(2002) 01 GUJ CK 0045

In the Gujarat High Court

Case No : Central Excise and Customs Gold Control Ref. No. 1 of 2001

Commissioner of Central Excise APPELLANT

Vs

Ashok Fashion Ltd. RESPONDENT

Date of Decision : 22-01-2002

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3, 3(1), 3(3)
Constitution of India, 1950 — Article 265

Citation : (2002) 83 ECC 410 : (2002) 141 ELT 606 : (2002) 22 GLH 601

Hon'ble Judges : R.K. Abichandani, J;K.A. Puj, J

Bench : Division Bench

Advocate : Asim J. Pandya, for the Appellant;

Judgement

R.K. Abichandani, J.—The Customs, Excise & Gold (Control) Appellate Tribunal, Mumbai has referred the following question of law to this High Court u/s 35G(1) of the Central Excises & Salt Act, 1944 :

"Whether in absence of any specific penal provisions in Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the provisions relating to confiscation and imposition of penalty are applicable to man-made fabrics which are ''excisable goods'' finding mention in Schedule to the Central Excise Tariff Act, 1985 though they are liable to additional duty of excise only?"

2. There was a raid conducted in the premises of the appellant by the officers of the department on 12th/13th February, 1993 and a panchnama was drawn in respect of the proceedings undertaken during the raid. Thereafter, a show cause notice was issued on 11th May, 1993 in respect of the violations of the provisions of the Act and the Rules and the appellant was called upon to pay duty of Rs. 52,717.00 and also to show cause as to why penalty should not be levied under various Central Excise Rules mentioned therein.

2.1 The violation of the Rules entailing imposition of penalty was alleged on the ground that the assessee had evaded central excise additional duty by removing the fabrics without payment of such duty. In the show cause notice dated 11-5-1993, issued to the assessee by the Collector, Central Excise and Customs, it was alleged that the assessee had removed man-made fabrics measuring 50,446 Mtrs. after processing without payment of central excise duty and without issue of GP 1s. It was alleged that the authorised signatory of M/s. Ashok Fashions Ltd., in his statement, had not disputed this fact. The additional duty to the tune of Rs. 52,717.00 was thus evaded. The acts of contraventions of various provisions referred to in the show cause notice constituting wilful and deliberate suppression of facts and misdeclaration of quantities in statutory central excise documents with an intention to evade payment of excise duty, were alleged to have been committed. It was alleged that these acts were covered by Rules 9(2) and Clauses (a), (b) & (d) of sub-rule (1) of Rule 173Q of the Central Excise Rules. A demand of additional duty of excise to the tune of Rs. 52,717.00 was, therefore, made.

3. The demand came to be confirmed by the Collector, which order was challenged before the Tribunal. The Tribunal found that the physical verification had been done by the panchas and that there was a statement recorded of the appellant''s authorised signatory Dineshbhai Dahyabhai Shah accepting the mistake which had resulted in the breach of the provisions of the Central Excise Rules. The tribunal found that the levy of duty was rightly made. As regards the penalty of Rs. 10,000.00 imposed on the appellant under Rule 173Q(1) of the Central Excise Rules, 1944 by the Collector, Central Excise & Customs, under his order dated 8th August, 1994, the Tribunal, placing reliance on the decision of the Delhi High Court in Pioneer Silk Mills v. Union of India - 1995 (80) E.L.T. 507 (Delhi) reported in [1997 (90) E.L.T. 343 (Tri) = 1996 ECR 131], held that no such penalty could be levied. The appeal was, therefore, partly allowed in respect of the penalty imposed on the appellant, while confirming the demand of duty under the said order made by the Collector.

3.1 The Collector, Central Excise and Customs had, under the said order, also imposed penalty on Dineshbhai Dahyabhai Shah, the authorised signatory of M/s. Ashok Fashions Ltd. and the appeal which was filed by that authorised signatory was allowed by the Tribunal again relying on the decision of the Delhi High Court in Pioneer Silk Mills (supra).

