

(2015) 03 SC CK 0178

In the Supreme Court Of India

Case No : Civil Appeal Nos. 37-44 of 2004

Commissioner of Central Excise

APPELLANT

Vs

Shree Rajasthan Syntex Ltd.

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A(1), 4

Citation : (2015) 318 ELT 626 : (2015) 51 GST 707

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

Bench : Division Bench

Advocate : K. Radhakrishnan, Senior Advocate, Arijit Prasad, Rashtni Malhitra and B. Krishna Prasad, for the Appellant; V. Lakshmikumaran, M.P. Devanath, Vivek Sharma, L. Charanaya, Aditya Bhattacharya, R. Ramachandran, Anandh K. and Rajesh Kumar, Advocates for the

Final Decision : Allowed

Judgement

1. The Respondents herein are engaged in the manufacture of yarn and waste of the man-made fibre. It was availing sales tax exemption under the Sales Tax Incentive Scheme of 1989 on the yarn and waste, as issued by the State of Rajasthan. Under this Incentive Scheme though the Respondents were collecting the full incidence of sales tax from its buyer, 75% thereof was retained by the Respondents and only 25% of the said sales tax collected was payable and paid to the State Government in terms of the Incentive Scheme. Since the remaining 75% of the amount of sales tax collected was not included for the purpose of payment of excise duty, the Appellant/Revenue Department issued show cause notice dated 26-11-2001 demanding a sum of Rs. 37,03,161/- alleging that the excise was payable on the amount after including the aforesaid 75% sales tax as well. After giving opportunity to the Respondents to reply to the said show cause notice and after hearing the Respondents the Commissioner vide order dated 10-3-2003 confirmed the aforesaid amount of demand and also imposed penalty of equal amount. The penalty was also imposed on the individual officers of the Respondents. The Respondents, apart from arguing the matter on merit had

raised the issue of limitation with the plea that it was not a case where extended period of limitation could be applied. This argument of the Respondents was also negated by the Commissioner in this aforesaid order.

2. Aggrieved by the said order, the Respondents preferred an appeal before CEGAT. CEGAT allowed the appeal on merits and set aside the order of the Commissioner holding that the aforesaid amount of 75% of the sales tax component retained by the Respondents was not includible while calculating the excise amount. Against this judgment present appeal is preferred.

3. We may state here that the period involved is November 1996 to July, 2001. Show cause notice in this behalf, as noted above, was issued on 26-11-2001. The valuation of the excisable goods has to be in terms of Section 4 of the Central Excise Act, 1944. The said Section was amended in the year 2000 which amendment came into effect on 1-7-2000. The legal position relating to identical sales tax incentives Scheme which would prevail in view of the un-amended provision as well as amended provision, came up for consideration before this Court in Commissioner of Central Excise, Jaipur-II Vs. Super Synotex (India) Ltd. and Others, (2014) AIRSCW 1761 : (2014) 3 SCALE 142 . This Court took the view, after analysing the provision of Section 4 which provided prior to the amendment, that the Assessee would be entitled to claim deductions towards sales tax from the assessable value and sales tax incentive which is retained by the Assessee namely 75% sales tax amount in this case. The Court also held that this position changed after the amendment in Section 4 with effect from 1-7-2000 and in arriving "the transaction value" the amount of 75% which was retained by the Assessee, will be included. As per the aforesaid decision, the Assessee/Respondent herein will not be liable to pay any excise duty on the sales tax amount which was retained under the Incentive Scheme up to 30th June, 2000. However, this component of sales tax which was retained by the Assessee after 1-7-2000 shall be includible in arriving at the transaction value and sales tax shall be paid thereon.

4. Insofar as the question of extended period of limitation is concerned, we have gone through the order of the Commissioner and are of the opinion that he has rightly held that the extended period of limitation as per the proviso of Section 11A(1) of the Central Excise Act, 1944 would be applicable in the given circumstances.

5. However, we are of the opinion that in a case like the present one, where the legal position and interpretation of un-amended Section 4 and the position after the amendment in the said provision with effect from 1-7-2000 was in a fluid state, it would not be appropriate to levy the penalty. In the aforesaid circumstances the present appeals are allowed in part by sustaining the Commissioner's Order-in-Original passed on 10-3-2003 insofar as it relates to the period from 1-7-2000 to July 2001 but the penalty is set aside. However, there shall be no order as to costs.