Supreme Court of India
Modi Rubber Limited S Another vs Union Of India & Others on 7 May, 1996
Equivalent citations: 1996 SCC (4) 573, JT 1996 (5) 307
Author: S Sen
Bench: Sen, S.C. (J)

PETITIONER:
MODI RUBBER LIMITED S ANOTHER

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT: 07/05/1996

BENCH:
SEN, S.C. (J)
BENCH:
SEN, S.C. (J)
AHMADI A.M. (CJ)
HANSARIA B.L. (J)

CITATION:
1996 SCC (4) 573 JT 1996 (5) 307
1996 SCALE (4)516

ACT:

HEADNOTE:

JUDGMENT:

[With Civil Appeals Nos.1965/86, 1966/86, 1967/86, 2328/86, 1059/81, 2393-2409/80, 1052/81 285/88, 2155/87, 1415-16/86, 8178/95, 8263/95 and Civil Appeals Nos. 7848. AND ,7852 . . of 1996 (Arising out of S.L.Ps.(C) Nos.5881/86, 5882/86)].

J U D G M E N T This appeal raises the question as to the scope and effect of the Explanation to Section 4 (4)(d)(ii) of the Central Excises and Salt Act, 1944 (hereinafter referred to as 'the Act'). The Explanation was added to clarify what would be the amount of duty which had to be deducted from the wholesale price for arriving at the assessable value of goods. The Delhi High Court in the case of I.T.C. Limited & Anr v. Union of India,(30) E.L.T. 321, took the view that by virtue of the Explanation only that amount of duty which was actually paid by the assessee after giving effect to various exemption notifications would qualify for deduction.

The contention of the appellant is that during the period in dispute, duty of excise was leviable under the Act at the rates specified in the First Schedule to the Act. Under Rule 8 of the Central Excise Rules, 1944 (hereinafter referred to as 'the Rules') the Central Government had power to issue notifications for exempting the amount of duty of excise leviable on goods to the extent mentioned in such notifications. The Central Government had issued a series of notifications under which exemption was granted from levy of duty of excise. The language of the notifications provided that the goods specified in the notification shall be exempted 'from so much of duty of excise leviable thereon as is in excess of . . .' the specified amount. The contention of the assessees is that on a true interpretation of the notifications, the assessable value has to be determined first and the notification has to be applied thereafter.

This controversy has been dealt with in a large number of cases before the amendment of Section 4 of the Act. The Delhi High Court in the case of Modi Rubber Limited v. Central Board of Excise and Customs, ILR 1978 (2) Delhi 352 held that from the language of the notification it appeared that the duty of excise leviable and the assessable value of the goods had to be determined first, the relief under the notification had to be given thereafter. According to the appellant, the notifications exempted goods from 'so much of duty of excise leviable thereon' as was specified. In order to determine the extent of the exemption, it was necessary to determine 'the excise duty leviable' in the first instance. In a case where the price is inclusive of Excise Duty (cum-duty price) the amount of excise duty leviable under the Act has to be deducted from the cum duty price in order to determine the assessable value. This is done without applying the notification. Therefore, before giving effect to the notification and before determining the extent of exemption available thereunder, it is necessary to finally determine the 'assessable value' as well as 'excise duty leviable'. This method of determining the assessable value has been accepted by this Court in the case of Bata (India) Limited v. Union of India, (1985) 3 SCC 97.

After these cases were decided, major changes have been brought about in the Central Excise Act. The controversy about the quantum of deduction of duty from wholesale price for the purpose of computation of value under Section 4 of the Act has been set at rest specifically by the Explanation added to Section 4(4) (d)(ii) by the Finance Act, 1982 with retrospective effect from 1.10.1975. Section 4(4)(d)(ii) with the added Explanation now stands as under:-

> (d) "value in relation to any excisable goods,
>
> (i) x x x x
>
> (ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the wholesale trade at the time of removal in respect of such goods sold or contracted for sale; "Explanation: For the purpose of this sub-clause, the amount of the duty of excise payable on any excisable goods shall- be the sum total of:

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for levy of duties of excise on such goods, and the effective duty of excise on such goods under each Act, referred to in clause (a) or sub-clause (b) shall be -

(i) in a case where a notification or order providing for any exemption (not being an exemption for giving credit with respect to or reduction of excise on such goods equal to any duty of excise already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act, is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other cases the duty of excise computed with reference to the rate specified in such Act, in respect of such goods.