4. The Tribunal has set aside the imposition of penalty relying on the decision of the Delhi High Court in case of Pioneer Silk Mills (supra), in which the Delhi High Court, while interpreting the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (hereinafter referred to as ''the Additional Duties of Excise Act), held that there was no provision under the said Additional Duties of Excise Act for confiscation of goods and imposition of penalty. It was held that, under the Additional Duties of Excise Act, there was no provision creating a charge in the nature of penalty, and that the term ''Levy and

Collection'' in Section 3(3) of the Additional Duties of Excise Act had a restricted meaning in view of the use of the words ''including those relating to refunds and exemptions from duty''. The Delhi High Court held that Chapter II of the Central Excise Act, 1944 entitled "Levy and Collection" contained provisions for penalties, but the heading of that Chapter itself was not a guiding factor. The Court held that, "the argument that various sections falling in Chapter II of the Central Excises Act, which has the heading ''Levy and Collections'' would also be construed as provisions for levy and collection of additional duty as well, is of no avail to the revenue .....". In paragraph 39 of the judgment, the Delhi High Court held as under :

"We have given our considerable thought to various arguments raised by the parties. We find there is no mandate in the Additional Duties Act for levy of penalty and the Central Excises Act and the Rules made thereunder cannot be imported in the Additional Duties Act for the purpose of levy of penalty. We have spent anxious moments as the interpretation we have put has grave consequences for the revenue as similar terminology as used in Section 3(3) of the Additional Duties Act has been used in various Acts and other enactments, but then Article 265 of the Constitution mandates that no tax shall be levied and collected except by authority of law. There being no such authority of law to levy penalty, we have to hold so."

4.1 According to the High Court, the provisions of levying penalty must be explicit and therefore, the provisions regarding confiscation and penalty could not be invoked in respect of levy and collection of additional duties of excise payable u/s 3(3) of the Act.

5. The learned standing Counsel appearing for the Revenue submitted that Section 3(3) of the Additional Duties of Excise Act adopts, by reference, the provisions of the Central Excises and Salt Act, 1944 and the Rules made thereunder and in view of such specific mandate, the legislation having already been made by incorporating the provision of the Act of 1944 and the Rules made thereunder by reference, it was not necessary to enumerate all the assessment, confiscation and penalty provisions which were applicable to the levy and collection of central excise duty under the Act of 1944 and the Rules framed thereunder. In other words, according to him, by virtue of Section 3(3) of the Additional Duties of Excise Act, all the provisions of assessment, confiscation and penalty were automatically applicable to the goods subjected to additional duty, which were described in the first schedule to the Additional Duties of Excise Act. He also submitted that these very goods were also enumerated in the schedule to the Central Excise Tariff Act, 1985 which is referred to in Section 3(1) of the Central Excise Act, 1944 and therefore also, no different approach can be adopted in respect of the additional duties of excise imposed under the Act of 1957.

5.1 The learned Standing Counsel appearing for the Revenue relied upon the following decisions in support of his contentions ;

(a) The decision in Ujagar Prints v. Union of India, reported in 1988 (38) E.L.T. 535 = : AIR 1989 SC 516 was relied upon for the proposition that Section 3(3) of the Additional Duties of Excise Act expressly made the provision in the Central Excise Act apply in relation to ''Levy and Collection'' of additional duties. It was held that the term ''levy'' is an expression of wide import and included both imposition of a tax as well as its quantification and assessment.

