(2015) 04 SC CK 0172

In the Supreme Court Of India

Case No : Civil Appeal No. 4035 of 2004 and C.A. Nos. 4910-4914, 6043-6044 of 2004

Commissioner of Central Excise — APPELLANT

Vs

Alwar Lamps Pvt. Ltd. — RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Central Excise (No. 2) Rules, 2001 — Rule 25
Central Excise Rules, 2002 — Rule 25
Central Excises and Salt Act, 1944 — Section 11AC, 173Q, 4A, 4A(1), 4A(2)
Standards of Weights and Measures (Packaged Commodities) Rules, 1977 — Rule 34

Citation : (2015) 321 ELT 177

Hon'ble Judges : A.K. Sikri, J;Rohinton Fali Nariman, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Respondents herein are engaged in the manufacture of auto bulbs of various sizes and voltage wattage under the brand name ''Antopal'' falling under entry 85.39. The issue arising for consideration is whether the bulbs manufactured by the Respondents and cleared to OE manufacturers are to be classified under entry 8539.10 of the Central Excise Tariff Act, 1985, as claimed by the Assessee or under entry 8539.90, as alleged by the revenue. It is clear that both the entries, viz., 8539.10 and 8539.90 fall under the same Chapter, viz., 85.39. The relevant entries read as under:

"85.39 Electric filament or discharge lamps, including sealed beam, lamp units and ultra-violet or infrared lamps; Are lamps

8539.10 Vacuum and gas filled bulbs of retail sale price not exceeding Rs. 20 per bulb.

8539.90 Other"

2. In the present case, as pointed out above, the Revenue has taken the position

that the goods of the Respondent-Assessee fall under Entry 8539.90 that is "other" and on this, the rate of duty is 16 per cent, whereas for the goods falling under entry 8539.10, the rate of excise is 8 per cent. On this ground, the Revenue issued a show cause notice dated 5-7-2002 demanding the excise duty of Rs. 33,20,015/- as well as equivalent amount of penalty Under Section 11AC of the Central Excise Act, 1944. Penalty was also demanded Under Section 173Q of the Central Excise Rules, 1944, read with Rule 25 of the Central Excise (No. 2) Rules, 2001 and Rule 25 of the Central Excise Rules, 2002.

3. The Commissioner, after adjudication, passed the final order dated 27-3-2003 confirming the aforesaid demand and also imposing an equivalent amount of penalty. The view of the Commissioner was that in order to claim classification under Entry 8539.90, it was mandatory to mention the MRP on the pack of bulb which was not mentioned by the Respondent in the instant case. For this purpose, the Commissioner referred to Note 7A of Chapter 85 which reads as follows:

"For the purpose of the Chapter, the expression ''retail sale price'' has the meaning assigned to it in Section 4A of Central Excise Act, 1944 (1 of 1944)."

4. Feeling aggrieved by the aforesaid order of the Commissioner, the Respondent filed appeal before the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT''). The CESTAT has accepted and allowed the appeal of the Respondent thereby quashing the demand as well as the penalty in its order dated 8-1-2004 [Associated Provincial Picture Houses Limited v. Wednesbury Corporation, (1948) 1 K.B. 223]. This is the subject matter of the present case.

5. A perusal of the order of the CESTAT will show that the CESTAT has considered the true import of Note 7A of Chapter 85 in conjunction with Section 4A of the Central Excise Act and particularly the term ''retail sale price'' which has been defined in the explanation contained in Section 4A of the Central Excise Act. This Explanation is to the following effect:

"For the purposes of this section, retail sale price means any maximum price at which the excisable goods in packaged form may be sold to the ultimate consumer and includes all taxes, local or otherwise, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding and the like, as the case may be, and the price is the sole consideration for such sale."

6. It is not necessary to go into the detailed discussion of the aforesaid provisions. Ultimately, on the reading of these provisions and particularly the fact that the bulbs sold by the Respondent are sold to the industrial units at a retail price less than Rs. 20 per bulb, the CESTAT has concluded that the goods would fall under Entry 8539.10. It is not in dispute that the bulbs are sold in the packaged form. The only consideration which weighed with the Commissioner, prompting him to pass the order was that on these goods sold in packaged form,

the retail price, viz., MRP, was not mentioned.

7. We are of the opinion that there was no necessity to mention this retail price on the bulbs sold in the packaged form in view of Rule 34 of The Standards of Weights and Measures (Packaged Commodities) Rules, 1977, which gives an exemption in respect of certain packages and would include the category of goods sold by the Respondents. For the sake of convenience the said rule is also taken note of hereinbelow:

"34. Exemption in respect of certain packages. - Nothing contained in these rules shall apply to any package containing a commodity if,-

(a) the marking on the package unambiguously indicates that it has been specially packed for the exclusive use of any industry as a raw material or for the purpose of servicing any industry, mine or quarry:

Provided that this exemption shall not be available in respect of-

(i) any yarn which is sold in hanks to handloom weavers;

(ii) any component, part or material used in any workshop, service station or any other place where servicing or repairing of any bicycle, tricycle or motor vehicle within the meaning of the Motor Vehicles Act, 1939 (4 of 1939), is undertaken;

(iii) any package containing a commodity of net content of 5 kilograms or 5 litres or less and displayed for sale at the retail outlet;

(iv) any package containing a commodity to be sold by number or length and displayed for sale at the retail outlet."

8. We will be failing in our duty if we do not refer to Jayanti Food Processing (P) Ltd. Vs. Commissioner of Central Excise, Rajasthan, (2007) 121 ECC 1 : (2007) 10 JT 327 : (2007) 8 SCC 34 : (2007) 9 SCR 221 : (2007) 10 STT 375 : (2007) 2 UJ 1002 which was referred to by the learned Senior Counsel appearing for the Revenue in support of his submission. Para 7 of that judgment which was strongly relied upon by the learned Senior Counsel has interpreted the provisions of Section 4A(1) and (2) of the Central Excise Act, 1944, and has held that having regard to the provisions of the Standards of Weights and Measures Act, 1976, or the rules, following conditions have to be satisfied by the Assessee in order to be entitled to have reduction of abatement as declared by the Central Government in its notification. However, we find that the aforesaid judgment was rendered in the context of arriving at the valuation and the provisions of Standards of Weights and Measures Act were applicable. As we have already pointed out above, in the present case, Rule 34 exempts the Respondent from mentioning the MRP on the packages, the aforesaid judgment would be of no assistance to the Revenue. We are also of the opinion that Section 4A in its wholesome form would not be applied in its entirety in cut and paste form. The relevant portion of the said Section, in view of Note 7A incorporates the meaning of ''retail sale price'' which alone would apply.

9. We thus, agree with the view taken by the CESTAT and finding no merit in this appeal, the same is dismissed.

Civil Appeal Nos. 4910-4914 of 2004

10. In these appeals which were decided in favour of the Respondent by the CESTAT, CESTAT has upheld its own order dated 8-1-2004 passed in the case of M/s. Alwar Lamps Pvt. Ltd. Since we have dismissed the appeal of the Revenue against that order passed, following that judgment, these appeals are also dismissed.

Civil Appeal Nos. 6043-6044 of 2004

The appeals are disposed of in terms of the aforesaid order passed in Civil Appeal No. 4035 of 2004.

