(2002) 02 PAT CK 0020

In the Patna High Court

Case No : Tax Case Nos. 4 of 2000

Commissioner, Central Excise APPELLANT

Vs

Gemini Silk Ltd. and Others RESPONDENT

Date of Decision : 15-02-2002

Acts Referred:

Citation : (2002) 02 PAT CK 0020

Judgement

1. All these four Tax Cases are connected matters and as such they have been heard together and are being disposed of by this common order.

2. All these Tax Cases have been filed u/s 130(3) of the Customs Act for a direction to the Customs, Excise and Gold (Control) Appellate Tribunal, hereinafter referred to as ''CEGAT'' to state facts and refer the matter on the following questions:

1. Whether in view of the declaration made by one of the Petitioners, namely, M/s Annapurna Yarn Fabrics u/s 89 of the Finance (No. 2) Act, 1988 in respect of the Kar Vivad Samadhan Scheme, 1998 which was accepted by the Department and the Petitioner was ordered to deposit 50% of the penalty amount determined by the Commissioner Central Excise, the order of CEGAT can be given effect to?

2. When the opinion obtained by the Department from the local experts has not been considered by the CEGAT as proper then whether the CEGAT should have remanded the case back for retesting?

3. Whether it was proper and legal on the part of the CEGAT to reject the findings of the adjudicating authority merely on the plea advanced by the Commissioner Central Excise without having regard to the documentary evidence placed on record and the factual aspects of the case?

3. On 26.7.1995 the Custom authorities searched the premises of Md. Sammi Alam, who was engaged in weaving of Silk Yarn in the town of Bhagalpur, and seized 1183 kg. Silk Yarn valued Rs. 21.64 lacs. According to them, it was foreign Silk Yarn and was kept without any valid document. During the course of

enquiry, aforesaid Sammi Alam appeared and made statement that he had purchased the aforesaid Silk Yarn from M/s Gemini Silk Ltd. Bhagalpur, M/s Annapurra Yarn Fabrics, Bhagalpur and M/s Ridhi Sidhi Textiles Ltd., Bhagalpur. Thereafter, notices were issued to them and the Commissioner, Central Excise vide order dated 21.7.1997 passed order of confiscation of the Silk Yarn and fabrics and imposed penalty of Rs. 1,00,000/- (Rupees one lac) each on the aforesaid Sammi Alam and aforesaid three manufacturers.

4. Four appeals were filed by them before CEGAT and by order dated 31.3.1999 it set aside the order of the Commissioner, Central Excise. Thereafter the Department filed an application before the CEGAT to state facts and refer the matter to the High Court on the aforesaid three questions u/s 130(1) of the Customs Act.

5. CEGAT by order dated 28.3.2000 rejected the prayer of the Department on the ground that those questions were not questions of law and are related to only appreciation of evidence. Thereafter these applications have been filed before us to direct CEGAT to state facts and refer the aforesaid questions for adjudication before this Court.

6. According to the provisions of Section 130(1) of the Customs Act, reference can be made to this Court on any question of law arising out of such order. Thus, the questions of fact cannot be subject matter of reference. The questions as to the construction of the Statute, interpretation of documents forming the basis of claim of the parties and such other matters are questions of law. However, in any case, question of law must arise out of such order and if question of law are not raised and not decided, then that cannot be referred to for adjudication u/s 130(1) of the Customs Act. In this connection, reference may be made to the case of Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., wherein it has been held as follows:

(31) ... (1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

(2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is therefore one arising out of its order.

(3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be question arising out of its order.

(4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it. may arise on the findings given by it.

Stating the position compendiously, it is only a question that has been raised before or decided by the Tribunal that could be held to arise out of its order.

7. According to the Department, three questions arise for reference in this Court.

Question No. 1 is as to whether in view of the declaration made by one of the Petitioners namely, M/s Annapurna Yarn Fablrcs u/s 89 of the Finance (No. 2) Act, 1988 in respect of the Kar Vivad Samadhan Scheme, 1998 which was accepted by the Department and the Petitioner was ordered to deposit 50% of the penalty amount determined by the Commissioner Central Excise, the order of CEGAT can be given effect to?

8. In our view, no direction can be issued to make reference for the simple reason that this question has not been raised before the appellate Tribunal nor it as been decided by it and as such it is not a question of law arising out of the order.

9. So far other two questions are concerned, they relate to appreciation of evidence. The appellate Tribunal has considered the evidence and arrived at one conclusion which according to the Department was not proper appreciation of evidence. In view of the settled law that the reference cannot be made for the purpose of reappraisal of evidence, we are of the view that with regard to these questions no reference can be made by CEGAT.

10. In the result, there is no merit in all these Tax Cases and they are accordingly dismissed.