(a)(i) The question that arose before the Supreme Court was, whether the provision of Section 3(3) of the Additional Duties of Excise Act was sufficient to attract Section 2(f) of the Central Excise Act defining ''manufacture''. In paragraph 29 of the judgment, the Supreme Court held that, it was clear that what applied to the main levy, applied to the additional duty as well, and that there was no substance in the contention which proceeded on the presupposition that processing did not amount to manufacture u/s 3(1) of the Additional Duties Act. In the concurring judgment, justice Ranganathan held that the words ''Levied and Collected'' used in Section 3(1) of the Additional Duties Act were the same as the words used in Article 265 of the Constitution, which have been interpreted as comprehending the entire process of taxation commencing from the imposition of the tax by enacting a statute to the actual taking away of money from the pocket of a citizen it was held that, they take in every stage in the entire process of taxation. It was then held that the words ''Levy and Collection'' in Sub-section (3) of Section 3 of the Additional Duties Act cannot be construed differently from the words ''Levied and Collected'' used in Sub-section (1) of Section 3 and therefore, Section 3(3) also covers the entire gamut of Section 3(1) and cannot be construed as becoming operative at a somewhat later stage. In paragraph 48 of the judgment, it was held that the provision of Section 3(3) of the Additional Duties Act, is an instance of ''referential legislation'', which legislative device was quite well known and the principles applicable to it fairly well settled. After referring the two topics of ''referential legislation'', the Supreme Court held that Section 3(3) of the Act of 1957 did not incorporate in that Act any specific provisions of the Central Excise Act, 1944, but only declared generally that the provisions of the Act of 1944 shall apply ''so far as may be'', that is, to the extent necessary and practical for the purposes of the Act of 1957 as well. In paragraph 51 of the judgment, it was held that, "There is no reason or logic why all the incidents attaching under the earlier legislation, insofar as they are not clearly inconsistent with the later one should not be extended to the later legislation as well." In paragraph 52 of the judgment, full and literal effect to the language of Section 3(3) which had the effect not only of attracting the procedural provisions of the Act of 1944, but also all its other provisions, including those contained in the definitions.

(b) A Division Bench judgment of this Court in Maheshwari Mills Ltd. Vs. Union of India, which was in context of the similar provision of Section 3 of the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, was cited for the proposition that Section 3(3) of that Act indicated that it was a case of legislation by reference, and that it was evident that the Central Excise Act, 1944 and the

Rules framed thereunder including those relating to refund and exemption of duties had become integral part of the Act of 1978 and that they were applicable to the levy of duty u/s 3(1) of the Act of 1978 as they would apply in relation to the levy and collection of duties of excise on such goods under the Act of 1944 or the rules framed thereunder.

6. The Additional Duties of Excise (Goods of Special Importance) Act, 1957 was enacted to provide for levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated and the recommendations made by the Finance Commission in its second report. ''Additional duties'' is defined to mean the duties of excise levied and collected under Sub-section (1) of Section 3.

6.1 Section 3 of the said Act, which falls for our consideration, reads as under :

"3. Levy and collection of Additional Duties :-

(1) There shall be levied and collected in respect of the goods described in Column (3) of the First Schedule produced or manufactured in India and on all such goods lying in stock within the precincts of any factory, warehouse or other premises where the said goods were manufactured, stored or produced, or in any premises appurtenant thereto duties of excise at the rate or rates specified in Column (4) of the said Schedule.

(2) The duties of excise referred to in Sub-section (1) in respect of the goods specified therein shall be in addition to the duties of excise chargeable on such goods under the Central Excise Act, 1944 (1 of 1944), or any other law for the time being in force.

(3) The provisions of the Central Excise Act, 1944, and the rules made thereunder, including those relating to refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they ap-. ply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1)."

7. It will be noticed from Sub-section (3) of Section 3 of the Additional Duties Act that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder including those relating to refunds and exemptions are made applicable, so far as may be, in relation to the levy and collection of additional duty of excise. The provisions of the Central Excise Act, 1944 and the Rules made thereunder are made applicable to the additional duty of excise in the same manner and extent to which they apply in relation to the levy and collection of the duties of excise on the goods specified in column 3 of the First Schedule referred to in Section 3(1) of the Additional Duties Act. This is so stated, because, all the goods specified in the said First Schedule were also subjected to duties of excise at the rates set forth in the Schedule to the Central Excise Tariff of 1985, u/s 3 of the Central Excise Act, 1944, which provision also

lays down that such duties of excise shall be ''levied and collected'' in such manner as may be prescribed.

