

ASSOCIATED CEMENT CO. LTD.

v.

DIRECTOR OF INSPECTION, CUSTOMS &
CENTRAL EXCISE, NEW DELHI.

March 29, 1985

[V.D. TULZAPURKAR, V. BALAKRISHNA ERADI AND
R.B. MISSRA, JJ.]

Income Tax Act 1961, Section 280ZD Tax Credit Certificate (Excise Duty on Excess Clearance) Scheme 1985 & Finance Act 1965, Section 80

Manufacturer of cement—Whether entitled to Tax Credit Certificate in respect of special Excise duty levied under Finance Act 1965.

Words & Phrases :

'Duty of excise'—Meaning of—Section 280ZD (6) (b) Income Tax Act 1961.

The Tax Credit Certificate (Excise Duty on Excess Clearance) Scheme 1965 was framed by the Central Government under s. 280ZD of the Income Tax Act 1961. It was made applicable to the Cement Industry in 1965. For the year 1965-66, the excise duty for Cement levied under the Central Excise and Salt Act 1944 was Rs. 23.60 per ton, but under s. 80 of the Finance Act 1965 a special duty of excise equal to 25% of the total amount of excise chargeable under the Excise Act on various articles including cement was levied.

The appellant company on the excess Clearance of cement made during the concerned year 1965-66 over and above the quantity cleared in the base year (financial year 1964-65) applied for the grant of tax credit certificate to the concerned authority. The authority however, granted the Tax Credit Certificate only in respect of the Central Excise Duty levied under the Excise Act, taking the view that the appellant was not entitled to have any tax credit in respect of any other excise duty levied under a different enactment, namely, s. 80 of the Finance Act,

A The appellant company challenged in the High Court. The aforesaid view, but it was rejected on the ground that tax credit would not be available to the appellant-company in respect of the special excise duty levied under s. 80 of the Finance Act, 1965 having regard to the special meaning assigned to the expression 'duty of excise' by clause (b) of sub-section (6) of section 280ZD

B Dismissing the appeals and Special leave Petitions to this Court.

C HELD : 1. Under s. 280ZD (1) a manufacturer of the concerned goods is entitled to be granted a tax credit certificate for an amount calculated at the rate not exceeding 25% of "the amount of duty of excise payable by him" on that quantum of the goods cleared by him during the relevant financial year which exceeds the quantum of goods cleared by him during the base year and clause (b) of sub-section (6) of section 280ZD defines the expression 'duty of excise' for the purpose in a special manner, as "the duty of excise leviable under the Central Excise and Salt Act 1944". [578C-E]

D 2. Sub clause (3) & (4) of s. 80 of the Finance Act, 1965 refer to the procedural aspect such as the quantification and collection of duty. Simply because the quantification and collection of special duty under the Finance Act is to be done in the manner indicated under the Excise Act, such duty does not become leviable that is chargeable under the Excise Act. [578G-H]

Seshasayee Paper & Boards Ltd. v. Deputy Director of Inspection, Customs and Central Excise, New Delhi, and Anr., 114 ITR 616, over-ruled.

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1201-03 of 1972

From the Judgment and Order dt. 30.4.1971 of the High Court of Delhi in Civil Writ No. 1207/67, 425/68 & 16/70.

WITH

F Special Leave Petitions (Civil) Nos. 2820-23 of 1977. From the Judgment and order dt. 18.1.1977 of the High Court of Delhi in Letters Patent Appeals Nos. 3 to 6 of 1977.

Anil Devan, A.N. Haksar and D.N. Misra for the Appellant in C.A. Nos. 1201-03/72.

B.P. Maheshwari for the Petitioners in SLPs Nos. 2820-23 of 1977.

G *Abdul Khader, T.V.N. Chari and R.N. Poddar* for the Respondents in C.A. Nos. 1201-03/72.

The Order of the Court was delivered by

H TULZAPURKAR, J. Two contentions under a Scheme called "Tax Credit Certificate (Excise Duty on Excess Clearance) Scheme,

1965" framed by the Central Government under s. 280 ZD of the Income Tax Act, 1961, which were negatived by the High Court, have again been pressed by the appellant company before us in these appeals but after hearing counsel for the appellant company at some length and after going through the relevant provision of the said Scheme, relevant section of the Income Tax Act, 1961 and s. 80 of the Finance Act 1965 we are satisfied that the High Court was right in the view which it took on both the contentions and the appeals deserve to be dismissed.