The legislative intent is quite clear. The Explanation has been brought into effect from 1.10.1975. By virtue of sub-section (2) of Section 47 of the Finance Act, 1982, all actions taken during the period 1st Octobers 1975 to 27th February, 1982 have been deemed to have been taken for all purposes as validly and effectively taken or done as if the Explanation was in force. This will have the effect notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority. There is no reason to assume that the law laid down in the earlier judgments which had been rendered before the amendments were made to Section 4 will continue to be in force and operative notwithstanding the amendments made in Section 4 with retrospective effect.

The Explanation makes it clear that the amount which will have to be taken out from the wholesale price of the good for purpose of ascertaining value of any excisable goods shall be the sum total of the effective duty of excise payable on such goods under the Central Excise Act Act the aggregate of the effective duties of excise payable under other Central Acts. Therefore, when Section 4(4)(d)(ii) lays down that 'value' does not include the amount of duty of excise, if any, payable on such goods, an enquiry will have to be made as to the amount of the effective duty of excise, which is actually payable on the goods and not merely leviable in accordance with the rates prescribed in the schedule. The newly added Explanation makes it clear that for the purpose of Section 4(4)(d)(ii), the calculation of "the amount of duty of excise, if any, payable on such goods" will not be on the basis of the rate given in the schedule only but also after taking into account any notification or order providing for exemption from the duty of excise under the Act The ad valorem duty leviable by the Central Excise Act will have to be calculated according to the rate prescribed in the schedule for the specified goods But the amount so calculated is not payable as duty but will have to be reduced in terms of the notification in order to give full and complete effect to the notification. By virtue of Rule 8 of the Central Excise Rules, the Central Government has been empowered to exempt any excisable goods from the whole or any part of duty leviable on such goods.

The contention of Mr, Salve is that this notification granted relief from 'so much of the duty of excise leviable thereon as is in excess of seventy five per cent of such duty'. The notification envisaged ascertainment of the base year of clearance. What was produced in excess of the base year qualified for exemption The language used in these notifications makes it clear that the amount of duty payable according to the first Schedule to the Central Excise Act on the excisable goods will have to be calculated first. Thereafter, if other conditions laid down in the notifications were fulfilled. then for the quantum of the excess production only, seventy five per cent of such duty had to he paid. In effect. Mr. Salve has contended that the amendments have not really brought about any effective change in the manner of calculation of the "amount of excise duty payable under Section 4(4)(d)(ii).

This contention is not borne out by the language of the Section and also the notification. It is of significance that the notification seeks to exempt the excisable goods 'from so much of the duty of excise leviable thereon……as is in excess of seventy five per cent of such duty'. Section 4(4)(d)(ii) speaks of the amount of excise duty payable. What is to be excluded from 'value' is only the amount of duty which is payable. The entire amount which is otherwise leviable under the Central Excise Act will not be payable because of the exemption from duty granted in the notification. No question can arise of deduction in the first instance of the amount which is not payable from the wholesale price for determination of the assessable value. Having regard to the language of Section 4(4)(d)(ii) and, in particular, the Explanation notification, we are unable to uphold the contention of Mr. Salve that the assessment of excise duty must be in two stages. In the first stage, the excise duty calculated in accordance with the rate given in the schedule must be deducted from the wholesale price even though this amount is not payable at all. The relief under the notification will have to be calculated only thereafter. Although this was the interpretation given in various judgments before the amendment of Section the position has radically changed after the amendment. It is only the amount of excise duty which is payable, that is to say, the effective duty of excise which can be deducted under Section 4(4)(d)(ii) The language of notification No.198 76-C.E. dated 16th June, 1976 was:-

"In exercise of the powers conferred by sub rule (1) of rule 8 of the Central Excise Rules, 1944, the Central Government hereby exempts the excisable goods of the description specified in column (3) of the Table hereto annexed (hereinafter referred to as the specified goods) and falling under such Item Number of the First Schedule to the Central Excises & Salt Act, 1944 (1) of 1944), as are specified in the corresponding entry in column (2) of the said Table and cleared from one or more factories in excess of the base clearances by or on behalf of a manufacturer, from so much of the duty of excise leviable thereon under the said Item as is in excess of seventy five per cent of such duty,"

Section 4(4)(d)(ii) provides that 'value' in relation to any excisable goods will not include the amount of duty of excise, if any, payable on such goods. The duty payable on such goods must be the actual Amount of duty the assessee has to pay and not any hypothetical figure. The Explanation has put this beyond doubt by specifically providing that if there is a notification providing for any exemption from the duty of excise under the Central Excise Act, then the amount of the duty of excise payable under sub-clause (ii) of clause (d) will be the amount computed with reference to the rates specified in the Act as reduced by the exemption notification.

