Supreme Court of India
Collector Of Customs & Central ... vs M/S. Oriental Timber Industries on 26 March, 1985
Equivalent citations: 1985 AIR 746, 1985 SCR (3) 475
Author: A N Sen
Bench: Sen, Amarendra Nath (J)

PETITIONER:
COLLECTOR OF CUSTOMS & CENTRAL EXCISE & ANR.

Vs.

RESPONDENT:
M/S. ORIENTAL TIMBER INDUSTRIES

DATE OF JUDGMENT26/03/1985

BENCH:
SEN, AMARENDRA NATH (J)
BENCH:
SEN, AMARENDRA NATH (J)
DESAI, D.A.

CITATION:
1985 AIR 746 1985 SCR (3) 475
1985 SCC (3) 85 1985 SCALE (1)627
CITATOR INFO :
R 1987 SC1576 (3)
D 1989 SC 617 (11)

ACT:
Central Excise & Salt Act 1944 First Schedule Item 16B. Plywood circles-Manufacture of-Assessment to duty-Determination of.

HEADNOTE:
The respondent firm is a manufacturer of plywood circles to be used as component part of packing materials for wire and cables. The firm used to be assessed to duty under the Central Excise and Salt Act, 1944 on the basis of the Total area of the circles manufactured and the duty to be collected when the circles were issued out of the factory premises. An audit objection was taken to this mode of assessment on the ground that the process of cutting out circles and punching of holes cannot be considered as incidental or ancillary to the completion of the manufacture of plywood, that the levy of excise duty must be on the total area of blocks or panels of plywood that come out of the press and not on the area of the circles made out of the blocks or panels and that by plywood it was meant only plywood which had a general market and not plywood circles

specially manufactured for a particular purpose or a particular customer. Pursuant to the audit objection, the Central Excise Range Officer issued a notice calling upon the firm to furnish area of the plywood manufactured at the panel stage for taking clearance of the plywood circles. It was also mentioned that the assessment of the plywood circles would be made at the panel stage and not on the finished circles and directed the firm to file ARI accordingly. The firm sent reply through an Advocate and wanted the order of the Collector referred to in the notice, but the same was not furnished and instead the Range Officer issued another notice reiterating the earlier stand and directed that duty paid on plywood panels cleared outside the factory could not be brought back for further process of cutting circles with prior permission.

The firm challenged the validity of the two notices under Article 226 of the Constitution.A Single judge of the High Court disposing of the writ petition directed the Collector to issue a copy of the order referred to in the notice on the Range Officer dated 22-2-67 within a month and on receipt on that order the firm might seek appropriate remedies by way of appeal under the statute.

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The Division Bench, however, allowed the appeal of the firm and quashed the said two notices. It held that the real dispute was as to what stage the excise duty-became leviable on the goods, and that the blocks or panels from which the firm cuts out circles are all unfinished products, because they will become furnished products only when they are trimmed and their edges are sanded.

In the appeal by the Revenue to this Court it was contended that the plywood as and when it comes out of the press in blocks or panels is a manufactured product known in the market as plywood and is exigible to duty, that the blocks or panels so manufactured do not cease to be plywood under item 16B merely because they are not trimmed and their edges are not sanded, that the cutting of the blocks does not form a part of the manufacture of the plywood, that the circles which are made by the cutting of the blocks and punching holes into blocks and panels, do not result in the manufacture of any different product for the purpose of assessment to duty and that the plywood earlier manufactured in blocks and panels when it came out of the press can be said to constitute materials for the purpose of manufacture of circles and becomes exigible to duty under Item 16B.

Allowing the Appeal,

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HELD: 1. The High Court was in error in quashing the two notices. They are valid and lawful. Item 16B makes it clear that plywood in sheets, blocks, boards or the like attracts excise duty.A special provision by way of exception is made only in the case of plywood for tea-chests when cut to size in panels or shocks and packed in sets. The

provision in Item 16B that ply wood in sheets, blocks and board or the like, which attracts duty is in very broad terms and the expression 'like' includes circles. There is nothing to indicate in this item that plywood must be trimmed or sanded Plywood is manufactured as soon as it comes out of the press, though the same may not be trimmed or sanded out of which circles are to be produced. There is nothing to indicate that plywood in panel stage not trimmed and not sanded, is not known in the market as plywood. Plywood when it comes out of the press at the panel stage, therefore, clearly falls within Item 16B of the First Schedule and the authorities were justified in seeking to levy duty on plywood at the panel stage.