With a view to encourage investment in new equity shares and to stimulate industrial output the Government of India introduced certain special provisions in Chapter XXII-B of the Income Tax Act, 1961 for the grant of tax credit certificate and s. 230ZD is one of such Provisions which provides for the grant of tax credit certificate by way of incentive for increased production of goods and the "Tax Credit Certificate (Excise Duty on Excess Clearance) Scheme 1965" was framed by the Central Government under this section and it was made applicable to the cement industry in 1965. Under the Scheme the amount of tax credit to which a manufacturer of cement is entitled is calculated at a rate not exceeding 25% of the amount of the duty of excise payable by him on the quantity of excess production during the financial year as compared to the production in the base year and the financial year 1964-65 is defined as the base year in relation to an existing undertaking. For the year 1965-66 being the concerned year in the instant case the excise duty for cement levied under the Central Excises and Salt Act, 1944 (for short the Excise Act) was Rs. 23.60 per ton but under s. 80 of the Finance Act 1965 a special duty of excise equal to 25% of the total amount of excise chargeable under the Excise Act on various articles including cement was levied. On the excess clearance of cement made during the concerned year over and above the quantity cleared in the base year the appellant Company applied for the grant of tax credit certificate to the concerned authority under the Scheme for an amount calculated at the rate of 25% of the entire amount of duty of excise paid by it, that is to say, 25% of the basic excise duty levied under the Excise Act at Rs. 23.60 per ton plus the amount of special excise duty paid by it under s. 80 of the Finance Act. The concerned authority granted tax credit certificate only in respect of the Central Excise Duty levied under the Excise Act, taking the view that the appellant was not entitled to have any tax credit in respect of any other excise duty levied under a different enactment, namely, s. 80 of the

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- A** Finance Act. The appellant challenged before the High Court the aforesaid view of the authorities but the High Court negated the challenge principally on the ground that tax credit would not be available to the appellant company in respect of the special excise duty levied under s. 80 of the Finance Act having regard to the special meaning assigned to the expression 'duty of excise' by clause (b) of sub-s(6) of s. 280ZD.
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- It is clear that under s. 280ZD (1) a manufacturer of the concerned goods is entitled to be granted a tax credit certificate for an amount calculated at the rate not exceeding 25% of "the amount of duty of excise payable by him" on that quantum of the goods cleared by him during the relevant financial year which exceeds the quantum of goods cleared by him during the base year and clause (b) of sub-s. (6) of s. 280ZD defines the expression 'duty of excise' for the purpose of the aforesaid provision in a special manner and clause (b) says 'duty of excise' means the duty of excise leviable under the Central excises and Salt Act, 1944".
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- D** Obviously the special excise duty which was levied under s. 80 of the Finance Act 1965 cannot be regarded as having been levied under the Excise Act. Counsel for the appellant company, however, urged before us that having regard to the provisions of sub-clause (3) and (4) of s. 80 of the Finance Act the special excise duty leviable thereunder should be regarded as duty of excise leviable under the Excise Act. It is not possible to accept this contention. It is true that the expression 'leviable' is an expression of wide import and includes stages of quantification and recovery of the duty but in the context in which that expression has been used in clause (b) of sub-s. (6) of s. 280 ZD it is clear that it has been used in the sense of chargeability of the duty. In other words
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- F** the duty of excise in respect whereof tax credit is available would be in respect of such duty of excise as chargeable under the Excise Act and clearly the special excise duty in respect whereof additional tax credit is sought by the appellant company is not chargeable under the Excise Act but chargeable under the Finance Act. Sub-clauses (3) & (4) of s. 80 of the Finance Act on which reliance has been placed by counsel for the appellant company in terms refer to the procedural aspect such as the quantification and collection of duty and simply because the quantification and collection of the special duty under the Finance Act is to be done in accordance with the provisions of the Excise Act such duty does not become
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- H** leviable, that is to say, chargeable under the Excise Act. It is,

therefore, not possible to accept the contention of the counsel that such special duty of excise leviable under the Finance Act should also be included or taken into account for the purpose of granting tax credit certificate under the Scheme read with S. 280ZD of the Income Tax Act 1961. Reference was made by counsel for the appellant to a decision of the Madras High Court in *Seshasayee Paper & Boards Ltd. v. Deputy Director of Inspection Customs and Central Excise, New Delhi and Anr.*⁽¹⁾ where the view taken by that Court seems to support his contention but having regard to the special definition of the expression 'duty of excise' given in s. 280ZD (6) (b) and the construction which we have put on the word 'leviable, we do not approve the decision of the Madras High Court.

The other contention urged by counsel for the appellant relates to the question of limitation but on this aspect the admitted facts are that the first application for tax credit certificate was made by the appellant on June 24, 1966 and the same had been disposed of in December 1966. Thereafter a supplementary application was made on August 26, 1967 which was obviously barred by limitation as per para 5.2 of the Scheme. Further, even the power to condone delay conferred on the Central Authority under para 5.3 would not cover the appellant's case for under that provision a delay for a period not exceeding 60 days could alone be condoned. Counsel, however, urged that the delay in filing the supplementary application ought to have been condoned having regard to the trade notice that had been issued on June 29, 1967 inasmuch as the supplementary application could be said to have been made because of the clarification issued under that trade notice. It is, however, clear that by the trade notice no amendment was effected but merely a clarification of the existing position in law was given and, therefore, the trade notice could not furnish starting point of limitation for the supplementary application.

In our view both the contentions were rightly rejected by the High Court and the appeals are dismissed but without cost.

In view of what is stated above the special leave petitions are also dismissed.

N.V.K.

Appeals & Petitions dismissed.