Premier Tyres Ltd vs Collector Of Central Excise, Cochin on 9 February, 1987

Equivalent citations: 1987 AIR 729, 1987 SCR (2) 198, AIR 1987 SUPREME COURT 729, 1987 (1) SCC 697, 1987 TAX. L. R. 1891, 1987 (1) ALL TAX J 532, (1987) 1 CURLJ(CCR) 747, 1987 SCC (TAX) 153, (1987) 28 ELT 58, (1987) 12 ECC 327, (1987) 11 ECR 360, (1987) 2 SCJ 180

Author: O. Chinnappa Reddy

Bench: O. Chinnappa Reddy, V. Khalid

PETITIONER:
PREMIER TYRES LTD.

Vs.

RESPONDENT:
COLLECTOR OF CENTRAL EXCISE, COCHIN

DATE OF JUDGMENT09/02/1987

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
KHALID, V. (J)

CITATION:
1987 AIR 729 1987 SCR (2) 198
1987 SCC (1) 697 1987 SCALE (1)273

ACT:
Central excise Rules, 1944: Rule 8(1)--Exemption from excise duty--Notification dated June 16, 1977 and July 14, 1978'Applicability of.
Excise duty-- Double taxation-- Whether permissible.

HEADNOTE:
By a notification dated August 1, 1974 the Central Government in exercise of its powers under sub-rule(1) of Rule 8 of the Central Excise Rules, exempted automobile tyres from excise duty leviable thereon as was in excess of fifty-five per cent ad valorem. Another notification issued on June 16, 1977 exempted all excisable goods from duty to the extent of the duty already paid on the inputs. A further

notification dated July 14, 1978 exempted tyres and tubes from so much of the duty leviable thereon (read with any relevant notification issued under the said subrule(1) of Rule 8 in force for the time being) as was in excess of eightyseven and a half per cent of such duty if produced in any factory which commenced production for the first time earlier than the 1st day of April 1976, and seventy five per cent of such duty if produced in any factory which commenced production for the first time on or after the 1st day of April, 1976.

A dispute arosse in respect of the latter two notification as to which of them was first to be given effect to. The Tribunal accepted the Department's contention that effect had to be given in the first instance to the notification dated June 16, 1977, and then to the notification dated July 14, 1978.

In this appeal, it was contended for the appellant that to give effect to the second notification and thereafter to the third notification would mean that the assessee would not be getting full credit for the entire duty paid on the inputs but only a percentage of it and that there would, therefore, be double taxation at least to that extent.

Dismissing the appeal, the Court,

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HELD: 1. The Tribunal was right in taking the view that effect had to be given first to the notification dated June 16, 1977 and then to the notification dated July 14, 1978. The words "read with any relevant notification issued under the said sub-rule (1) of Rule 8 in force for the time being" super-added by the latter notification show conclusively that the earlier notification dealing with exemption to the extent of the duty paid on the inputs which was already in force had first to be given effect to. [201E-G]

Assistant Collector of Central Excise v. Madras Rubber Factory Limited, Civil Appeal No. 3195 of 1979, distinguished.

2. There is no general principle that there can be no 'double taxation' in the levy of excise duty. The Court may lean in favour of a construction which will avoid double taxation, but in the instant case there does not appear to be any lean question of construction at all. [202B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 943 Of 1986.

From the Judgment and Order dated 4th July, 1985 of the Appellate Tribunal in Appeal no. 244 of 1985-D. L.M. Singhvi and K.K. Bhaduri for the appellant. A Subba Rao and Ms. S. Relan for the Respondent. The Judgment of the Court was delivered by CHINNAPPA REDDY, J. This appeal is directed against a judgment of the Customs, Excise and Gold Control Appellate Tribunal in regard to

the manner and sequence in which certain notifications under Rule 8 Sub-rule (1) of the Central Excise Rules granting exemptions from duty have to be worked out. By a notification dated August 1974 the Central Government, in exercise of its powers under subrule(1) of Rule 8 of the Central Excise Rules exempted.

> "Tyres for motor vehicles failing under sub- item(1) of Item No. 16 of the First Schedule to the Central Excise and Salt Act, 1944(1 of 1944) from so much of the duty of excise leviable thereon as is in excess of fifty-five per cent Ad valorem".