[488H; 489A-B]

2. The facts and circumstances go to indicate that the respondent firm is a small scale industry and carried on business on small scale. Prior to the impugned notification, the assessment of the excise duty was made on the plywood circles after the same had been produced and not on plywood as and when the same came out of the press. This was the mode of assessment adopted by the Excise Authorities and there was no default on the part of the firm. It was` only in the year 1967 the Excise Authorities sought to change the mode of assessment because of audit objection. The respondent assessee succeeded in the High Court. The present was instituted in 1971 and this is being
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disposed of in the year 1985. If the respondent firm is saddled with all the accumulated liability on account of excess amount of excise duty payable for all these years, the firm will be very seriously prejudiced and it may be difficult to meet this liability. On the other hand, so far as the Union of India is concerned even without this excess amount, it had managed without any serious prejudice or inconvenience. The excess amount is not likely to be a very substantial sum from the point of view of Union's financial position and will not be of any material gain but may very likely spell doom for the respondent firm. Apart from this aspect, no assessment for all these years on the basis of the said notices has been made or could have been made. To make fresh assessment for imposition of duty for so many years after such a long lapse of time may require a prolonged exercise which may not ultimately be worth the trouble and is bound to cause a great deal of hardship and harassment to the firm. In these circumstances, the ends of justice require that there should be no levy of excise duty on the basis of the said notices for the years which have already passed.

[489D-H; 490A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION; Civil Appeal No. 21 of From the Judgment & order dated 21.1.1970 of the Kerala High Court in W.A. No. 820 of 1969 V.C. Mahajan, N.S. Das Bahl and R.N. Poddar for the Appellants.

P.K Pillai and A.G. Pudissery for the Respondents. The Judgment of the Court was delivered by AMARENDRA NATH SEN', J. The question for consideration in this appeal by Special Leave is whether the plywood manufactured by the Respondent and utilised by the respondent in manufacturing plywood circles to be used as component parts of packing material for wire and cables is exigible to excise duty under the Central Excise and Salt Act, 1944.

The respondent is a manufacturer of plywood circles to be used as component parts of - packing materials for wire and cables. The Respondent used to be assessed to duty under the Central Excise and Salt Act, 1944 (hereinafter referred to as the Act) on the basis of the total area of the circles manufactured and the duty used to be collected when the circles were issued out of the factory premises. On 13.2.1967 an audit objection was taken to this mode of assessment of excise duty on the ground that the process of cutting out circles and punching of holes cannot be considered as incidental or ancillary to the completion of the manufacture of plywood. The audit objection pointed out that the levy of excise duty must be on the total area of blocks or panels of plywood that came out of the press and not on the area of the circles made out of the blocks or panels. It was further indicated that by plywood it was meant only plywood which had a general market and not plywood circles specially manufactured for a particular purpose or a particular customer. In consequence of the audit objection, the Range ` Officer, Central Excise, Irinjalakuda, the appellant No. 2 herein, issued a notice on 22.2.1967 to M/s. Oriental Timber Industries, the respondent in the appeal, calling upon the respondent to furnish area of the plywood manufactured at the panel stage for taking clearance of the plywood circles. By this notice the Range Officer - also mentioned that the assessment of the plywood circles would be made at the panel stage and not on the finished circles and directed M/s. Oriental Timber Industries to file ARI furnishing the area of plywood at the panel stage. In the notice dated 22.2.1967 issued by the Range Officer, the Range Officer had also mentioned that the said notice was issued as the Collector of Customs had ordered that the assessment of plywood circles would be made at the panel stage and not on the finished circles.

For the sake of convenience we shall describe the Range Officer, Central Excise, Irinjalakuda who happens to be second appellant before us as the Range Officer and we shall refer to the Collector of Customs and Central Excise, Cochin, the first appellant before us, as the Collector and M/s. Oriental Timber Industries, the writ petitioner before the High Court and the respondent before us in this appeal, will be described as the firm.

