

(2015) 09 SC CK 0145

In the Supreme Court Of India

Case No : Civil Appeal No. 1460 of 2007

Commissioner of Central Excise and Customs

APPELLANT

Vs

Kasat Chemicals P. Ltd.

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4

Citation : (2015) 324 ELT 631

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

Bench : Division Bench

Advocate : K. Radhakrishnan, Sr. Advocate, Rupesh Kumar, B. Sunita Rao, Subas C. Acharya, Pratik, Hrishikesh, Anurag and B. Krishna Prasad, Advocates, for the Appellant; Arvind P. Datar, Senior Advocate, Medhavin Baxi, Pratap Venugopal, Anuj Sharma, Gaurav Nair, Nih

Final Decision : Dismissed

Judgement

1. The question that arises for consideration in this appeal relates to the manufacture, clearance and quantification of the product Kalogen Brill 3K and its valuation. Another issue which is raised pertains to under-valuation of the product known as Kalogen BL 3SL. The facts in brief are that the Respondent-Assessee herein who is the manufacturer of excisable goods falling under the erstwhile T.I. 68 and T.I. 14D of the Central Excise Tariff and declared their products in their classification lists as Kalogen BL 3SL under T.I. 14D chargeable to 30 per cent of BED plus 5 per cent SED and Kalso/Solvent KG under T.I. 68 at nil rate taking benefit of Notification No. 179/77 as the goods were manufactured without any aid of power. The Appellant/Revenue issued show cause notice to the Respondent dated 15-8-1985 on the ground that reports were received by the Superintendent, Central Excise (Anti-Evasion), Headquarters Pune, after visiting the Respondent-factory, to the effect that there were 7 barrels containing "Kalogen BL 3SL (Power form)" which were duly packed in Polythene bag weighing each 45 kg (net) found to be fully manufactured but not accounted for in the RG1 Register. It was also noticed that the 1st Respondent (hereinafter

referred to as the "Assessee") had not mentioned the stage of RG1 account for the finished products.

2. It was also found that there was a stock of 63 Carboys containing Blue Chemical Liquid kept in wooden crates. On due enquiries being made from Shri H.R. Kasat, M.D. of KCPL it was told that those goods had been received by him from Bombay 4 to 5 days back by Tempo. They could however not produce any documents/vouchers/delivery challan/octroi papers, etc., in respect of the above goods. Hence the unaccounted 7 barrels containing Kalogen BL 3SL (Powder form) and 63 Carboys containing Blue Chemical liquid manufactured by KCPL in the factory were seized under panchanama for contravention of Central Excise Rules, 1944.

3. On examination of the classification list/price list filed by the Assessee it appeared that the Assessee was manufacturing Kalogen BL 3SL and Kalsol/Solvent KG. The Assessee had classified Kalogen BL 3SL under T.I. 14D as a S.O.D. and had been paying duty @ 30% BED + 5% SED on Bed ad valorem and had filed a price list for the said product declaring the assessable value at Rs. 20/- per kg.

4. As regards the product Kalsol/Solvent KG, the Assessee had classified the same under T.I. 68 and had claimed full exemption from payment of Central Excise duty quoting Notification No. 179/77, dated 18-6-1977 as amended by Notification No. 74/83, dated 1-3-1983 contending that the said product was being manufactured without the aid of power. The classification list and price list appeared to have been duly approved of by the Assistant Collector, Central Excise, Pune IV, Division, Pune.

5. The Respondent replied to the said Show Cause Notice whereafter it was adjudicated upon and Order-in-Original dated 9-9-1986 was passed demanding duty in the sum of Rs. 1,56,92,883/-. Certain penalties were also imposed. The said order was taken in appeal by the Assessee before the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as Tribunal") and by orders dated 26-7-1990, the Tribunal remanded the case back to the Collector to decide the correct classification of Kalsol/Solvent KG or Copper Complex based on the technical literature of the matter and the expert opinion in this behalf which had been obtained but had not been taken into consideration by the Collector. After remand, the matter was adjudicated afresh which resulted in Order-in-Original dated 28-6-1991, again confirming the aforesaid demand and penalties. In appeal filed before the Tribunal, the Tribunal set aside the order of the Collector.

6. Suffice is to state that the Commissioner passed the Order-in-Original and the matter travelled up to the Tribunal. The Tribunal has, this time, allowed the appeal of the Respondent vide orders dated 4-4-2006 [2006 (202) E.L.T. 666 (Tri. - Mumbai)] which is impugned in the appeal.

7. After going through the said order, we find that the Tribunal has discussed in

detail all the intricacies and has arrived at the finding that the order of the Commissioner is based on certain assumptions and presumptions which are not found from the records. Detailed discussions in this behalf is reproduced herein:-

The Commissioner's finding based on certain assumptions and presumptions. There is no doubt that the Appellants have issued invoices for supply of the goods, but the mere fact that invoices have been issued will not indicate the manufacture of different product and even if it is accepted that the different product is being manufactured, the fact remains that the Appellants have not received any further consideration in monetary terms over and above the invoice price on the alleged misdeclaration. When the charge of receipt of any additional consideration in monetary terms is not found, the valuation as per the invoice price has to prevail and in this connection it has been held by the Board that even if the goods are sold at prices less than the manufacturing cost, the sale prices will constitute Under Section 4 of the Central Excise Act, 1944 as held by the Supreme Court in the case of Collector of Central Excise, New Delhi Vs. Guru Nanak Refrigeration Corpn., following the settled law on this aspect even if a new product emerges, that has been sold at the rate of other products consequent duty demand as arrived at in the orders cannot be upheld, when classification and value thereof is not required to be changed.

(a) When it is found that the classification of KG/Kalsol solvent as organic derivative under item 14D cannot be upheld, there is no cause for invoking the larger period of limitation as regards misdeclaration, when the direction of the Tribunal while remanding the matter were to be kept in mind and have not been followed.

(b) There is no cause to determine the additional duties on the grounds of misdeclaration of values while applying the decision of the Apex Court as arrived at hereinabove are applied to the facts. In this view of the matter, the duty demands even on valuation cannot be sustained.

(c) When the duty demands on Kalogen Kalson cannot be upheld there is no case to uphold the duty demands as arrived at in order of the lower authority.

(d) When duty demands are not being sustained, there can be no cause for upholding the penalty as arrived at a perusal of the show cause notice had revealed that it does not contain any allegation on the Directors part nor does it call upon them even to show cause. Therefore, relying on the following case laws Expo, 1995 (75) E.L.T. 513, 1999 (108) E.L.T. A121 (S.C.) confirming that and 2002 (139) E.L.T. 720 and 1986 (88) E.L.T. 60 , the penalties arrived at on the Directors cannot be upheld. Appeals are to be allowed after setting aside the penalties.

(e) Since no duty demands and penalties on the Assessee is also being upheld, the order impugned cannot be upheld and the appeals are to be allowed.

The aforesaid findings are pure findings of facts after due consideration of the

entire material on record. We do not find any reason to disturb the same. The appeal is, accordingly, dismissed.