

(1975) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 79 of 1975

Union of India (UOI)

APPELLANT

Vs

Kirloskar Brothers Ltd.

RESPONDENT

Date of Decision : 30-07-1975

Acts Referred:

Central Excise Rules, 1944 — Rule 224(2), 49, 8(1), 9, 9A

Central Excises and Salt Act, 1944 — Section 3, 4, 4A

Constitution of India, 1950 — Article 132(1), 133(1)

Citation : (1978) 2 ELT 690

Hon'ble Judges : P.K. Tare, C.J;P.D. Mulye, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Tara, C.J.—This is a petition under Articles 132(1) and 133(1) of the Constitution of India for a certificate of fitness for leave to appeal to Supreme Court against a Division Bench decision of this Court, dated 26-9-1974, passed in Misc. Petition No. 55 of 1972 [1978 E.L.T. (J 33)].

2. The respondent, a limited company having a branch at Dewas, had been manufacturing power driven pumps. By notification, dated 29-4-1969 in exercise of the powers conferred by Sub-Rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central Government had exempted during the period commencing on 1-3-1969, the power driven pumps falling under item No. 30A of the First Schedule to the Central Excises and Salt act, 1944, from whole of duty of excise leviable thereon. That benefit was available to those manufacturers only, who produced proof to the satisfaction of the Collector of Central Excise that such benefit had been passed on by them to the person to whom they had sold the said power driven pump. This benefit was continued by the Government upto 16-3-1972 and with effect from 17-3-1972 the excise duty was made payable at 10% ad valorem on the price and any duty leviable under the Act in excess of 10% was continued to be exempted. Thus, upto 16-3-1972 there was no excise

duty payable, but it became payable at 10% of the price with effect from 17th March, 1972.

3. This Court relying on the pronouncement of their Lordships of the Supreme Court in *British India Corporation Ltd. Vs. Collector of Central Excise*, examined the nature of the excise duty, which u/s 3 of the Central Excises and Salt Act, 1944, is a duty leviable on production or manufacture of excisable articles. The question was as to when the liability for excise duty would arise. The opinion expressed by this Court was that it would arise on the manufacture or production of an excisable article and, therefore, till 16-3-1972, but which were in the stock of the manufacturer were exempt from excise duty. The excise duty would be payable on excisable articles produced or manufactured on 17-3-1972 onwards. Aggrieved by this decision, the department has filed this leave petition.

4. The learned counsel for the petitioner invited attention to the pronouncement of their Lordships of the Supreme Court in *Orient Paper Mills Ltd. Vs. Union of India (UOI)*, . In that case their Lordships laid down that excise duty would be payable at the time of removal and two kinds of casts would have to be considered. Where the relevant time is the removal, the duty would be payable as on the date of removal. But, if the payment of duty be made payable before the removal, then the critical time would be the time of payment of the duty. We may observe that Section 4A and Rules 9, 9A, 49 and 224(2) of the Central Excise Rules, 1944, would be relevant as regards the calculation of the rate at which excise duty would be payable. Their Lordships considered the said Rules in connection with Section 4 of the Act. There can be no doubt that as laid down by their Lordships, the rate would be as existing at the time of removal and if advance excise duty were to be paid then it would be at the time of payment of duty and the time of removal would be wholly irrelevant. This case is clearly distinguishable inasmuch as Section 4 of the Act along with the relevant rules was for consideration before their Lordships. The question will be different where the charging Section, namely, Section 3 of the Act is to be considered to ascertain as to at what point of time of excise duty is payable when the impost is made for the first time. In our opinion, different considerations will prevail and excise duty being a tax on manufacture or production, the material time u/s 3 will be the date of manufacture or production. Moreover, we may observe that the notification imposing the excise duty with effect from 17-3-1972 had not retrospective operation and if it was prospective, then excise duty would be payable on goods produced or manufactured on 17-3-1972 and thereafter.

5. The learned counsel for the petitioner further invited attention to the provision of 8-4 of the Act as also to Rules 9, 9A, 49 and Rule 224(2) of the Central Excise Rules. 1944 we may observe that the said rules relate to time and manner of payment of duty. It is no doubt true that the rules provide for payment of duty at the rate prevailing on the date of removal of the goods. As such, there can be no doubt that so far as the rate is concerned, the one prevailing on the date of removal of the goods from the godowns will be relevant. But the liability for

payment of excise duty cannot be determined with reference to Section 4 of the Act or the Rules framed thereunder, where exemption has for the first time been revoked and an article is subject to excise duty with effect from a particular date. Excise duty being a tax on production or manufacture, the liability for tax will arise at the time the production or manufacture is completed and not at the time the goods are removed from the godowns by the producer or the manufacturer, of course, if that liability u/s 3 be established, then the matter relating to rate will be governed by the provisions of Section 4 of the Act and the relevant rules pertaining thereto. In view of this position, we do not think that the present case is a fit one for a certificate of fitness for leave to appeal to the Supreme Court, as, in our opinion, no substantial question of law of general importance is involved in this case.

6. This petition, therefore, fails and is accordingly dismissed summarily without notice to the other side.