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(2015) 11 SC CK 0010

In the Supreme Court Of India

Case No : Civil Appeal Nos. 1059-1062 of 2008

Commissioner of C. Ex., Chennai — APPELLANT

Vs

Gillette Diversified Operations Ltd. — RESPONDENT

Date of Decision : 20-11-2015

Acts Referred:

Citation : (2015) 326 ELT 417

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri Yashank Adhyaru, Senior Advocate, P.K. Mullick, Ms. Rashmi Malhotra, Ravi Shankar Verma, Pankaj Pandey and B. Krishna Prasad, Advocates, for the Appellant; Shri Kavin Gulati, Senior Advocate, Ms. Anisha Mitra, Ms. Ruby Singh Ahuja, Ms. Deepti Sarin, Ms. Eesha Mohapatra and Mrs. Manik Karanjawala, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. The period involved in the present appeals for which the purported differential duty is demanded is August, 1996 to May, 1998.

2. It so happened that the respondent M/s. Gillette Diversified Operations Limited (hereinafter referred to as ''Gillette'') entered into an agreement with another company incorporated under the Indian Companies Act and known as M/s. Rialto Enterprises (P) Limited (hereinafter referred to as ''Rialto''). As per the said agreement, an arrangement was agreed to between Gillette and Rialto whereby Rialto was to manufacture electric hair removers and electric dyers for Gillette. Rialto was a Small Scale Industrial unit (SSI unit) and in order to undertake this job, Rialto needed requisite machinery that was leased to it by M/s. Braun India Pvt. Limited (hereinafter referred to as ''Braun''). It is not in dispute that Rialto had been paying excise duty on the goods manufactured and cleared by it which were supplied to Gillette.

3. A Show Cause Notice dated 31-8-2001 was issued by the Revenue/Appellant

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to Gillette alleging therein that it had connived with Rialto for evading central excise duty by indulging in undervaluation of the excisable goods. The case set up in the Show Cause Notice was that at the relevant time, manufacturing of electric hair removers and dyers was reserved for SSI unit, hence, Gillette could not have directly manufactured the said goods. Therefore, in connivance with Braun, which is a group company of Gillette and Rialto, it got the same manufactured in the premises of Rialto. It was alleged that Rialto was a shadow/ dummy company which was created by Gillette in order to facilitate the aforesaid operations and pay the excise duty at a much lesser rate inasmuch as after getting those goods manufactured from Rialto, Gillette was selling these goods in the market at a much higher rate.

4. To buttress the stand taken in the Show Cause Notice that Rialto was a shadow company, following facts were stated in the Show Cause Notice :-

(i) Machinery worth crores of rupees was supplied by M/s. Braun India Ltd. to M/ s. Rialto Enterprises (P) Ltd. on lease.

(ii) Machinery imported by M/s. Rialto Enterprises (P) Ltd. was purchased by M/s. Braun India (P) Ltd.

(iii) The respondent provided "interest free advances" to M/s. Rialto Enterprises (P) Ltd. obviously for purchasing raw materials and other expenses incurred in manufacturing.

(iv) Employees of the respondent were posted at the plant of M/s. Rialto Enterprises (P) Ltd.

(v) The goods manufactured by M/s. Rialto Enterprises (P) Ltd. were sold to the respondent at cost price, which were then sold by the respondent at a much higher price as second sale, thus, evading central excise duty running into crores of rupees.

5. Gillette filed reply to the Show Cause Notice denying the aforesaid allegations. It was claimed that Rialto was an independent entity as it was a company incorporated under the Indian Companies Act with different shareholders and Directors who had no connection with Gillette. It was also stated that the contract entered into between the parties was of manufacture and purchase of goods and was on principal to principal basis.

6. Notice was also issued to Rialto and Rialto filed its reply dated 13-11-2001 to the said Show Cause Notice, inter alia, making the following submissions :-

(a) Rialto was a private company owned by Mr. Ranjit Pratap and his family members. There was no common directorship between Rialto and Gillette.

(b) Rialto was manufacturing Silk Epil Hair Epilator and Hair dryer under the Braun brand for GDOPL since July 1997.

(c) Agreement for "Sale and Supply" had been entered into between GDOPL and

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Rialto on a principal to principal basis.

(d) All components and raw materials were procured by Rialto. Moulding of some components was also done by Rialto through third parties.

(e) Factory land and buildings used by Rialto was on lease from Rayala (A Rialto Group Company).

7. Both Gillette and Rialto, thus, denied all the allegations in the Show Cause Notice.

8. The said Show Cause Notice was adjudicated upon by the Commissioner of Central Excise, Chennai, who confirmed the allegations made in the Show Cause Notice and passed Order-in-Original dated 2-2-2004 whereby he confirmed the demand raised in the Show Cause Notice. Interest and penalties were also imposed. Gillette and Rialto preferred appeal against the said order of the Commissioner which appeal has been allowed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT'') vide impugned judgment dated 12-7-2007 [2007 (217) E.L.T. 551 (Tri.-Chennai)].

9. After examining the record and the evidence which was produced and relied upon by the Commissioner in his order, the CESTAT has arrived at an categorical finding of fact that Rialto was not a dummy or shadow company of Gillette and further that the contract between the parties was on principal to principal basis. It has also stated that, if at all, such a contract can be treated as one whereby Gillette had given job work to Rialto, the transaction between the parties were not sham. Even if, it was a job work done by Rialto, Rialto had been paying excise duty thereon.

10. The findings which are returned by the CESTAT in this behalf included finding that Rialto and Gillette are separate and independent Companies with separate juristic personality; Rialto manufactured the goods and supplied the same to Gillette on payment of duty of excise under statutory invoices; in the Show Cause Notice, the Department did not raise any objection with regard to these returns; the goods were not manufactured by Rialto out of raw materials procured by themselves; the capital goods used for the purpose, i.e., machinery, was lawfully acquired by Rialto under a lease agreement with Braun.

11. At the same time, the facts which weighed with the Commissioner were brushed aside by the CESTAT with cogent reasons. It pointed out that the same were insignificant and were, in any case, satisfactorily explained by both Gillette and Rialto.

12. The aforesaid are the finding of facts arrived at by the CESTAT.

13. Mr. Yashank Adhyaru, learned senior counsel appearing for the Revenue, had endeavoured to demonstrate that the aforesaid finding of facts are perverse and contrary to the record. He took us through the relevant discussion in this behalf in Order-in-Original.

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14. After going through the same, we are of the opinion that the findings arrived at by the CESTAT cannot be considered to be perverse.

15. The appeals, thus, lack merit and are, accordingly, dismissed.

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