In the instant case, the exemption notification provides that if the other conditions laid down on the notification are fulfilled, then the goods cleared from the factory of the assessee which are in excess of 'base clearances' by the assessee will be exempt from 'so much of the duty of excise leviable thereon,.... as is in excess of seventy five per cent of such duty', Therefore, the excess production will bear excise duty only to the extent of seventy five per cent of what would have been otherwise payable by the assessee, under the Act calculated according to the rate prescribed in the Schedule.

The contention of Mr. Salve that the calculation will have to be made in two stages is not supported by the wording of the Explanation. A clear distinction has been drawn in the section between the amount of duty leviable and the amount of duty payable. 'Value' will not include the amount of duty of excise which is payable. This amount has to be calculated on the basis of the duty levied under the Act and also after taking into account any relief from duty given by any order or notification issued by the Government. The resultant figure is the amount of duty of excise which is payable and deductible from the wholesale price. There is nothing in the Act to suggest that the 'value' has to be calculated by deducting in the first place the tax leviable under the Act, from the wholesale price. Thereafter, a second valuation on the basis of the notification will have to be made. The Explanation clearly states that the duty of excise computed with reference to the prescribed rate in the schedule will have to be reduced "so as to give full and complete effect to such exemption". If the amount of duty calculated according to the schedule became smaller by virtue of the notifications then the only way to give full and complete effect to the notification is to take only the smaller amount in reckoning for the purpose of determination of value in Section 4(4)(d)(ii). Whatever may have been the position before the amendment of the Act, the in view of the Explanation to clause (d) , the 'value' in Section 4(4)(d)(ii) can no longer be computed by reference only to the Act and the Schedule without taking into consideration the exemption notification.

In the case of I.T.C. Limited & Another v, Union of India & Others 1987 (30) E.L.T. 321 (Delhi) at P. 339 it was observed, and in our opinion rightly:-

> "At the time of the earlier decisions, the Act and the notification were in two watertight compartments; the Act was first applied and, from the duty computed, an exemption was granted. This involved three stages: One, the determination of the assessable value: two the computation of the amount of duty payable under the Act; and three, the calculation of the amount of exemption. Once the exemption operated the duty payable in effect became smaller and this may have an impact on the assessable value if it could be redetermined but there was no statutory language which authorised the authorities to go back again to redetermine the assessable value and that had been determined already. The statute and notification operated successfully in three different stages of calculation and the High Court could find no reason to intertwine them into one another so as to make such a redetermination of the assessable value possible or necessary. The amendment has altered the position by expressly integrating and incorporating the effect of the notification in the statute. The assessable value can no longer be computed by reference only to the Act and schedule without taking into consideration the effect of a notification under rule 8, where it exists. This is made doubly clear by amending the definition of the word

assessable 'value' and clarifying that. for this purpose duty payable would be the effective duty payable after taking the notification into account. This definition vitally alters the first stage of computation which was easily done under the Act earlier without any reference to the notification.

Though the terms of the notifications under rule 8 remain unaltered, the inclusion of a reference to the notification in Section 4 itself has made the notification a material part of that section which can no longer be interpreted without reference to the notification." ' In view of the above and also in view of our decision in the case of The, Asstt. Collector of Central Excise & Ors. v. Bata India Ltd., Civil Appeal No.8762 of 1994 (judgment delivered earlier on this date), this appeal is dismissed. the judgment under appeal is affirmed. There will be no order as to costs.

Civil Appeals Nos.1965/86, 1966/86, 1967/86, 2328/86, 1059/81, 2393- 2409/80, 1052/81, 285/88, 285/88, 2155/87, 1415-16/86 84 8178/95, 8263/95 and Civil Appeals Nos. .... of 1996 (Arising out of S.L.Ps.(C) Nos 5881/86, 5882/86).

Special leave granted in S.L.P.(C) Nos.5881 and 5882 of 1986.

For the reasons given in these two cases (Civil Appeal Nos.8762 of 1994 and 1121 of 1992), the above appeals are dismissed. There will be no order as to costs.