WALLACE FLOUR MILLS COMPANY LTD.

v.

COLLECTOR OF CENTRAL EXCISE, BOMBAY, DIVISION III.

SEPTEMBER 28, 1989

[SABYASACHI MUKHARJI AND B.C. RAY, JJ.]

Central Excises and Salt Act 1944/Central Excise Rules, 1944, Sections 2(d) and 35L/Rule 9A—Excise Duty—Realisation of—May be postponed for administrative convenience to date of removal of goods from factory.

The appellant is a manufacturer of various types of food products known as Sapaghetti, Macaroni, Vermicelli, etc., falling under Heading No. 1902.10 of the Central Excise Tariff Act. The said goods had been made dutiable only by the Finance Bill 1987-88 with effect from 1st March, 1987. The appellant claimed that their pre-budget stocks of fully manufactured non-excisable goods were entitled to duty free clearance. The Assistant Collector of Central Excise, the Collector of Central Excise (Appeals) and the Tribunal rejected the claim of the appellant.

Before this Court it was contended on behalf of the appellant that the relevant date would be the date of manufacture and in this case the manufacture was complete before the introduction of the budget.

Dismissing the appeal, this Court,

HELD: (1) Excise is a duty on manufacture or production. But the realisation of the duty may be postponed for administrative convenience to the date of removal of goods from the factory. Rule 9A of the Central Excise Rules merely does that. [314C]

(2) The scheme of the Act read with the relevant rules framed under the Act, particularly rule 9A, reveals that the taxable even is the fact of manufacture or production of an excisable article, the

payment of duty is related to the date of removal of such article from the factory. [313F]

(3) On the basis of rule 9A of the Central Excise Rules, the Central Excise authorities were within the competence to apply the rate prevailing on the date of removal. [314E]

Karnataka Cement Pipe Factory **v.** *Supdt. of Central Excise,* **[1986] 23 ELT 313 and** *Tamil Nadu (Madras State) Handloom Weavers Co-operative Society Ltd.* **v.** *Assistant Collector of Central Excise,* **[1978] ELT J. 57, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3544 of 1989.

From the Judgment and Order No. 131/89-D dated 9.5.1989 of the Central Excises & Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1176/88-D.

Rajiv Dutta, Nimish Kothare and K.K. Patel for the Appellant.

The Judgment of the Court was delivered by

SABYASACHI MUKHARJI, J. This is an appeal under section 35L of the Central Excise & Salt Act, 1944 (hereinafter referred to as 'the Act').

The appellant is a manufacturer of various types of food products known as Sapaghetti, Macaroni, Vermicelli, etc., falling under Heading No. 1902.10 of the Central Excise Tariff Act. The appellant filed classification list effective from 1st March, 1987 claiming that their pre-budget stocks of non-excisable goods, namely, various types of food products declared in the classification list as aforesaid were entitled to duty free clearance being pre-budget stocks. The Assistant Cellector of Cental Excise, however, held that the question of clearing pre-budget stocks duty free did not arise because the products in question were excisable though exempted from the duty. There was an appeal from the said order of the Assistant Collector before the Collector of Central Excise (Appeals), Bombay. He dismissed the appeal. The appellant went up in appeal before the Tribunal. It was contended before the Tribunal on behalf of the appellant that the goods in question were not leviable to duty under the aforesaid head until 28th February, 1987 and the said goods had been made dutiable only by the

