
(2010) 10 SC CK 0125

In the Supreme Court Of India

Case No : Civil Appeal No's. 1075-1076 of 2008

Commissioner of C. Ex., Indore

APPELLANT

Vs

C.T. Cotton Yarn Ltd.

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (2010) 259 ELT 3

Hon'ble Judges : Mukundakam Sharma, J; Anil R. Dave, J

Bench : Division Bench

Advocate : H.P. Raval, ASG, Harish Chandra, Binu Lamia and B. Krishna Prasad, for the Appellant; Ajay Aggarwal and Rajan Narain, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned Counsel appearing for the parties.
2. Counsel appearing for the parties have taken us through the judgment and order of the Tribunal. The Tribunal in its impugned judgment and order dated 27-6-2007 has given a finding that the soft cotton waste in question is a reject and residue arising in the processes and it is an amalgam of waste material as well as short fibres.
3. Learned Counsel appearing for the Appellant has submitted that the Tribunal held the issue arising for consideration in favour of the Assessee and against the Appellant herein. However, while doing so, the issue with regard to limitation which was raised by the Respondent herein was not decided as the Tribunal went into the merits and decided in favour of the Respondents. But the counsel for the Appellant has drawn our attention to the decision of this Court in Commissioner of Sales Tax, Bombay Vs. Bharat Petroleum Corporation Ltd., wherein it was held by this Court as follows:

....other point is whether the Assessee can be said to manufacture "acid sludge" and "cotton waste" respectively. It is suggested for the State that the Assesseees

are purchasing acid and cotton for the manufacture of kerosene and yarn/cloth respectively and it is ludicrous to suggest that the Assessee's are purchasing sulphuric acid and cotton for manufacturing acid sludge and cotton waste. Put like that the Assessee's contention seems a little artificial. But the contention is not really absurd. For, the Assessee's do purchase sulphuric acid and cotton for use in a manufacturing process which yields not only kerosene and yarn/cloth but also acid sludge and cotton waste. As pointed out in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* (1967 19 STC 1), where a subsidiary product is turned out regularly and continuously in the course of a manufacturing business and is also sold regularly from time to time, an intention can be attributed to the manufacturer to manufacture and sell not merely the main item manufactured but also the subsidiary products

4. When the aforesaid decision was pointed out to the counsel appearing for the Respondent, he has stated that the aforesaid decision has no relevance to the facts of the present case and in support of his contention, he sought to rely upon the decision of this Court in *State Bank of Saurashtra Vs. Chitranjan Rangnath Raja and Another*, He has specifically referred to paragraph 18 of the said judgment and particularly to the following observations:

.... In our opinion, the Court has strained the language to reach an unsustainable conclusion, holding that cotton waste is not the processed form of cotton but it is a by-product quite different form of cotton though containing cotton fibre which cannot be used as ordinary cotton. As its name indicates, cotton waste appears to be droppings, stripping and other waste product while ginning cotton. It cannot be said to be a by-product of cotton but it is cotton nonetheless minus the removed seed. In other words it is residue of ginned cotton. We, therefore, find it difficult to agree with the view of the High Court that cotton waste is not comprehended in the item "cotton ginned and unginned."

5. The aforesaid decision was rendered in the case of agricultural produce whereas the decision in the case of *Bharat Petroleum* was rendered in the context of Bombay Sales Tax Act, which provision was corresponding to Section 2(f) of Central Excises and Salt Act, 1944. Therefore, the decision of the Supreme Court in *Bharat Petroleum Corpn. Ltd.* prima facie appears to have some relevance to the facts of this case.

6. At this stage, the counsel appearing for the Respondent seeks to argue on the limitation also. Since no finding whatsoever was recorded by the Tribunal on the aforesaid issue, we are of the opinion that the impugned judgment and order passed by the Tribunal is required to be set aside and sent back to the Tribunal, for the purposes of giving its decision on all the issues like limitation raised and is mentioned paragraph 11 of the impugned judgment and order and also to give decision on merits after noticing and appreciating the aforesaid decisions which have been relied upon before us. The Tribunal may hear the parties and render its decision by giving reasons for it as expeditiously as possible.

7. In terms of the aforesaid observation, the appeals stand disposed of, by setting aside the impugned judgment and remitting it to the Tribunal for fresh consideration in accordance with law.