7.1 The expression ''so far as may be'' in Section 3(3) would exclude the applicability of only such of the provisions of the Central Excise Act and the Rules made thereunder which are inconsistent with the provisions of the Additional Duties of Excise Act, while all other provisions thereof are clearly adopted by reference. It is unnecessary to raise any doubt on this aspect from the expression ''including those relating to refunds and exemptions from the duty'' occurring in Sub-section (3) of Section 3 of the Additional Duties Act, because, the word ''including'' used in this expression only makes explicit by reckoning in, the provisions of the Act and the Rules relating to refunds and exemptions as a part of the whole i.e. all the provisions of the Central Excise Act, 1994 and the Rules made thereunder, which are expressly adopted by reference in relation to the levy and collection of additional excise duty and made applicable in the same way as they applied to these very goods for the levy and collection of excise duties applicable to them under the Act of 1944 and the Rules made thereunder. The provision of Section 5A in Chapter II of the Central Excise Act, 1944 relates to power to grant exemption from duty of excise and of Section 11B, also contained in Chapter II, relates to claim for refund of duty. It is, therefore, obvious that the word ''including'' used in the expression ''including those relating to refunds and exemptions'' has only explicitly reckoned in, what is already comprised in the provisions of the Central Excise Act and the Rules framed thereunder. The word ''including'' is, therefore, not used in any restrictive sense, and, given its full play Subsection (3) of Section 3 will make applicable all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, to the levy and collection of additional duties of excise, in such manner as is prescribed under the rules, to all the excisable goods included in the First Schedule to this Act of 1957. To make sure that the words ''Levy and Collection'' in their literal sense and away from their statutory context, may not be construed by the uninformed to exclude topics of exemption and refund, which meaning may not flow from their literal popular sense, the law makes it explicit by the expression ''including those relating to refunds and exemptions'' and brings to fore the fact that they are also part of the scheme of ''Levy and Collection'' under the provisions of the Act and the Rules.

8. Article 265 of the Constitution of India provides that no tax shall be levied or collected except by authority of law. The word ''levied or collected'' in Article 265 have a wider connotation and would embrace the entire process of imposing the tax till its realisation. Power to provide for collection of tax would include power to devise means and methods of collection of tax. The power to levy a penalty for proper enforcement of the taxing statute flows from the power to impose a tax as an ancillary power to ensure proper realisation of the taxes.

8.1 In Khazan Chand and Others Vs. State of Jammu and Kashmir and Others, , it was held that the taxing power will also comprehend within it, inter alia, the power to provide for collection of tax including prescribing the methods of recovery of the amount of tax due if the person liable to pay the tax does not voluntarily pay it. The power to make a law with respect to a tax also includes a power to make provisions in the relevant statute with respect to all matters ancillary and incidental to the levy, assessment, collection and recovery of tax.

8.2 In Commissioner of Income Tax, Andhra Pradesh Vs. Bhikaji Dadabhai and Co., , it was held that the expression ''assessment'' was not used merely in the sense of computation of income, but was also applicable to the procedure for declaration and imposition of tax liability and the machinery for enforcement thereof. It was held that penalty was an additional tax imposed upon a person in view of this dishonest or contumacious conduct.

8.3 By incorporating all the provisions of the Central Excise Act and the Rules in connection with levy and collection of additional duties of excise u/s 3(3) of the Act, the legislature has clearly, unambiguously and by such express enactment created the liabilities which are attached to violation of the excise regulations contained in the Rules. The provisions clearly satisfy the ratio of the decision of the Supreme Court in Khemka and Co. (Agencies) Pvt. Ltd. Vs. State of Maharashtra, , on which reliance was placed by the Delhi High Court in Pioneer Silk Mill''s case (supra).

