

PETITIONER:
M/S J.K. SYNTHETICS LIMITED

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT: 20/12/1996

BENCH:
S.P. BHARUCHA, S.C. SEN

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P.BHARUCHA, J.

The Central Excise Tariff Act, 1985, came into force on 28th February, 1986. It substituted the Schedule in the Central Excises & Salt Act, 1944, whereunder, till then, the excise tariff was prescribed. Prior to 28th February, 1986, exemption notifications issued under Rule 8 of the Central Excise Rules had been in force. They ceased to have effect on the coming into force of the Tariff Act on 28th February, 1986. They were replaced by other exemption notifications, though not precisely in the same terms. The process of issuance of these exemption notifications took some months. It was realised that by reason thereof manufacturers of exempted items would have to pay duty for the periods between the date on which the new tariff came into force and the dates on which the exemption notifications were issued. It was, therefore, that the Central duties of Excise (Retrospective Exemption) Act, 1986, was passed. It gave retrospective effect to the exemption notification. What is relevant for our purpose is section 2, which, so far as is relevant, reads thus:

"2. Retrospective Effect for certain notifications. - (1) Every notification issued by the Government of India in the Ministry of finance (Department of Revenue) on or after the 3rd day of March, 1986, but before the 8th day of August, 1986, in exercise of the powers conferred by sub rule (1) of rule 8 of the central Excise Rules, 1944, for the purpose of

(a) Maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to the 28th day of February 1986 notwithstanding the changes in the rates of duties of excise made by the Central Excise Tariff Act, 1985 (5 of 1986), the

additional Duties of Excise (Textiles and textile Articles) Amendment Act, 1985 (6 of 1986), or the Additional Duties of Excise (Goods of Special Importance Amendment Act, 1985 (7 of 1986): or (b) maintaining the effective rates of duties of excise in respect of certain goods at the level obtaining prior to 1st day of March, 1986 notwithstanding the changes in the rates of duties of excise made by the Finance Bill, 1986, shall , in so far as such notification relates to such goods, be deemed to have and to have always had, effect on and from the 1st day of March, 1986.

(2) The duties of excise which have been collected, but which would not have been so collected if the said notification had been in force at all material times, shall be refunded:

Provided that no such refund shall be allowed where credit of the duties of excise has been taken under rule 56A or, as the case may be, where the goods on which the duties on excise have been paid have been exported under a claim for rebate of such duties."

(The date on which the Central duties of Excise (Retrospective Exemption) Bill was introduced was 8th August, 1986,)

The exemption notification that concerns us in this appeal was issued on 3rd April, 1986, and it reads, so far as it is relevant, thus:

"In exercise of the powers conferred by sub-rule (i) of rule 8 of the Central Excise Rules, 1944, the central Government hereby exempts excisable goods of the description specified in column (5) of the Table hereto annexed (such goods being hereinafter referred to as "final products") and falling under such Chapter, heading no or subheading no. of the Schedule to the central Excise Tariff Act, 1985 (5 of 1986) as is specified in the corresponding entry in column (4) of the said Table, from so much of the duty of excise leviable thereon under the Central Excise and salt Act, 1944(1 of 1944), as is equivalent to the duty of excise leviable thereon under the said Central Excise and Salt Act, or the additional duty leviable under the customs Tariff Act, 1975 (51 of 1975), as the case may be, already paid on the goods of the description specified in the

corresponding entry in column(3) of the said table (such goods bring hereinafter referred to as "inputs") and falling under such Chapter, heading no. or sub-heading no. of the said schedule as is specified in the corresponding entry in column(2) of the said Table.

T A B L E

Sl.No	Chapter, heading No. or sub heading No	Description of inputs	Chapter heading No. or sub heading No	Description of final product
(1)	(2)	(3)	(4)	(5)
6.	29	Mono ethylene glycel	54 or 55	polyester or staple fibre and tow including tops, and polyester filament year,"

The said notification was amended on 3rd April, 1986, thus:

"In the Table annexed to the said notification, after S. No. 6 and the entries relating thereto, the following shall be inserted, namely:

(1)	(2)	(3)	(4)	(5)
xxx 11.	29	xxx Acrylonitrile	59.03	xxx Acrylic fibre
xxx		xxx		xxx "

It was further amended on 3rd April, 1986, to insert the following :

(1)	(2)	(3)	(4)	(5)
17	2907.90	Vinyl acetate monomer	55.01	Acrylic fibre

The appellants manufacture the final products aforementioned. They claimed the benefit of the said exemption notification, as amended, in regard to the inputs aforementioned. The same was given to them on 29th December, 1989, and they were allowed credit in the aggregate sum of Rs.61,02,946.48 (This sum took into account the amount of Rs.34,80,971.95 paid as additional duty). On 3rd January, 1987, a show cause notice was issued to the appellants alleging that the aforesaid credit had been erroneously given, the said notification not having effect retrospectively. The demand therein was confirmed on 7th December, 1987.

the appellants challenged the order confirming the demand in a writ petition in the Rajasthan High Court. by the judgement and order under appeal the High Court allowed the writ petition in respect of the excise duty paid on the inputs aforementioned to the extent that they were used for the manufacture for the final products aforementioned. so far as the additional duty was concerned, the High court declined to give similar relief. it is a little difficult to

understand why, but it would appear that the High Court found an absence of satisfactory pleadings.

There is no dispute that the said notification has retrospective effect for the period 3rd March, 1986 to 8th August, 1986, by reason of the central duties of Excise (Retrospective exemption) Act, 1986.

By the said notification, as amended from time to time, the central Government exempted excisable goods described as final products in the Table thereof from so much of the excise duty leviable thereon as was equivalent to the excise duty leviable under the excise Act or to the additional duty leviable under the Customs Tariff Act and had already been paid on the goods described as inputs in the correspondenting entry of the Table. Excise duty upon the final product was exempted. it was exempted to the extent of the excise duty or the additional duty paid on the input, as the case may be. On a plain reading of the said notification, the appellants were entitled to its benefit both in regard to the excise duty and the additional duty that they had paid on the inputs aforementioned used to manufacture the final products aforementioned.

That the same had been paid would appear to be clear from the order by which the appellants had been given credit therefore that order was not sought to be recalled on the ground that payment of additional duty had not been made but, it would appear, on the ground that the said notification did not have retrospective effect, and this contention of the respondents the High court rejected.

It is, therefore, necessary to modify the judgment and order of the high court and hold that the appellants are entitled to the benefit of the said notification and, consequentially, to refund of the additional duty that had been paid on the inputs aforementioned used in the manufacture of the final products aforementioned, the precise quantum thereof to be determined by excise authorities.

The appeal is allowed accordingly. no order as to costs.