The firm sent a reply to this notice on 23-2.1967 through the lawyer asking for a copy of the order of the Collector referred to in the notice of the Range Officer. It further appears that the Advocate, of the firm had also addressed a letter on 24-2-1967 to the Collector, requesting the Collector for, a copy of the order. No copy of the order was furnished to the firm or the Advocate and instead the Range Officer on 24-2-1967 issued a further notice to the firm reiterating the stand earlier taken in the notice dated 22 2.1967 and this notice dated 24-2-1967 further directed that duty paid on plywood panels cleared outside the factory could not be brought back for further process of cutting

circles without obtaining prior permission.

On 28.2.1967 the firm filed a writ petition in the High Court in which the validity of the aforesaid notice was challenged and obtained an order of stay of the operation of the aforesaid notices The writ petition came up for final hearing on 27.3.1969.A learned Single Judge of the High Court passed an order to the effect that the Collector of Customs would issue a copy of the order referred to in the notice of the Range Officer dated 22.2.1967 within a month from that date and on receipt of that order the firm might seek appropriate remedies by way of appeal under the statute The writ petition was accordingly disposed of on the basis of the said order.

Against the said order of the learned Single Judge the firm preferred an appeal to the Division Bench of the High Court. For reasons recorded in the judgment delivered on 21.7.1670, the Division Bench of the High Court allowed the appeal and quashed the said two notices.

The correctness of the judgment of the Division Bench has been questioned in this appeal by special leave granted by this Court. The Division Bench noted that the real dispute was as to at what stage the excise duty becomes leviable on the goods. The contention of the Excise Authorities was that plywood became dutiable or excisable at the panel stage, that is at the stage it came out of the press, whereas the contention of the firm was that excise duty would only be attracted when the plywood left the factory premises in the shape of Circles, cut, trimmed and sanded. The Division Bench referred to S.3 of the Act, which is the charging section and also item 16B in the First Schedule. The Division Bench also considered Rule 49(1) of the Central Excise Rules framed under the Act.

The Division Bench proceeded to hold:-

"Item 16B itself, in our opinion throws considerable light on this question. Plywood and other articles mentioned in the body of the item may be in sheets, blocks, boards or the like, which means that the plywood or other article may be in the shape of circles as well. Moreover, the articles are classed into two Sub-item (I) makes plywood for tea-chests, when cut to size in panels or shooks and packed in sets, exisable at 10 per cent ad valorem, and sub-item (ii) makes 'all others' dutiable at 15 per cent ad valorem; Evidently, the articles mentioned in the body of Item 16B must be exhausted by these two classes under Sub items (i) and (ii). If plywood is dutiable at the state when it comes out of the press (hydraulic press or hand press). Sub-item (i) becomes meaningless. This item indicates that the plywood which comes out of the press can be cut to size in panels or shooks suitable for making tea chests and duty is leviable only such cut pieces. If so, the argument that the cutting of the panels into circles is not a process in or part of manufacturing plywood loses all significance, because the cutting of the bigger sheets emerging from the press into smaller panels or shooks is equally not part of the process of manufacture of plywood but is a part of making tea-chests. Sub-item (ii) includes 'all others', which evidently means that all the rest excluding the cut panels shooks suitable for making tea-chests mentioned in sub-item (i): this means that all the rest of the plywood out into any other shape or not cut."

The Division Bench further held:-

"Again, the blocks or panels from which the appellant cuts out circles are all unfinished products, because they will become finished products only when they re trimmed and their edges are sanded. Therefore, the argument that the manufacture of plywood is over the moment the product comes out of the press cannot be correct."

The Division Bench negatived the other contention raised on behalf of the authorities that plywood for the purpose of assessment is only that plywood which has a general market with the following observations:-

> "The second contention that plywood is only plywood which has a general market cannot also stand serious scrutiny. The panels or shooks cut to size for making tea chests do not have a general market in that sense, so that they stand on the same position as the circles cut but, finished and sent out of the factory by the appellant Moreover, this line of reasoning is not warranted by the Act or the Rules."

