore, the liability to pay excise duty occurs on the taxable event of the production or manufacture of goods. But the further question how this liability is to be enforced in terms of the quantum of money which is to be recovered as excise duty or in other words at what the excise is to be imposed, the manner and procedure to be followed for the recovery of such excise duty are all matters which are not determined merely by the taxable event. The liability to pay excise duty may be co-incidental with the taxable event but the time when it actually becomes due for recovery at the prescribed rate is not prescribed u/s 3 and it is provided under Rule 9A 90 (ii) of the Rules framed under the Act. Under Rule 9A (1) (ii) it is at the time of removal of goods that the excise duty will be payable at the rate which is prevalent on that date.

8. The other decision on which square reliance has been placed by the learned counsel for the petitioner is Sirpur Paper Mills Ltd. Vs. Union of India and Others, . It may be stated at the very outset that this is a case dealing with the question of exemption of excisable goods produced during the period of exemption but cleared after withdrawal of exemption. It was held that the goods which were produced during the period of exemption would be entitled to exemption, complete or partial, as the case may be. It is also stated that the imposition of the excise duty is one the goods produced or manufactured. Section 4 provides for the determination of the value of the goods for the purpose of duty and Rule 9A schedules the date for determination of duty and tariff valuation. It is in this view of the matter that it was held that the goods produced during the exempted period but cleared after withdrawal of exemption would be entitled to exemption irrespective of the fact whether the petitioner-company. Here we are not concerned with question of goods which have been produced during the exempted period. The goods in the instant case were produced before 28-2-1983 but removed only after 1st March, 1983 and, therefore, they attracted the duty which was current and binding on the goods at the time of removal of the goods. If the are manufactured or produced during the period of exemption it can be said that there is no taxable event because they enjoy the immunity by virtue of the exemption granted at the time of their production or manufacture and, therefore, the provisions of Rule 9A cannot be applied to subject them to excisable duty at the time of their removal. We have no difficulty in distinguishing the facts of the above decision and the one on hand

and we are not inclined to apply the principles laid down in the said Division Bench decision to this case.

9. In *Shree Synthetics Limited Vs. Union of India (UOI) and Others*, the question of excise duty in terms of the taxable event has been discussed with reference to the scope of Rule 9A. It was held that although excise duty is a tax on manufacture or production of goods, yet it need not necessarily be levied at the stage of manufacture or production but may be levied at a later stage for administrative convenience. This inference is supported from Section 4 of the Central Excise Act whereunder the material point of time with reference to which the value has to be determined is the time of 'removal of the goods' from the factory and not the time when it is manufactured or produced. Therefore, the crucial time for levy of duty is the time of removal as envisaged by Rule 9A and not the date of manufacture or production of goods in the factory. It is manifest that the view expressed in the aforesaid decision tallies with the view that we are inclined to take in this case. A clear distinction will have to be made between the taxable event and the rates of duty which may become applicable to the goods at the time of removal of the goods from the factory or warehouse, as the case may be.

10. We have dealt with the matter at length to clarify certain intricacies arising out of the provisions of Section 3 and 4 of the Act and Rule 9A of the Rules framed thereunder to indicate that the incident of taxable event is distinct and separate from the incident of applying the rates of duty and tariff as envisaged under Rule 9A at the time of removal of the goods. However, it may be stated that the controversy, perhaps, can be deemed to have been laid at rest with the pronouncement of the Supreme Court in *Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise, Bombay, Division III*, wherein it is clearly held that even though the taxable event is the manufacture or production of an excisable article, the duty can be levied and collected at a later state for administrative convenience. The scheme of the Act read with the relevant rules framed under the Act, particularly Rule 9A of the said Rules, reveals that while the taxable event is the fact of manufacture or production of an excisable article, the payment of duty is related to the date of removal of such article from the factory. On the basis of Rule 9A of the said Rules, the Central Excise authorities were within the competence to apply the rate prevailing on the date of removal. The above said decision of the Supreme Court is a complete answer to the contentions raised on behalf of the petitioner-company and we have no hesitation in upholding the validity of Rules 9A and 224 (2A) of the Central Excise Rules, 1944 as being perfectly legal and constitutional and thoroughly in consonance with the provisions of Section 3 of the Central Excises and Salt Act, 1944.

11. For the above reason, the writ petition is dismissed but in the circumstances of the case there will be no order as to costs. Advocate's fee Rs. 250/-