Collector Of Central Excise, Vadodra vs M/S. Dhiren Chemical Industries on 12 December, 2001

Equivalent citations: AIR 2002 SUPREME COURT 453, 2002 (2) SCC 127, 2001 AIR SCW 5073, 2001 (8) SCALE 479, (2001) 10 JT 456 (SC), 2002 (1) LRI 88, (2002) 1 JCR 403 (SC), 2002 (2) SRJ 166, (2001) 8 SUPREME 624, (2001) 8 SCALE 479, (2002) 101 DRJ 1, (2002) 139 ELT 3, (2002) 2 GUJ LR 1354, (2002) 1 GUJ LH 548, (2002) 254 ITR 554, (2002) 126 STC 122, (2002) 172 CURTAXREP 670

Bench: Chief Justice, Syed Shah Mohammed Quadri, U.C. Banerjee, S.N. Variava, Shivaraj V. Patil

CASE NO.:
Appeal (civil) 7937 of 1995

PETITIONER:
COLLECTOR OF CENTRAL EXCISE, VADODRA

Vs.

RESPONDENT:
M/S. DHIREN CHEMICAL INDUSTRIES

DATE OF JUDGMENT: 12/12/2001

BENCH:
CJI, Syed Shah Mohammed Quadri, U.C. Banerjee, S.N. Variava & Shivaraj V. Patil.

JUDGMENT:

WITH CIVIL APPEAL NOS. 2496-2497 OF 1992 J U D G M E N T Bharucha, C.J.I.:

The case of Dhiren Chemical Industries (Civil Appeal No. 7937 of 1995) has been referred by a Bench of three learned Judges to the Constitution Bench because it appeared to the Bench that there was a conflict between the view taken in Collector of Central Excise, Patna vs. Usha Martin Industries [1997 (7) S.C.C. 47] and the view taken in Motiram Tolaram & Anr. Vs. Union of India & Anr. [1999 (6) S.C.C. 375], both being judgments of Benches of three learned Judges. Because of that reference, the other cases (Civil Appeal Nos. 2496-97) were also so referred.

> The only question that we are concerned with relates to the correct interpretation to be placed upon the phrase "on which the appropriate amount of duty of excise has already been paid".
>
> In the case of Usha Martin, the relevant Exemption Notification read, so far as is relevant, thus:
>
> "Exemption in goods falling under Item 26-AA(i-a) made from duty-paid material:
>
> In exercise of the powers conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and in supersession of the notification of the Government of India in the M.F. (D.R.) No. 131/62-CE, dated 13-6-1962, the Central Government hereby exempts iron or steel products falling under sub-item (i-a) of Item No. 26-AA made from any of the following materials or a combination thereof namely:
>
> (i) fresh unused re-rollable scrap 'on which the appropriate amount of duty of excise has already been paid'...".

(Emphasis supplied) The other clauses used the same phrase.

The Court said that there was "no doubt that as per the above notification if any amount of duty has been paid on the raw material, the output product would escape from excise duty. The doubt which arose was regarding the expression in the notification i.e., 'on which the appropriate amount of duty of excise has already been paid' as to whether it is capable of two interpretations, one as claimed by the assessee and the other as put forth by the Revenue." The Court then said:

> "If we take the words 'already paid' in the notification delinked from other words employed therein, they would, perhaps, lend support to the contention of the Revenue as the said combination relates to an antecedent act of payment. But the word 'already' is not the decisive term in the context because the preceding word 'appropriate', cannot be sidelined to piffle. The word 'appropriate' is defined in Websters' New Dictionary and Thesaurus (Concise Edn.) as 'applicable, apposite, appurtenant, apropos, apt...'. In the World Book Dictionary it is defined as 'right for the occasion, suitable, proper, fitting...'.
>
> What is the idea behind granting exemption to the commodities indicated in the notification? One reason is that the Central Government wanted to save certain raw materials and the end products made with them from double duty. Another idea, as could be discerned from it, is that the reason which prompted the Central Government to absolve one commodity from duty must as well be applicable to the other commodity which is made out of the former. Therefore, we are not disposed to afford a narrow interpretation to the expression (i.e. on which the appropriate amount of duty of excise has already been paid) as excluding all cases where nil duty was paid for the input materials."

The Court, thus, upheld the contention on behalf of the assessee.

In the case of Motiram Tolaram, reliance was placed upon the case of Usha Martin to contend that the appropriate duty being nil, because the raw material was not manufactured in India, it must be taken that appropriate duty had been paid and the appellants would be entitled to the benefit of the Exemption Notification in question, which used the said phrase. The Court was unable to agree. It said that the raw material being an item which was manufactured in India, a rate of excise duty was leviable thereon. On the raw material which had been imported, the appropriate amount of duty had not been paid. It was only if this payment had been made that the exemption notification would be applicable.

In our view, the correct interpretation of the said phrase has not been placed in the judgment in the case of Usha Martin. The stress on the word "appropriate" has been mislaid. All that the word "appropriate" in the context means is the correct or the specified rate of excise duty.

An exemption notification that uses the said phrase applies to goods which have been made from duty paid material. In the said phrase, due emphasis must be given to the words "has already been paid". For the purposes of getting the benefit of the exemption under the notification, the goods must be made from raw material on which excise duty has, as a matter of fact, been paid, and has been paid at the "appropriate" or correct rate. Unless the manufacturer has paid, the correct amount of excise duty, he is not entitled to the benefit of the exemption notification.

Where the raw material is not liable to excise duty or such duty is nil, no excise duty is, as a matter of fact, paid upon it. To goods made out of such material the notification will not apply.

The notification is intended to give relief against the cascading of excise duty - on the raw material and again on the goods made therefrom. There is no cascading effect when no excise duty is payable upon the raw material and the hardship that the notification seeks to alleviate does not arise.

We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue.

These appeals shall now be placed before a Bench of two learned Judges, who will decide the same on their merits. This is done having regard to the fact that other issues may be involved.

.....CJI.

.....J. (Syed Shah Mohammed Quadri) .....J. (U.C. Banerjee) .....J. (S.N. Variava) .....J. (Shivaraj V. Patil) December 12, 2001.