

(1989) 04 GAU CK 0014
In the Gauhati High Court
Case No : Civil Rule Nos. 249, 1122 of 1982

Varat Timber, Assam M/S Veneer Mills	APPELLANT
Vs	
Aseistant Collector of Customs And Central Excise, Tinsukia Division	RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Central Excises and Salt Act, 1944 — Item 15A, Item 15A

Citation : (1989) 2 GLJ 141

Hon'ble Judges : B.L.Hansaria, J and J.M.Srivastava, J

Bench : Division Bench

Advocate : Sk.Chand Mahammad, S.K.Senapati, B.L.Singh, Advocates
appearing for Parties

Judgement

B. L. Hansaria, J.—The point for determination in these applications under Article 226 of the Constitution is whether the petitioners are liable to pay excise duty on captive consumption of aqua solution in the shape of phenol or urea formalin. The answer to this question, according to us, depends on the use the petitioners are putting aforesaid article while producing plywoods. The case of the petitioners is that they are not selling the aforesaid product but are using the same as binding agent of veneer which are ultimately produced in the shape of plywood.

2. It is contended by Mr. Mohammad that the petitioners were paying tax on the above commodity from 1971 to 2. 4. 81 and subsequently also from 1985. This fact by itself is not conclusive inasmuch as it is stated by Shri Senapati that earlier payment might have been under some misconception and subsequent payment was due to the amendment of the Central Excise Tariff Act, 1983. Before the 1985 Act came into force, Item No. 15A finding place in the Central Excise and Salt Act, 1944 was amended in 1982 whereby the excitability of the aforesaid article was widened and many subarticles covered by the artificial synthetic resin were added to the schedule.

3. We are of the view that the item in question shall become exigible to excise duty only if the petitioner are producing the same as artificial synthetic resin as a separate commodity and not as binding agent for the purpose of manufacturing plywood. To state it differently if the product manufactured by the petitioners is only used for captive consumption, the same would not be taxable under the Central Excise & Salt Act, 1944. We may say that we have not examined the question of excitability of the aforesaid article on the basis of what has been provided in the Central Excise Tariff Act, 1985 as we are concerned with the period prior to the enactment of 1985 Act. We also are not concerned with the period after to the amendment of Item No. 15A in 1982 inas much as the period covered by these petitions are 1.1.79 to 24. 2. 80 and 26. 2. 80 to 31, 3. 80.

4. In view of the above, we state that the product manufactured by the petitioners and used as captive consumption or binding agent cannot be taxed. So the petitioners shall be liable to excise duty on the aforesaid article if they had manufactured the same not as a binding agent or in the shape of captive consumption but as final product to be sold as artificial synthetic resin.

5. The petitions are disposed of accordingly.

J.M.Srivastava, J.I agree.