The learned counsel appearing on behalf of the Collector and the Range Officer, the appellants before us in this appeal, has submitted that the decision of the Division Bench is erroneous. It is contended that Item 16B on which the High Court has relied has not been properly construed. The contention is that Item 16B`provides that plywood and other articles mentioned in the main body of the rule may be in sheets, blocks, boards or the like and are excisable to duty as plywood at the rate of 15% ad valorem under sub-item (2) of the said Rule; and sub-item (I) of the said rule makes an exception in case of plywood for tea-chests when cut to size in panels or shooks and packed in sets and provides duty at the rate of 10% ad valorem. The argument is that plywood as and when it comes out of the press in blocks or panels is a manufactured product known in the market as plywood and is exigible to duty: and the blocks or panels so manufactured do not cease to be plywood under item 16B merely because they are not trimmed and their edges are not sanded. It has been submitted that the cutting of the blocks does not form a part of the manufacture of the plywood, and the circles which are made by the cutting of the blocks and punching holes into blocks and panels, do not result in the manufacture of any different product for the purpose of assessment to duty and the circles so made form part of the plywood. It is further argued that if the making of the circles of the plywood blocks and panels can be said to involve any process of manufacture and the plywood earlier manufactured in blocks and panels when it came out of the press can be said to constitute materials for the purpose of manufacture of circles even then the plywood in view of the provision of Item 16B, becomes exigible to duty, when is comes out of the press in panel or block. On behalf of the respondent firm it has been submitted that the view expressed by the High Court is correct and the Respondent firm adopts the reasons stated by the High Court in the Judgment.

The relevant provisions contained in S.3 of the Act which` is indeed the charging Sections reads as follows:-

> "(1) There shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India and a duty on salt manufactured in, or imported by land into, any part of India as, and at the rates, set forth in the First Schedule. X X `X X x X X X X X X (2) The

Central Government may, by notification in the official gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated, either specifically or under general headings, in the First Schedule as chargeable with duty ad valorem and may alter any tariff values for the time being in force.

(3) Different tariff values may be fixed

(a) for different classes or description of the same excisable goods; or

(b) for excisable goods of the same class or description;

(i) produced or manufactured by different classes of producers of manufacturers;

(ii) sold to different class of buyers: Provided that in fixing different tariff values in of excisable goods falling under sub-clause (i) or sub- clause (ii ), regard shall be had to the sale prices charged by the different classes of producers or manufacturers or, as the case may, the normal practice of the wholesale trade in such goods".

The term 'manufacture' in so far as the same is relevant for the present appeal is defined in S.2 (g) of the Act to mean: `manufacture' includes any process incidental or ancillary to the completion of a manufactured product".

Item 16B of the First Schedule as it read at the relevant time, was :-

"PLYWOOD, BLOCK BOARD. LAMINBOARD, BATTEN BOARD, HARD OR SOFT WALL BOARDS OR INSULATlNG BOARD, AND VENEERED PANELS, WHETHER OR NOT CONTAINING ANY MATERIAL OTHER THAN WOOD; CELLULAR WOOD PANELS; BUILDING BOARDS OF WOOD PULP OR OF VEGETABLE FIBRE, WHETHER OR NOT BONDED WITH NATURAL OR ARTIFICIAL RESINS OR WITH SIMILAR BINDERS; AND ARTIFICIAL OR RECONS-

TITUTED WOOD BEING WOOD SHAVlNGS, WOODCHIPS, SAW DUST, WOOD FLOUR OR OTHER LIONEOUS WASTE AGGLOMERATED WITH NATURAL OR ARTIFICIAL RESINS OR OTHER (ORGANIC BINDING SUBSTANCES, IN SHEETS, BLOCKS, BOARDS OR THE LIKE) :"

(i) plywood for tea-chests when cut in Ten per panels or shooks and packed in sets:ad valorem

(ii) all others.. fifteen per cent, ad valorem".

Rule 49 of the Central Excise Rules (hereinafter referred to as the Rules) referred to in the course of the arguments and also in the judgment of the High Court does not in the facts and circumstances of this case have a material bearing on the question in dispute. Rule 9, however, may be noticed and

the relevant provision of Rule 9 read as follows:-

> "No excisable goods shall be removed from any place where they are produced, cured or manufactured or any premises appurtenant thereto, which may be specified by the Collector in this behalf whether for, consumption, export, or manufacture of any other commodity in or outside such place, until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these Rules or as the Collector may require, and except on presentation of an application in the proper form and on obtaining the per mission of the proper officer on the form".

