(2012) 02 SC CK 0126

In the Supreme Court Of India

Case No : Civil Appeal Nos. 4421-4424 of 2003.

Commissioner of C. Ex., Bangalore - Appellant @HASH B.S. Appliances Ltd.

Date of Decision : 02-02-2012

Acts Referred:

Citation : (2012) 286 ELT 339

Hon'ble Judges : H.L. Dattu and Anil R. Dave, JJ.

Bench : Division Bench

Advocate : Ms. Binu Tamta, Shri. B. Krishna Prasad, Advocates (NP), for the Appellant; S/Shri. Alok Yadav, Krishnamohan K. Menon and Rajesh Kumar, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. The present Civil Appeals are directed against the judgment and order dated 13-12-2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "the Tribunal"), South Zonal Bench at Bangalore in Final Order No. 1569-1572/2002 in Appeal No. E/828/2002 & E/831/2002 [2003 (153) E.L.T. 398 (Tribunal)], whereby the Tribunal has dismissed the Revenue?s appeals, which have been impugned before us.

2. The assessee-respondent is the manufacturer of Washing Machines, falling under Chapter Sub-heading 845010 of the Schedule to Central Excise Tariff Act, 1985. The assessee has provisionally assessed its goods cleared from April, 1994 onwards under Rule 9B of the Central Excise Rules, 1944. In relation to such clearance of goods, the Assistant Commissioner of Central Excise, IV Division (hereinafter referred to as "the Adjudicating Authority"), had issued five show cause notices dated 27-12-1996, 1-5-1997, 4-11-1997, 17-2-1998 and 30-7-1998 for the period commencing from April 1994 to June 1998 and had also directed the assessee to pay the differential duty under the provisions of the Central Excise Act, 1944 (?the Act? for short). It had also levied certain penalties. According to the Adjudicating Authority, M/s. BPL Sanyo Utilities & Appliances Ltd. (?M/s. BSUA? for short) are the manufacturers of washing

machines and they have also effected sales of the said manufactured machines to M/s. BPL Ltd. It is further their stand that M/s. BSUA would price the products at a price lower than the price fixed by M/s. BPL Ltd., when it effects its sale in the market. It is further their case that the price that is charged by M/s. BSUA for the sale of the washing machines, is far less when compared to the sales effected by M/s. BPL Ltd. in the open market and the same has been done in order to avoid the payment of duty under the provisions of the Act.

3. The show cause notice has been replied by the assessee and in that, the transaction between M/s. BSUA and M/s. BPL Ltd. was clearly brought out. Along with its explanation, M/s. BSUA had produced various other documents such as agreement between the parties, sale invoices, books of accounts, ledgers, etc. After rejecting the explanation offered by the assessee, the Adjudicating Authority had confirmed the demands raised in the said show cause notices vide its Order dated 13-11-1998.

4. The assessee-respondent, being aggrieved by the order and the demands raised by the Adjudicating Authority, had preferred appeals before the Commissioner of Central Excise & Customs (Appeals) (hereinafter referred to as "the First Appellate Authority"). However, the First Appellate Authority directed the assessee for pre-deposit of 50% of the duty demanded. Against this Order, the assessee filed a Writ Petition before the High Court of Karnataka. The High Court had reduced the pre-deposit to 40% of duty demand. On Appeal, this Order was, subsequently, upheld and confirmed by the Division Bench of the High Court, and, by this Court. Accordingly the assessee had deposited Rs. 3,60,00,000/-. Thereafter, the First Appellate Authority, vide order dated 18-1-2001, had set aside the demands raised by the Adjudicating Authority.

5. Revenue, being aggrieved by the order of the First Appellate Authority had carried the matter before the Tribunal. The Tribunal vide its order dated 5-2-2002 remanded the matter to the Appellate Authority on the ground that the Appellate Authority had not looked into the number of documents relied by the revenue.

6. Thereafter, the First Appellate Authority had decided the issue de novo vide its Order dated 1-5-2002, whereby, it allowed the assessee?s appeals and had set aside the demands raised by the Adjudicating Authority.

7. Being aggrieved by this Order of the First Appellate Authority, the revenue preferred an appeal before the Tribunal. The Tribunal vide its Order dated 13-12-2002 has rejected Revenue?s appeals. That is how the Revenue is before us in these appeals.

8. We have heard Ms. Binu Tamta, learned counsel appearing for the Appellant and Mr. Alok Yadav, learned counsel appearing for the respondent. We have also carefully perused the orders passed by the Adjudicating Authority, First Appellate Authority and the Tribunal.

9. In our considered view, the Tribunal and the First Appellate Authority have not

committed any error whatsoever. Further, in our view, the findings and the conclusions reached by those Authorities cannot be characterised as perverse. In that view of the matter, we do not see any ground to interfere with the order passed by the Tribunal and accordingly, the appeals deserves to be dismissed and they are dismissed.

10. Ordered accordingly.

