

**(2002) 09 MAD CK 0148**

**Madras High Court**

**Case No:** Tax Case No. 247 of 1995 4 September 2002

Chemicals and Plastics India Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

**Date of Decision:** Sept. 4, 2002

**Citation:** (2002) 125 TAXMAN 648

**Hon'ble Judges:** R. Jayasimha Babu, J; K. Raviraja Pandian, J

**Bench:** Full Bench

**Advocate:** P.P.S. Janarthana Raja, for the Assessee T.C.A. Ramanujam, for the Revenue, for the Appellant;

### **Judgement**

R. Jayasimha Babu, J.

The question referred at the instance of the assessee is,

"Whether on the facts and in the circumstances of the case, the Customs Duty and Excise Duty actually paid and shown as current assets in the balance sheet and not charged to the profit and loss account could be deducted u/s 43B in computing the income of the assessee ?"

2. The assessment year is 1984-85. The assessee is engaged in the manufacture of Poly Vinyl Chloride, rigid PVC pipes and fittings and other items. The assessee had, in the previous year corresponding to the assessment year 1984-85, imported materials required for the manufacture of the assessee's products. The assessee had paid import duty of Rs. 35,09,826. According to the assessee the cost of the imported materials inclusive of duty was taken to the profit and loss account only on consumption basis. The balance of import duty of Rs. 11,58,833 paid on the raw materials held as closing stock, was taken into the balance sheet and shown as part of current assets. Schedule 15 of the balance sheet set out the current assets, loans and advances. In that schedule, under the heading "Inventories" value of raw materials held in stock was shown. The value of the raw materials stated therein, according to the assessee, includes this sum of Rs. 11,58,833.

3. Similarly excise duty paid on finished goods held as closing stock was shown as part of the inventory under the current assets in the balance sheet.

4. The assessee's claim u/s 43B of the Act for deducting the actual customs duty and excise duty paid on the stock of raw material and finished goods was negatived by the assessing officer, the Commissioner and finally by the Tribunal, all of whom took the view that as the amounts paid towards customs duty and excise duty had not been shown separately in the profit and loss account, the deduction could not be given.

5. Section 43B of the Act which provides that certain deductions to be only on actual payment opens with a non obstante clause in relation to any other provision in the Act, and provides, inter alia that any sum payable by the assessee by way of tax, duty, cess or fee, by whatever names called, under any law for the time being in force shall be allowed irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him, only in computing the income referred to u/s 28 of that previous year in which that sum is actually paid by the assessee. The first proviso permits such payment being made even after the close of the previous year, but prior to filing the return of income u/s 139(1) of the Act.

6. The assessee, therefore, is entitled to the deduction of the amount of duty paid in the year in which the payment was made. The fact that part of the customs duty was paid in respect of raw materials which remained with the assessee at the end of the year would not deprive the assessee of the benefit of claiming the deduction in the year in which duty had been actually paid. So also the right of the assessee to claim deduction for the amount of excise duty paid in the year in which it was paid is unaffected by the fact that part of the duty paid was in relation to finished goods which remained with the assessee at the end of the year.

7. Section 43B does not stipulate that before an assessee could claim deduction in that year, the assessee should have shown the amounts paid towards duty under a separate head and that the inclusion of the duty element in the valuation of the current assets would disentitle the assessee from claiming the deduction u/s 43B.

8. The fact that the duty paid was not charged to the profit and loss account by itself would not disentitle the assessee from claiming deduction u/s 43B. It is open to the assessee to file an adjustment statement before the assessing officer. Learned counsel for the revenue submitted that the duty paid is a legitimate charge on the gross profits when the gross profits has been properly ascertained by valuing the closing stock as also the opening stock including therein the duty paid on such stock.

9. A view similar to the one taken by us has been taken by the Bombay High Court in the case of [Commissioner of Income Tax Vs. Bharat Petroleum Corporation Ltd.,](#).

10. The assessee had filed before the assessing officer the necessary adjustment statement. The question referred to us is answered in favour of the assessee.