(2011) 09 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No. 765 of 2004

Union of India (UOI) APPELLANT

Vs

H.M.M. Ltd. RESPONDENT

Date of Decision : 22-09-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 9A
Central Excises and Salt Act, 1944 — Section 9A(1)

Citation : (2012) 189 ECR 225 : (2011) 272 ELT 338

Hon'ble Judges : H.L. Dattu, J;Chandramauli Kr. Prasad, J

Bench : Division Bench

Advocate : K. Swami and Rahul Kaushik, for B. Krishna Prasad, for the Appellant;

Final Decision : Allowed

Judgement

1. As per Office Report dated 17th day of September, 2011 service of notice is complete on both the Respondents by way of publication, but no one has entered appearance on their behalf so far. The Appeal has been set down for hearing ex-parte against both the Respondents.

2. This Appeal is directed against the judgment and order dated 16-9-2002 [2005 (192) E.L.T. 63 (Del.)] passed by the High Court of Delhi in Civil Writ No. 443 of 1986.

3. The revenue has framed the following question of law for our consideration and decision:

...whether the stock of excisable goods manufactured before enhanced rates of excise duty come into force but cleared after such enhancement in the duty, are liable to enhanced rate of duty as per Section 9A(1) of the Central Excise Act, 1944.

4. In our view, the aforesaid question of law is no more res integra in view of the decisions of this Court in Wallace Flour Mills Company Ltd. v. Collector of C. Ex,

1989 (44) E.L.T. 598 (S.C.) Collector of Central Excise, Madras v. Newman Press and Ors., 1990 (Supp.) SCC 112 : 1990 (48) E.L.T. 626 (S.C.) and Collector of Central Excise, Bombay v. Polyset Corporation, 2000 (115) E.L.T. 41 (S.C.)

5. In Wallace Flour Mills Company Ltd. (supra) this Court has observed:

It is well settled by the scheme of Central Excises and Salt Act and clarified by several decisions that even though the taxable event is manufacture or production of excisable article, the duty can be levied and collected at a later stage for administrative convenience. The scheme of the 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. Therefore when the goods were unconditionally exempted from duty on the date of manufacture but were dutiable on the date of their removal they would be liable to duty because on the basis of Rule 9A of the Central Excise Rules, 1944, the Excise authorities are within competence to apply the rates prevalent on the date of removal.

6. In Collector of Central Excise, Bombay v. Polyset Corporation (supra) it is observed as under:

We are in no doubt that the Tribunal was in error in the view that it took. The said goods were excisable to excise duty under the tariff that then pre, vailed. When manufactured, an exemption notification wholly exempted the said goods from the payment of excise duty. When they were cleared from the Respondents'' factory, the exemption notification had been modified so that they were liable to duty at the rate of eight per cent. For the purpose of determining whether they said goods were excisable, what is relevant is the date of their manufacture. On that date they were exigible to excise duty. As to the rate of duty that the said goods must bear, what is relevant is the date of their clearance. On that date they were liable to duty at the rate of eight per cent by reason of the amended exemption notification.

7. We are in the respectful agreement with the observations made by this Court in the aforesaid decision. In view of the above, we allow this Appeal and set aside the orders passed by the High Court.

