

(1991) 08 KAR CK 0023
In the Karnataka High Court
Case No : Writ Appeal No. 1561 of 1990

Union of India

APPELLANT

Vs

Belur Enterprises

RESPONDENT

Date of Decision : 13-08-1991

Acts Referred:

Central Excise Act, 1944 — Section 11 A, 2 (d)
Central Excise Rules, 1944 — Rule 9A

Citation : (1994) 52 ECR 468 : (1992) 58 ELT 61

Hon'ble Judges : S. Mohan, J;C. Shivappa, J

Bench : Division Bench

Advocate : Shri Ashok Haranahalli, for the Appellant; Shri G. Chandrakumar, for the Respondent

Judgement

1. This writ appeal raises an interesting question which will be apparent from the following narration. The respondent M/s. Belur Enterprises is a manufacturer of Sodium Alginate. With effect from 28-2-1982, this product was brought to excise duty under Tariff Item 68 of Schedule I to the Central Excises and Salt Act, 1944 (hereinafter referred to as "the Act"). The respondent manufactured 4151 Kgs. of Sodium Alginate. At the time of manufacturing, no duty of excise was liable to be paid since it was exempted from duty by Notification No. 105 of 1980. This was prior to the budget of that year. Thereafter it was changed to Tariff Item 15A(1) and as a result it became liable for excise duty. At the relevant period, viz., when the stocks were cleared, from 7-7-1982 to 10-11-1982, it was subjected to duty under Tariff Item 15A(1) and the respondent has to pay excise duty to the tune of Rs. 1,23,048-81P. Thereafter two applications were filed by him on 22-6-1983 and 23-6-1983 claiming refund of the said amount on the ground that on the date of manufacture, there was no liability to pay excise duty in view of Notification No. 105/1980. The appellants directed refund only to the tune of Rs. 92,761/- on the application dated 23-6-1983. The other application was rejected. However, by exercise of power u/s 11A of the Act, a show cause notice was issued on 16-12-1983 by the Assistant Collector of Central Excise who

himself ordered refund, stating that having regard to the fact that the goods were removed from the factory and on the date of removal, goods in question fell under Tariff Item 15A(1) refund was ordered erroneously and therefore, the amount so refunded must be paid back. On reply by the respondent, the matter was considered on 7-11-1984 by the Assistant Collector of Central Excise who overruled the objections and directed repayment of that amount. An appeal was preferred by the respondent against the same. The appellate authority by its order dated 15-2-1984, confirmed the order of the Original Authority. Thereupon, W.P. 5312 of 1985 came to be filed for quashing these orders.

2. The matter came up before our learned brother Justice Rajendra Babu. He was of the view that "the goods manufactured prior to the withdrawal of exemption but removed thereafter, would not be entitled to such exemption." In arriving at this conclusion, he relied upon the decision in *The Union of India (UOI) and Others Vs. The Elphinstone Spinning and Weaving Mills Co. Ltd.*, and also the decision of the Supreme Court in *Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others*, . In the result he quashed the impugned orders. Hence the Excise Department has preferred this appeal.

3. Sri Ashok Haranahalli, learned Central Government Standing Counsel for the appellant, would submit that whatever might have been the prior position of law, having regard to the pronouncement by the Supreme Court in *Wallace Flour Mills Co. Ltd. Vs. Collector of Central Excise, Bombay, Division III*, the matter is no longer *res integra*, which categorically lays down that the scheme of Excise Act read with relevant rules particularly Excise Rule 9A reveals that the taxable event is the manufacture and the payment of duty is related to the date of removal of such article from the factory. What is relevant is the date of removal and the rates prevailed on the date of removal alone would be applicable. On the basis of the ruling, the appellant is entitled to succeed.

4. Sri G. Chandrakumar, learned counsel for the respondent does not dispute the proposition of law. However, he would say, in the instant case, it is not open to the Assistant Collector of Central Excise to exercise power u/s 11A as though he was reviewing his own order and directing refund pursuant to the application dated 23-6-1983.

5. As regards the position of law, it has now been set at rest by the decision relied upon by the learned counsel for the appellant which according to us applies "*ad idem*". That was also a case where pre-budget stock were exempted from excise duty. However, on the date of removal, the goods had become liable for excise duty. The question was whether duty was attracted. The Supreme Court held thus :

"3. We are of the opinion that the Tribunal was right. It is well settled by the scheme of the Act as clarified by several decisions 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 stage for administrative convenience. The Scheme

of the said Act read with the relevant rules framed under the Act particularly Rule 9A of the said rules, reveals that 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. In that view of the matter, the Tribunal dismissed the appeal and rejected the assessee's contention.

"4. Appearing before us in support of the appeal, Mr. Rajiv Dutta, learned counsel for the appellant contended that in several decisions it has been held, and referred us to the said decisions referred to hereinbefore, that the relevant date would be the date of manufacture and in this case the manufacture was complete before the introduction of the budget. It was submitted that until 28th February, 1987, when according to Shri Dutta, the goods had been manufactured, the goods in question were unconditionally exempt from the duty. Under the Finance Bill, 1987-88, the said products were made dutiable at the rate of 15% ad valorem on or from 1st March, 1987. But the appellant had in their factory, a stock of the said products which were duly manufactured, according to Shri Dutta, packed and ready for sale prior to 28th February, 1987. In those circumstances, the goods in question, according to Shri Dutta, would not be subjected to duty at 15% ad valorem. Having considered the facts and the circumstances of the case, we are unable to accept this submission. Excise is a duty on manufacture or production. But the realisation of the duty may be postponed for administrative convenience to the date of removal of goods from the factory. Rule 9A of the said rules merely does that. That is the scheme of the Act. It does not, in our opinion, make removal be the taxable event. The taxable event is the manufacture. But the liability to pay the duty is postponed till the time of removal under Rule 9A of the said Rules. In this connection, reference may be made to the decision of the Karnataka High Court in Karnataka Cement Pipe Factory Industrial Estate Vs. Superintendent of Central Excise and Another, where it was decided that the words "as being subject to a duty of excise" appearing in Section 2(d) of the Act are only descriptive of the goods and not to the actual levy. "Excisable goods", it was held, do not become non-excisable goods merely by the reason of the exemption given under a notification. This view was also taken by the Madras High Court Tamil Nadu (Madras State) Tamil Nadu (Madras State) Handloom Weavers Co-Operative Society Ltd. Vs. Assistant Collector of Central Excise, 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. We are of the opinion that even though the taxable event is the manufacture or the production of an excisable article, the duty can be levied and collected at a later date for administrative convenience."

6. Once the basis of law is altered, certainly it was well open to the very Assistant Collector of Central Excise who issued an order of refund to recall that order since it was for erroneous reasons. Therefore, the technical objection raised by the respondent cannot be prevailed. In the result, the writ appeal stands allowed. No costs.