A PIECO ELECTRONICS AND ELECTRICALS LTD.

v.

COLLECTOR OF CENTRAL EXCISE, PUNE

OCTOBER 24, 1996

B [S.P. BHARUCHA AND S.C. SEN, JJ.]

Provisional Collection of Taxes Act 1931, s.3 r/w Central Excise Tariff, Entry 15 A, Entry 68—Whether declaration as to enforceability of amendment forthwith applied to goods exigible to excise duty but exempt from payment of C *duty—Held, no; there was neither fresh imposition nor increase of excise duty by the amendment and therefore, declaration would not apply.*

The appellants manufactured plastic piece parts such as radio cabinets and knobs which fell within entry 15A(2) of the Central Excise Tariff. However, these were exempt under a separate notification from D **payment of excise duty. By the Finance Bill, 1982 ['Bill'], introduced on February 27, 1982, Entry 15A(2) was proposed to be amended whereby the plastic pieces fell outside the scope of that entry and became exigible to duty under Entry 68. The Bill contained a declaration as required by s.3 of the Provisional Collection of Taxes Act, 1931 ('Act') bringing the amend-** E **ment into effect one day after the Bill was introduced in Parliament.**

The appellants contended that by virtue of the said declaration, the amended Entry 15A(2) had come into operation on February 28, 1982. From that day the plastic piece parts fell outside the ambit of that Entry and were liable to excise duty under Entry 68. The Tribunal came to the F **conclusion that the plastic piece parts continued to remain under Entry 15A(2) until the enactment of the said Bill on April 19, 1982, whereupon they become classifiable under Entry 68.**

Dismissing the appeal, this Court

G **HELD : 1.1. The plastic piece parts being exigible to excise duty even under the unamended Entry 15A but being exempt from payment by reason of the notification, there was no "imposition" of excise duty upon them and they became liable thereto under Entry 68 only when the Bill was enacted and not from February 28, 1982, the date mentioned in the declaration.**

H **[668-A-B]**

1.2. Where, by reason of a Bill the customs or excise statute is to be amended either to impose duty for the fist time or, where it is already imposed, to increase it, the declaration under the Act made the imposition or increase effective upon the introduction of the Bill. The Act does not take account of exemption notifications for they apply only when goods are exigible to duty but, thereby, the payment of duty or a part thereof is exempted. [667-G-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 488 of 1986.

From the Judgment and Order dated 29.8.85 and 6.9.85 of the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in A.No. ED (SE) T.A. No. 484/83-C (Order No. 642/85-C.)

M.S. Ganesh, R. Narain, S. Narain and Ashok Sagar for the Appellant.

R. Mohan, T.V. Ratnam and R.B. Misra for the Respondent.

The Judgment of the Court was delivered by

BHARUCHA, J. This appeal relates to the Provisional Collection of Taxes Act, 1931.

The appellants manufacture plastic piece parts such as radio cabinets, knobs, etc. The plastic piece parts fell within the scope of Entry 15A(2) of the Central Excise Tariff, but they enjoyed the benefit of exemption from payment of excise duty under an Exemption Notification (no. 68/71).

The Finance Bill, 1982, was introduced in the Lok Sabha on 27th February, 1982. It proposed, in clause (49), the amendment of the First Schedule to the Central Excises Act in the manner specified in the Third Schedule thereto. Entry 15A was proposed to be amended.

Clause 2 of the proposed amendment, with which we are concerned, read thus :

"(2) Article of material described in sub-Item (i), the following namely :	

A	Boards, sheeting, sheets films, whether lacquered or metalised or laminated or not; lay that tubings not containing any textile material.	Fifty per cent *ad valorem*."

The plastic piece parts fell outside the scope of Entry 15A(2) as proposed to be amended, and within the scope of the residuary Entry 68.

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The said Bill contained the following declaration :

"Declaration under the Provisional Collection of Taxes Act, 1931.

It is hereby declared that it is expedient in the public interest C that the provisions of clauses 43, 44, 45, 46, 47, 49, 50, 51, 52 and 53 of this Bill shall have immediate effect under Provisional Collection of Taxes Act, 1931 (16 of 1931)."