This Rule makes it clear that no excisable goods even for consumption or manufacture of any other commodity can be removed except on payment of excise duty.

Item 16-B in the First Schedule which we have earlier set out contains the relevant provisions which, as the High Court rightly pointed out, throw proper light on the question On a careful consideration of the provisions contained in Item 16-B, we find it difficult to agree with the view expressed by the High Court. The main provision in Item 16-B indicates that plywood is liable to excise duty whether in Sheets, Blocks, Boards or the like. Sub-item (i) provides that plywood for tea-chests when cut to size in panels or shooks and packed in sets will be charged duty at the rate of 10% ad valorem and sub-item (2) provides that in all other cases duty will be charged, at the rate of 15% ad valorem.A proper reading of this Item indicates that plywood, except in case of tea chests, is liable to be charged at the rate of 15% ad valorem whether in sheets, blocks, boards or the like. In other words, this item makes it clear that the excise duty is payable on plywood whether in sheets, blocks, boards or the like at the rate of 15% ad valorem, except is case of plywood for tea-chests; and, in case of plywood for tea-chests when cut to size in panels or shooks and packed in sets, duty payable is 10% ad valorem. It is only in case of tea-chests, plywood, when cut to size in panels or shooks and packed in sets, is to be taken into consideration and this item does not indicate that in other cases like making of circles, plywood in the form of circles can be taken into account for assessment of duty. The exceptional provision made in case of tea-chests and the general provision made in all other cases, makes it clear that plywood, whether in sheets, blocks, boards or the like has to be assessed at the stage of plywood blocks or panels before circles are made out of the same. Whether cutting of plywood blocks or panels into circles constitutes a manufacturing process and whether circles made out of the plywood blocks or panels constitute a different product from the plywood may be debatable. There, can, however, be no doubt that plywood is manufactured as soon as the product comes out of the press and plywood in sheets, blocks, boards or the like come within Item 16B, even if they are not trimmed and their edges are not sanded, as the Item does not speak of trimmed or sanded plywood. Even if plywood blocks or panels manufactured by the firm can be said to constitute the raw material of the firm for producing plywood circles and not as the finished product of the firm, the position, in view of the definition of 'manufacture' as given in S. 2F of the Act, the provisions of Rule 9 and the provisions contained in Item 6B in the First Schedule, remains unaltered and unaffected, and plywood manufactured for producing circles becomes liable to duty at the block stage or panel stage. No question of double taxation arises as duty is leviable only once on the plywood as it comes out of the press in the panel or block stage and no further duty is to be levied on the circles which are made out of the plywood blocks or panels.

The decision of this Court in Union of India v. Hind Undivided Family Business Known as Ramlal Mansukhrai, Rewari and Anr.(l) lends support to the contention raised on behalf of the Excise Authorities that plywood as and when the same comes out of the press at the panel stage, even though not trimmed and sanded, becomes liable to excise duty under Item 16B of the First Schedule. In this case the facts were briefly as follows:-

The Hindu Joint Family Business known as Ramlal Mansukhrai used to carry on business of manufacture of Kansi and Brass utensils. Kansi is prepared as an alloy of copper and tin, and brass as alloy of copper and zinc. These alloys are prepared by melting metals and mixing them together. These alloys are then converted into billets. These billets were of two kinds viz of Kansi and Brass. These billets are then sent by the respondent joint family business to their agents who had a rolling mill and the rolling mills relied the billets into uncut circles. Subsequently, these uncut circles are trimmed and after further work on them, they are converted into utensils and sold as such in the market by the respondents. The Excise Authorities imposed Excise Duty at the stage when the rolling mills prepared circles from the billets under item 20-A of the First Schedule read with S. 3 of the Act. Item 26-A of the First Schedule as noted in the judgment reads as follows:-

"Description of goods . Rate of duty

Copper and copper alloys containing not less than Fifty per cent by weight of copper:-

(1) In any crude form including ingots, Three hundred rupees bars, blocks, slabs, billets, shots per metric tonne.

and pollets.