9. The Levy and collection of duties of excise u/s 3 of the Central Excises Act, 1944 is to be done in such a manner as may be prescribed, which means prescribed by the Rules under that Act. By virtue of Section 3(3) of the Additional Duties Act, levy and collection of additional duties of excise will therefore have to be done in the manner prescribed by the Rules framed under the Central Excise Act, 1944, because, that Act and the Rules made thereunder are generally adopted by reference for the purpose of the Additional Duties Act.

9.1 Chapter VI of the Central Excise Act, relates to ''Adjudication of Confiscation and Penalties''. u/s 33, it is provided that, where by the rules made under this Act, anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by the authorities mentioned therein Section 34A lays down that, no confiscation made or penalty imposed under the provisions of the Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of the Act or under any other law. Section 37(2)(ib) of the Central Excise Act empowers the Central Government, inter alia, to make such rules as may, "provide for the assessment and collection of duties of excise, the authorities by whom functions under this Act are to be discharged, the issue of notices requiring payment, the manner in which the duties shall be payable, and the recovery of duty not paid",

9.2 It excisable goods are deposited in or removed from any specified place in contravention of Rule 9(1) of the Central Excise Rules, the producer or manufacturer is made liable to pay penalty which may exceed up to Rs. 2,000.00

and the goods would be liable to confiscation over and above the liability to pay the duty. Then there are provisions imposing penalty for mis-declarations as laid down in Rules 92E(iv), 96M(iii) 96S(iv), 96ZL(iii). Rule 173Q provides for ''confiscation and penalty'' in respect of the excisable goods notified under Rule 173A(1) of Chapter VII-A of the Rules, and Chapter XXII of the Excise Rules deals with penalties and confiscations. Accordingly, the acts and omissions covered by Rules 173Q and 209 entail confiscation of goods and imposition of a penalty to the extent prescribed thereunder. There are also provisions of penalty under Rule 209A and for general penalty, in Rule 210.

9.3 It will thus be seen that penalty provisions are an integral part of assessment and collection of duties of which the necessary adjuncts are confiscation and penalty without which the imposition of taxes will lack teeth and become ineffective. If power to impose penalty for violation of the obligation to pay additional duty of excise is excluded in respect of the goods enumerated in the First Schedule of the Additional Duties Act, then these taxation provisions would be reduced to a donation drive in respect of these very items for which duty of excise is also imposed under the Central Excise Act, 1944 and the Rules made thereunder and violation of which would entail both confiscation and penalty.

10. The provisions of penalties are devised to ensure that the excise regulations are enforced and the recovery of excise dues is secured. The process of collection of revenue envolves enacting methods of collection. The procedure of assessment and collection are intertwined with confiscation and penalty, once violation of excise regulations is established, as contemplated by the Rules imposing penalties. The object of the provisions to impose heavy penalties is to ensure that the revenue is protected against procrastination, carelessness or deceit which if practised on a large scale, would make collection of the taxes a difficult task.

11. For the above reasons, it is clear to us that all the provisions of the Central Excise Act, 1944 and the Rules made thereunder, including the provisions relating to confiscation and imposition of penalty contained therein, are applicable to the levy and collection of the additional duty of excise u/s 3(1) of the Additional Duties of Excise Act, 1957 in the same manner as they already apply in relation to the levy and collection of such goods under the Central Excise Act, 1944 and Rules framed thereunder.

12. We accordingly hold that the provisions relating to confiscation and imposition of penalty contained in the Central Excise Act, 1944 and the Rules thereunder are applicable to man-made fabrics which are liable to additional duty of excise under the First Schedule of Section 3(1) of the Additional Duties of Excise Act and are ''excisable goods'' mentioned in Schedule to the Central Excise Tariff Act, 1985, by virtue of incorporation by reference u/s 3(3) of the Additional Duties Act, of all the provisions contained in the Central Excise Act, 1944 Rules made thereunder.

13. The question referred to us is answered accordingly in favour of the Revenue and against the assessee. There shall be no order as to costs.