Thereafter on June 16, 1977 another notification was issued in the following terms:

> "In exercise of the powers conferred by sub- rule (1) of Rule 8 of the Central Excise Rules, 1944 the Central Government hereby exempts all excisable goods (hereinafter referred to as the "said goods") on which the duty of excise is leviable and in the manufac- ture of which any goods falling under Item No. 68 of the First Schedule to the Central Excise and Salt Act, 1944 (1 of 1944) (hereinafter referred to as the inputs) have been used, from so much of the duty of excise leviable thereon as is equivalent to the duty of excise already paid on the inputs. Notification No. 205/77 dated 28.9.77, subject to the condi- tions that the manufacturer furnishes to the proper Officer a statement showing the quanti- ty of the inputs used in the manufacture of every unit of the said goods.
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> Provided that where the duty of excise levi- able on the said goods is less than the amount of duty of excise paid on the inputs the extent of exemption shall be restricted to the duty of excise on the said goods."

A Further notification was issued on July 14, 1978 and this was in the following terms:

> "In exercise of the powers conferred by sub- rule(1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts tyres and tubes excluding flaps failing under Item No. 16(1) and 18(3) of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) (hereinafter referred to as the specified goods) from so much of the duty of excise leviable thereon (read with any rele- vant notification issued under the said sub- rule(1) of rule 8 and in force for the time being) as is in excess of
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> (a) eighty-seven and a half per cent, of such duty, if produced in any factory which com-

menced production of the specified goods for the first time earlier than the 1st day of April 1976: and

(b) Seventy-five per cent of such duty, if produced in any factory which commenced pro- duction of the specified goods for the first time on or after the 1st day of April, 1976, subject to the conditions that:-

There is no controversy regarding evaluation According to the assessee as well as the department effect has first to be given to the notification dated August 1, 1974 and the duty calculated in terms of that notification. There is also no controversy at this stage. The controversy begining thereafter. According to the dapartment, thereafter, effect has to be given first to the notification dated June 16, 1977 and then to the notification dated July 14, 1978 where- as according to the assessee effect has to be given, in the first instance, to the notification dated July 14, 1978 and then to the notification dated 16, 1977. The Department's contention was accepted by the Tribunal. In this appeal, Dr. L.M. Singhvi, learned counsel for the appellant argued that on principle the effective duty has to be first determina- tion by applying the notification dated July 14, 1978 first and the duty paid on the inputs should be set off under the notification dated June 16, 1977 against the duty determined as payable after applying the notification dated July 14, 1978. In support of his argument, the learned counsel relied upon a recent judgment of this court in Assistant Collector of Central Excise v, Madras Rubber Factory limited, Civil Appeal No. 3195 of 1979 etc. We are afraid that in the face of the language of the notifications, it is not possible to agree with the submission of Dr. Singhvi. We have already extracted the notification dated June 16, 1977 and July 14, 1978. The notification dated July 14, 1978, it is to be noticed, has super-added the words "read with any relevant notification issued under the said sub-rule(1) of Rule 8 and in force for the time being." These super-added words show conclusively that the notification dealing with exemption to the extent of the duty paid on the inputs, which was already in force, had to be given effect before giving effect to the notification dated July 14, 1978. This was the submission of Shri A. Subba Rao, learned counsel for the department and it is difficult to see any escape from it. The case upon which reliance was placed by Dr. Singhvi does not appear to have any relevance to the question at issue. There, the court was concerned with the determination of the assessable value and not with the present question relating to the order of priority in which the notifications granting exemption from duty had to be applied. There, what the court decided was that Excise Duty cannot be computed without proper determination of the assessable value namely assessa- ble value exclusive of permissible deductions. That princi- ple cannot come in aid of the question involved in this appeal. The learned counsel also argued that to give effect first to the notification dealing with exemption to the extent of the duty paid on inputs and thereafter to the notification dated July 14, 1978 would mean that the asses- see would not be getting full credit for the entire duty paid on the inputs but only to a percentage of it and that there would, therefore, be double taxation atleast to that extent. There is no general principle that there can be no 'double taxation' in the levy of Excise Duty. The court may lean in favour of a construction which will avoid double taxation but in the present case there does not appear to be any lean question of construction at all. On the language of the notification dated July 14, 1978 only one result can follow. That is the view taken by the Tribunal in the order under appeal. We agree with that view of the matter. The appeal is dismissed with costs.

P.S.S. Appeal dismissed.

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