(2) Manufactures, the following namely, Five hundred plates, sheets, circles, strips and foils rupees per in any form or size. metric tonne.

(3) Pipes and tubes Ten per cent ad valorem."

(1) [1970] 2 S.C.C. 472

The Respondent Hindu Joint family business filed a suit challenging the imposition of excise duty on circles of Kansi and Brass prepared in the process of manufacturing utensils. The Trial Court decreed the suit holding that the circles were not liable to excise duty. The Appellate Court in the first appeal and the High Court in the second appeal confirmed the decree. The Union of India representing the Excise Authorities preferred an appeal to the Supreme Court. Allowing the appeal filed by the Union of India, this Court held:-

> "It appears to us that, on a plain reading of the provisions of the Act and Item 26-A of the First Schedule, the contention raised on behalf of the appellant must be accepted.

> Under Section 3, all excisable goods set forth in the First Schedule, which are produced or manufactured in India, are made liable to excise duty at the rates mentioned in the Schedule. Item 26-A(2) clearly mentions the manufactures, amongst others, of circles in any form or size. There can be no dispute that what the rolling mills prepared by rolling the billets are circles in some form or the other and in different sizes. The contention that the uncut circles cannot be held to be circles mentioned in this item has, on the face of it, no force at all. Brij Mohan, the Karta of the respondent Hindu undivided family business, in his statement himself admitted that the billets are sent to the rolling mills and the same are converted into P-6 and P-7, i.e., circles or Penas. P-6 and P-7, according to him, are a kansi circle and brass circle respectively. He added that the rolling mills never become the owners of either the billets P or the circles. It is true that, at some stages, he described these circles as uncut circles; but he did not dispute that P-6 and P-7 are, in fact, circles as uncut circles; but he did not dispute that P-6 and P-7 are, in fact, circles of kansi and brass. The mere fact that they are uncut at the stage when they are prepared after rolling by the rolling mills cannot, therefore, mean that they are not circles and are not cove red by that word as used in Item 26-A. No doubt, evidence has been given that subsequently, these uncut circles are trimmed and then converted into utensils. The argument of learned counsel that only trimmed circles can be treated as circles and as finished product for purposes of Item 26-A cannot be accepted because that item itself envisages excise duty being levied on 'circles in any form or size'. We can not understand how it can possibly be contended that uncut circles are not circles in any form or size. There is nothing in the item from which an inference can be drawn that the intention of the Legislature was to tax trimmed circles and not uncut circles. If there had been any such intention, the Legislature would not have used the expression 'circles in any form'. Uncut circles are certainly one form of circles".

It may be noted that in this decision the Court considered the case of Union of India v. Delhi Cloth and General Mills 1 on which reliance was placed by the counsel for the respondent and also the case of South Bihar Sugar Mills Ltd. v. Union of India.2 This Court observed:-

> "In our opinion, neither of these cases supports the contention raised on behalf of the respondents, and it appears that the ratio of these decisions has been misunderstood by the High Court and the lower, courts.

In the case of Union of India v. Delhi Cloth and General Mills (supra), the contention on behalf of the Union of India was that, in the course of manufacture of Vanaspati, the vegetable product from raw groundnut and 'til' oil, the respondents used to bring into existence at one stage, after carrying out some processes with the aid of power, what is known to the market as 'refined oil', and this 'refined oil' falls within the description of 'vegetable non essential oils, all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power,' and so is liable to excise duty under Item 12 of the First Schedule. The Court examined the process of manufacture of Vanaspati and found that vegetable non essential oils as obtained by crush. a ing containing the impurities were first produced as raw vegetable as non-essential oils. They had then to undergo (1)

