

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

COMMISSIONER OF INCOME TAX vs. LOKNETE BALASAHEB DESAI S.S.K. LTD.

HIGH COURT OF BOMBAY

J.P. Devadhar & Smt. R.P. Sondurbaldota, JJ.

IT Appeal No. 4297 of 2009

22nd June, 2011

(2011) 79 CCH 0472 MumHC

(2011) 243 CTR 0181 : (2011) 59 DTR 0169 : (2011) 339 ITR 0288 : (2011) 200 TAXMAN 0238

Legislation Referred to

Section 145A

Case pertains to

Asst. Year 2001-02

Decision in favour of:

Assessee

Accounts—Valuation of closing stock—Excise duty on goods lying in stock—Expression 'incurred by the assessee' in s. 145A(b) is followed by the words 'to bring the goods to the place of its location and condition as on the date of valuation'—Thus, the said expression relates to the liability determined as tax, duty, cess or fee payable in bringing the goods to the place of its location and condition—Hence, the expression 'incurred' in s. 145A(b) must be construed to mean the liability actually incurred by the assessee—In the case of excisable goods manufactured and lying in stock, excise duty liability crystallises on the date of clearance of goods and not on the date of manufacture—Consequently, assessee cannot be said to have incurred the excise duty liability in respect of excisable goods lying in stock till the date of clearance of such goods—In the instant case, admittedly manufactured sugar was lying in stock and the same was not cleared from the factory—Therefore, excise liability was not incurred in respect of unsold sugar and could not be included in the value of closing stock of sugar

Held :

The expression 'incurred by the assessee' in s. 145A(b) is followed by the words 'to bring the goods to the place of its location and condition as on the date of valuation'. Thus, the expression 'incurred by the assessee' relates to the liability determined as tax, duty, cess or fee payable in bringing the goods to the place of its location and condition of the goods. Explanation to s. 145A (b) makes it further clear that the income chargeable under the head 'Profits and gains of business' shall be adjusted by the amount paid as tax, duty, cess or fee. Therefore, the

expression 'incurred' in s. 145A(b) must be construed to mean the liability actually incurred by the assessee. Though the date of manufacture is the relevant date for dutiability, the relevant date for the duty liability is the date on which the goods are cleared. In other words, in respect of excisable goods manufactured and lying in stock, the excise duty liability would get crystallised on the date of clearance of goods and not on the date of manufacture. Therefore, till the date of clearance of the excisable goods the excise duty payable on the said goods does not get crystallised and consequently the assessee cannot be said to have incurred the excise duty liability. In respect of the excisable goods lying in stock, no liability is determined as payable and consequently, there would be no question of incurring excise duty liability. In the present case, it is not in dispute that the manufactured sugar was lying in stock and the same was not cleared from the factory. Therefore, the Tribunal was justified in holding that in respect of unsold sugar lying in stock, central excise liability was not incurred and consequently the addition of excise duty made by the AO to the value of the excisable goods was liable to be deleted—CCE vs. Polyset Corporation & Anr. 1999 (115) ELT 41 (SC) applied.

(Paras 9, 11 & 12)

Conclusion :

Excise duty liability crystallises on the date of clearance of excisable goods and not on the date of manufacture, and therefore, excise liability was not incurred by assessee in respect of unsold sugar lying in stock and could not be included in the value of closing stock of sugar.

Cases referred:

Asstt. CIT vs. D&H Secheron Electrodes (P) Ltd. (2008) 5 DTR (MP) 279 : (2008) 173 Taxman 188 (MP)

Counsel appeared:

Vimal Gupta, for the Appellant : S.N. Inamdar, for the Respondent

J.P. DEVADHAR, J.

JUDGMENT

Heard. Admit on the following question of law :

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that under s. 145A of the IT Act, 1961 the excise duty element cannot be added to the value of unsold sugar lying in stock on the last day of the accounting year ?"

2. By consent, appeal is taken up for final hearing.

3. The assessment year involved is asst. yr. 2001-02.

4. The assessee is engaged in the business of manufacture and sale of white sugar. In the assessment year in question, the AO held that the excise duty on sugar manufactured but not sold and lying in closing stock was a liability incurred by the assessee under s. 145A(b) of the IT Act, 1961 ('the Act' for short) and has to be considered for disallowance under s. 43B of the Act.

5. On appeal filed by the assessee, the CIT(A) upheld the order of the AO. According to CIT(A), the liability to pay excise duty is incurred on manufacture and the obligation to pay the excise duty continues when the goods are in stock and do not cease to exist.

6. On further appeal filed by the assessee, the Tribunal following the judgment of the Madhya Pradesh High Court in the case of Asstt. CIT vs. D&H Secheron Electrodes (P) Ltd. (2008) 5 DTR (MP) 279 : (2008) 173 Taxman 188 (MP) held that the AO was not justified in adding excise duty to the price of the unsold sugar lying in stock on 31st March, 2001.

7. The argument of the Revenue is that the excise duty liability is incurred on manufacture of sugar and since s. 145A(b) specifically used the expression 'incurred', the Tribunal ought to have held that the excise duty liability has to be taken into consideration in valuing the unsold sugar in stock on the last day of the accounting year.

8. Sec. 145A inserted by the Finance (No. 2) Act, 1998 w.e.f. 1st April, 1999 reads thus :

"145A. Method of accounting in certain cases.—Notwithstanding anything to the contrary contained in s. 145, the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head 'Profits and gains of business or profession' shall be—

(a) in accordance with the method of accounting regularly employed by the assessee, and

(b) further adjusted to include the amount of tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation.—For the purposes of this section, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payments notwithstanding any right arising as a consequence to such payment. "

9. The expression 'incurred by the assessee' in s. 145A(b) is followed by the words 'to bring the goods to the place of its location and condition as on the date of valuation'. Thus, the expression 'incurred by the assessee' relates to the liability determined as tax, duty, cess or fee payable in bringing the goods to the place of its location and condition of the goods. Explanation to s. 145A (b) makes it further clear that the income chargeable under the head 'Profits and gains of business' shall be adjusted by the amount paid as tax, duty, cess or fee. Therefore, the expression 'incurred' in s. 145A(b) must be construed to mean the liability actually incurred by the assessee.

10. Where the excisable goods are manufactured and are lying in stock on the last day of the accounting year, whether the manufacturer has incurred liability to pay excise duty on the manufactured goods is the question.

11. The apex Court in the case of CCE vs. Polyset Corporation & Anr. 1999 (115) ELT 41 (SC) has held that the dutiability of excisable goods is determined with reference to the date of manufacture and the rate of excise duty payable has to be determined with reference to the date of clearance of the goods. Therefore, though the date of manufacture is the relevant date for dutiability, the relevant date for the duty liability is the date on which the goods are cleared. In other words, in respect of excisable goods manufactured and lying in stock, the excise duty liability would get crystallised on the date of clearance of goods and not on the date of manufacture. Therefore, till the date of clearance of the excisable goods the excise duty payable on the said goods does not get crystallised and consequently the assessee cannot be said to have incurred the excise duty liability. In respect of the excisable goods lying in stock, no liability is determined as payable and consequently, there would be no question of incurring excise duty liability.

12. In the present case, it is not in dispute that the manufactured sugar was lying in stock and

the same were not cleared from the factory. Therefore, in the facts of the present case, the Tribunal was justified in holding that in respect of unsold sugar lying in stock, central excise liability was not incurred and consequently the addition of excise duty made by the AO to the value of the excisable goods was liable to be deleted.

13. In the result, the question raised in this appeal is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

14. The appeal is disposed of accordingly with no order as to costs.

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