The Provisional Collection of Taxes Act, 1931, (the said Act) is an D Act "to amend the law providing immediate effect for a limited period of provisions in Bills relating to the imposition or increase of duties of customs or excise". Section 2 thereof defines a "declared provision" to mean "a provision in a Bill in respect of which a declaration has been made under Section 3". Section 3 reads thus :

E "3. *Power to make declarations under this Act.*- Where a Bill to be introduced in Parliament on behalf of Government provides for the imposition or increase of a duty of customs or excise, the Central Government may cause to be inserted in the Bill a declaration that it is expedient in the public interest that any provision of the Bill relating to such imposition or increase shall have F immediate effect under this Act."

Under the provisions of Section 4 a declared provision has the force of law immediately on the expiry of the day on which the Bill containing it is introduced and it ceases to have the force of law under the provisions of G the said Act when it comes into operation as an enactment.

It was the case of the appellants that by virtue of the said declaration, Entry 15A(2) had come into operation on the expiry of the day on which the said Bill was introduced, that is, on 28th February, 1982. The plastic piece parts fell outside the ambit of Entry 15A(2), as sought to be H amended, with effect from 28th February, 1982, and were then liable to

excise duty under Entry 68. Prior to 28th February, 1982, there was no excise duty payable on the plastic piece parts because of the exemption aforementioned. Consequent upon the proposed amendment, excise duty was payable thereon under Entry 68. There was, thus, an imposition of excise duty on the plastic piece parts and, by virtue of the said declaration, the amendment of Entry 15A(2) came into effect on 28th February, 1982, so that from that date they were liable to excise duty under Entry 68. The Tribunal came to the conclusion that the plastic piece parts continued to remain under Entry 15A(2) until the enactment of the said Bill on 19th April, 1982, whereupon they became classifiable under Entry 68. It is that order of the Tribunal which is under challenge.

Learned counsel for the appellants contended that amendment of Entry 15A(2) brought about an imposition of excise duty on the plastic piece parts. The said declaration having been made, the amended Entry 15A(2) came into effect on the expiry of the day on which the said Bill was introduced, that is, on 28th February, 1982. The basis of the submission was that articles falling under the unamended Entry 15A(2) were exempt from excise duty by reason of the aforesaid Exemption Notification. By reason of the proposed amendment of Entry 15A(2), the plastic piece parts became liable to duty under Entry 68. The plastic piece parts were, therefore, liable to excise duty under Entry 68 on and after 28th February, 1982. It was also submitted that no attack by the Revenue on its own declaration should be entertained.

As we see it, the submission on behalf of the appellants proceeds upon an erroneous footing. Section 3 of the said Act empowers the Government, where a Bill to be introduced on its behalf "provides for imposition or increase of a duty of customs or excise", to insert in the Bill a declaration that "any provision of the Bill relating to such imposition or increase shall have immediate effect under the Act". What is requisite is that by reason of the Bill the customs or excise statute is to be amended either to impose duty for the first time or, where it is already imposed, to increase it. By making the declaration under the said Act the imposition or increase becomes effective upon the introduction of the Bill. The said Act does not take account of Exemption Notifications for they apply only when goods are exigible to duty but, thereby, the payment of duty or a part thereof is exempted.

A The plastic piece parts were, even under the unamended Entry 15A, exigible to excise duty but, by reason of the aforesaid Exemption Notification, exempted from the payment thereof. That, consequent upon the amended Entry 15A, the plastic piece parts would become liable to the payment of excise duty did not mean that there was an "imposition" of excise duty upon them or that they became liable thereto under Entry 68, B not when the said Bill was enacted, but from 28th February, 1982.

It cannot be said that in advancing the argument which the Tribunal accepted, as we do, the Revenue made an attack on its own declaration. The Revenue was entitled to urge the true scope of the declaration as C applying only where there was, in fact, an imposition or increase in excise duty by virtue of the said Bill.

The appeal is dismissed. No order as to costs.

S.M. Appeal dismissed.