(2002) 11 SC CK 0024

In the Supreme Court Of India

Case No : Civil Appeal 11931 of 1995

Collector of Central Excise APPELLANT

Vs

Simac India (P) Ltd. RESPONDENT

Date of Decision : 21-11-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (2003) 151 ELT 16 : (2002) 10 JT 579 : (2003) 11 SCC 321

Hon'ble Judges : S. S. M. Quadri, J;Arijit Pasayat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. In this appeal by the revenue, against the order of the Customs, Excise and Gold (Control) Appellate Tribunal (for short ''the Tribunal''), the short question that arises for consideration is: whether the order under challenge is sustainable in law?

2. The only point dealt with by the tribunal is whether the respondent-assessee was eligible for exemption under notification no. 120/1975-CE dated 30th April, 1975 (for short, ''the exemption notification'').

3. The assessee manufactures hand knitting machines and sells them, in bulk, to M/s. Singer Sewing Machine Company (for short, ''M/s. Singer''). It claimed benefit of the notification. The superintendent, central excise, issued a notice dated 16th July, 1976 to the assessee to show cause as to why the benefit of the exemption notification should not be denied to it. On 3rd January, 1979, the assistant collector of central excise, Thane, division I, accepted the contention of the assessee extending the benefit of the notification. However, the collector (appeals) issued a show cause notice on 24 December, 1979 calling upon the assessee to show cause as to why the benefit of the notification should not be denied and consequentially, made a demand for the differential duty of Rs. 18,55,570.69 by revising the order of the assistant collector. On appeal, against

the order of the collector (appeals), the tribunal, by the impugned order, held that the assessee was entitled to the benefit of the exemption notification. It is against that order, the revenue is in appeal before us.

4. Mr. A.K. Ganguli, learned senior counsel appearing for the revenue, contends that in view of the findings recorded by the tribunal itself, the assessee would not be entitled to the benefit of the exemption notification. He has also invited our attention to the findings recorded by the collector (appeals) to show that the buyer of the machines, namely, M/s. Singer, was having financial and other interest and, therefore, it resulted in the determination of the price within the meaning of clause (iv) of the exemption notification. Mr. G. Umapathy, learned counsel appearing for the assessee, on the other hand, contends that the tribunal has come to a clear finding that there was no evidence on record to show that the invoice price was influenced by any relation-ship between M/s. Singer and the assessee.

5. We have perused the order under challenge and the exemption notification. The exemption notification, insofar as it is relevant for our purposes, reads as under:

"Notification No. 120/75-CE Dated 30.4.75

(6) Goods falling under item no. 68 cleared from the factory of manufactures, on sale, are exempt from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the invoice price (excluding duty and local taxes, if any, included in such price) charged by the manufacturer from the sale of such goods:-

Provided that if the aforesaid exemption shall be admissible only if:

(i) to (iii) xxx xxx xxx

(iv) The invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the manufacturer and the buyer or any person associated in business with the buyer other than the relationship created by sale of the aforesaid goods;"

6. A perusal of the exemption notification, extracted above, shows that where the price of the goods, falling under item 68 of the first schedule, assessed u/s 4 of the Central Excise and Salt Act, 1944 and the rules made thereunder is more than the invoice price, the notification grants exemption in respect of so much of the duty of excise leviable on it as is in excess of the duty calculated on the basis of invoice price charged by the manufacturer from the sale. In the circumstances mentioned in Clause (iv), the benefit of the exemption would be lost when the invoice price is influenced by any commercial, financial or other relationship, whether by contract or otherwise, between the manufacturer or any person associated in business with the manufacturer and the buyer or any person associated in business with the buyer, other than the relationship created by sale

of the aforesaid goods. The import of the notification has been succinctly summed up by this Court in Texmaco Limited v. Collector of Central Excise, Calcutta in the following words:

"The exemption notification posits and predicates the possibility that the ''invoice value'' could be lesser than the ''assessable value'' and, taking into account the need to mitigate the hardship on the manufacturer of being called upon to pay duty on the value in excess of the invoice value, seeks to exempt the manufacturer from payment of duty ''in excess of the duty'' calculated on the basis of the ''invoice price''."

7. Now turning to the order under challenge, in paragraph (21), the tribunal noted:

"The nature of relationship between Simac and Singer, Singer''s interest in the sale of Simac products, Simac''s dependence on Singer for finances, sale, marketing etc., exceeded the normal area of a buyer and the seller and would have made the prices tainted, but for the exemption notification No. 120/75 CE."

So also, in paragraph (24), it held as under:

"We have seen that the involvement of Singer in the activities of Simac was more than that of a normal buyer. For the purposes of Section 4 of the Act it could amount to a favoured buyer, but for notification No. 120/75 CE, the same criteria could not apply."

8. A perusal of the above extracts of the order under appeal shows that the tribunal was not very clear about the import of the exemption notification. The tribunal further held, in paragraph (29), as under:

"The relationship was created by the sale of goods between Simac and Singer, and no evidence has been brought on record as in what way the invoice prices were influenced by such a relationship, and as to what extent Simac''s sale prices as such could not be the prices for Section 4 of the Act."

9. This portion of the order under appeal ignores the evidence referred to by the collector (appeals) in paragraph (7) of his order. We may also note that the contention of the assessee that in view of the conclusion arrived at by the tribunal, the other contentions, namely, the power to issue the notice and the question of limitation, which were urged before it, were not considered.

10. For all these reasons, we consider it just and appropriate to set aside the order under appeal and remand the case to the tribunal for fresh disposal in accordance with law on all the contentions raised before it.

11. The civil appeal is, accordingly, allowed.

12. There shall be no order as to costs.