Finance Bill, 1987-88 with effect from 1st March, 1987. It was submitted further that on 27th February, 1987, the appellant had in their factory a stock of the said product which were fully manufactured, packed and ready for sale and the inventory of the said stock was prepared by the Supdt. of Central Excise on 1st March, 1987. Reliance was placed on several decisions of the different High Courts, namely, decision of the Madhya Pradesh High Court in *Kirloskar Brothers Ltd.* v. *Union of India,* [1978] ELT 33; *Union of India* v. *Kirloskar Brothers Ltd.,* [1978] ELT 690, decision of the Bombay High Court in *Synthetic Chemicals Pvt. Ltd.* v. *S.C. Coutinho,* [1981] ELT 414, decision of the Bombay High Court in *New Chemicals Ltd.* v. *Union of India,* [1981] ELT 920 decision of the Madras High Court in *Sundaram Textiles Ltd.* v. *Asstt. Collector of Central Excise,* [1983] ELT 909, decision of the Allahabad High Court in *Union of India* v. *Delhi Cloth & General Mills,* [1973] ELT 177. On the other hand, the revenue contended that the goods forming the pre-budget stocks were very much excisable goods and that for the purpose of collecting duty, date of manufacture was not material under the scheme of the Act even though the taxable event is the manufacture. It was, therefore, contended that at the time of manufacture of the goods in question, the goods were excisable goods and in view of rule 9A of the Central Excise Rules, 1944, though the taxable event is the manufacture and production, the payment of duty is related to and postponed to the date of removal of articles from the manufactury. The Tribunal accepted the said contention.

We are of the opinion that the Tribunal was right. It is well settled by the scheme of the Act as clarified by several decisions that even though the taxable event is the manufacture or production of an excisable article, the duty can be levied and collected at a later stage for administrative convenience. The Scheme of the said Act read with the relevant rules framed under the Act particularly rule 9A of the said rules, reveals that the taxable event is the fact of manufacture or production of an excisable article, the payment of duty is related to the date of removal of such article from the factory. In that view of the matter, the Tribunal dismissed the appeal and rejected the assessee's contention.

Appearing before us in support of the appeal, Mr. Rajiv Dutta, learned counsel for the appellant contended that in several decisions it has been held, and referred us to the said decisions referred to hereinbefore, that the relevant date would be the date of manufacture and in this case the manufacture was complete before the introduction of the budget. It was submitted that untill 28th February, 1987, when,

A according to Shri Dutta, the goods had been manufactured, the goods in question were unconditionally exempt from the duty. Under the Finance Bill, 1987-88, the said products were made dutiable at the rate of 15% *ad valorem* on or from 1st March, 1987. But the appellant had in their factory, a stock of the said products which were duly
B manufactured, according to Shri Dutta, packed and ready for sale prior to 28th February, 1987. In those circumstances, the goods in question, according to Shri Dutta, would not be subjected to duty at 15% *ad valorem*. Having considered the facts and the circumstances of the case, we are unable to accept this submission. Excise is a duty on manufacture or production. But the realisation of the duty may be postponed for administrative convenience to the date of removal of
C goods from the factory. Rule 9A of the said rules merely does that. That is the scheme of the Act. It does not, in our opinion, make removal be the taxable event. The taxable event is the manufacture. But the liability to pay the duty is postponed till the time of removal under rule 9A of the said Rules. In this connection, reference may be
D made to the decision of the Karnataka High Court in *Karnataka Cement Pipe Factory* v. *Supdt. of Central Excise,* [1986] 23 ELT 313, where it was decided that the words 'as being subject to a duty of excise' appearing in s. 2(d) of the Act are only descriptive of the goods and not to the actual levy. 'Excisable goods", it was held, do not become non-excisable goods merely by the reason of the exemption
E given under a notification. This view was also taken by the Madras High Court in *Tamil Nadu (Madras State) Handlook Weavers Co-operative Society Ltd.* v. *Assistant Collector of Central Excise,* [1978] ELT J 57. On the basis of rule 9A of the said rules, the central excise authorities were within the competence to apply the rate prevailing on the date of removal. We are of the opinion that even though the
F taxable event is the manufacture or the production of an excisable article, the duty can be levied and collected at a later date for administrative convenience.

Having regard to the facts and the circumstances of this case and having regard to the scheme of the excise law, we are of the opinion
G that the Tribunal was right and there are no grounds to assail the order of the Tribunal. In the aforesaid view of the matter, the appeal must fail and, accordingly, is dismissed. there will, however, be no order as to costs.

R.S.S. Appeal dismissed.