119631 Supp 1 SCR 586 (2)[1968] 3 SCR 21 the process of refining which consisted of adding an aqueous - solution of an alkali which will combine with the free fatty acids to form a soap and settle down with it a large amount of suspended and mucilaginous matter; after settling the clear supernatant layer is drawn off and treated with an appropriate quantity of bleaching earth and carbon is then filtered. In this process, the colouring matter is removed and the moisture that was originally present in the neutralised oil will also be removed. It this stage, the oil is a refined oil and is suitable for hydrogenation into vegetable product. What was sought to be taxed was the refined oil at this stage; but that contention was rejected, because the Court held that the oil produced at that stage is not known as refined oil to the consumers in the commercial community and be described as refined oil only after deodorization. Since the process of deodorization is not carried out before that stage, no refined oil had come f into existence and, consequently, the oil could not be taxed as such. That case has on applicability to the case before us where the tax is to be imposed on circles in any form. When the rolling mills have rolled the billets, what comes into existence are circles known as such, even though the are in uncut form. The product at that stage fully satisfies the description contained in Item 26-A (2). Similarly, the decision in South Bihar Sugar Mills Ltd, v. Union of India and Ors. (supra) is of no help on this point, because, again, the gas, which was subjected to excise duty, was held by the Court not to be carbon dioxide, while only carbon dioxide was liable to duty. It was held that the pro ducts that came into existence was a mixture of gases containing only a percentage of carbon dioxide and could not, therefore, be held to be carbon dioxide alone which could be subjected to excise duty under Item 14-H of the First Schedule".

Item 16-B makes it clear that plywood in sheets, blocks, boards the like-attracts excise duty.A special provision by way of exception is made only in the case of plywood for tea chests when cut to s in panels or shooks and packed in sets. The provision in Item 1 that plywood in sheets, blocks and board or the like which attracts duty is indeed in very broad terms and the expression 'like' does necessarily include circles. There is nothing to indicate in this item that plywood must be trimmed or sanded. Plywood is manufactured as soon as it comes out of the press, though the same may not be trimmed or sanded out of which circles are to be produced. There is nothing to indicate that plywood in panel stage, not trimmed and riot sanded, is not known in the market as plywood. Plywood when it comes out of the press at the panel stage, therefore, clearly falls within item 16-B of the First Schedule, and the authorities concerned were therefore, justified in seeking to levy duty on plywood at the panel stage. We are, therefore, of the opinion that the High Court was in error in allowing the writ petition and in quashing the said two Notices. We must, therefore, allow the appeal and set aside the judgment of the High Court holding that the two notices issued which were quashed by the High Court, are valid and lawful.

Though this appeal has to be allowed, there is one aspect which caused us some anxiety. The facts and circumstances go to indicate that the respondent firm is a small scale industry and carries on business on small scale. Prior to the impugned notification, the assessment of the excise duty was made on the plywood circles after the same had been produced and not on plywood as and when the same came out of the press. This was the mode of assessment adopted by the Excise Authorities and there was no default on the part of the firm. It was only in the year 1961 the Excise Authorities sought to Exchange the mode of assessment because of audit objection. The Respondent assessee succeeded in the High Court. The present appeal was instituted in 1971 and this is being disposed of

in the year 1985. If the respondent firm be saddled with all the accumulated liability on account of excess amount of excise duty payable by the respondent firm for all these years, the respondent firm will be very seriously prejudiced and it may indeed be difficult for the respondent firm to meet this liability. On the other hand, these years have all rolled by and so far as the Union of India is concerned even without this excess amount to which the Union of India may be entitled from the respondent, the affairs of Union of India had been managed without any serious prejudice or inconvenience. The excess amount which the Union of India is likely to recover from the respondent firm is not likely to be a very substantial sum from the point of view of Union's financial position and will not be of any material gain to the Union of India but may very likely spell doom for the respondent firm. Apart from this aspect, it appears that on all these for all these years on the basis of the said notices had been made or could have been made. To make fresh assessment for imposition of duty for so many years after such a long lapse of time may require a prolonged exercise which may not ultimately be worth the trouble, so far as the Union of India is concerned and is bound to cause a great deal of hardship and harassment to the respondent firm. In these circumstances, we feel that the ends of justice require that there should be no levy of excise duty on the basis of the said notices for the years which have already passed in view of our judgment and our judgment allowing the appeal and holding the notices to be valid should be given effect to prospectively from now on and not retrospectively. We may observe that counsel for the Union of India fairly agreed that this should be the just course to adopt and the counsel fairly submitted that the Union of India was not concerned with the collection of additional duty for years already passed from the respondent firm but was merely concerned with the question of law involved in this case. The appeal is accordingly allowed to the extent and in the manner indicated with no order as to costs.

A.P.J. Appeal allowed.