

(2002) 09 SC CK 0042
In the Supreme Court Of India
Case No : Civil Appeal 4972 of 2001

Commissioner of Central Excise

APPELLANT

Vs

S.P.B.L. Limited

RESPONDENT

Date of Decision : 17-09-2002

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3A
Hot Air Stenter Independent Textile Processors Annual Capacity Determination
(Amendment) Rules, 2000 — Rule 5
Hot Air Stenter Independent Textile Processors Annual Capacity De

Citation : (2003) 85 ECC 252 : (2002) 146 ELT 254 : (2002) 8 JT 244

Hon'ble Judges : M. B. Shah, J;D. M. Dharmadhikari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The issue involved in this batch of appeals is - whether galleries attached to the chambers of a hot air stenter are deemed to be one chamber of a hot air stenter. The full bench of the customs, excise and gold (control) appellate tribunal, New Delhi (hereinafter referred to as "tribunal") by judgment and order dated 4.1.2001 in appeal No. E/1892/2000-NB held that a float drying machine and any other equipment if attached would be deemed to be a chamber of stenter. But such equipment installed in or attached to a stenter should be for aiding the process of heat setting or drying of the fabrics. That judgment is challenged in these appeals.

2. Before appreciating the contentions raised by the learned counsel for the parties, we would refer to the relevant part of Section 3A of the Central Excise Act, 1944 (hereinafter referred to as "the Act") as under:-

"Section 3A. Power of central government to charge excise duty on the basis of capacity of production in respect of notified goods.-

(1) Notwithstanding anything contained in Section 3, where the central government, having regard to the nature of the process of manufacture or

production of excisable goods of any specified description, the extent of evasion of duty in regard to such goods or such other factors as may be relevant, is of the opinion that it is necessary to safeguard the interest of revenue, specify, by notification in the official gazette, such goods as notified goods and there shall be levied and collected duty of excise on such goods in accordance with the provisions of this section.

(2) Where a notification is issued under Sub-section (1), the central government may, by rules, -

(a) provide the manner for determination of the annual capacity of production of the factory, in which such goods are produced, by an officer not below the rank of assistant commissioner of central excise and such annual capacity shall be deemed to be the annual production of such goods by such factory; or....."

3. In exercise of the powers conferred by Sub-section (2) of Section 3A, the central government framed the "Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 1998 (hereinafter referred to as the "1998 Rules"), which came into effect from 10th December, 1998. Rule 2 of the said rules inter alia provided that the rules shall apply for determining annual capacity of production of an independent processor if such textile fabrics are manufactured or produced with the aid of a hot-air stenter. Rule 3 provides for method of determination of annual capacity of production by considering the factors mentioned therein. Rule 3 provides as under:-

1. an independent processor shall declare:-

(i) the number of hot-air stenters installed in his factory;

(ii).....

(iii) the number and size (both the length and width in centimetres) of chambers in each of the hot-air stenters;

(iv) to (vii)

(2).....

(3) the annual capacity of production of processed textile fabrics specified in Rule 2 in respect of a factory of an independent processor shall be determined keeping in view the following factors, namely:-

(i) the number of chambers (of a hot-air stenter), each of which having a rail length of upto 3.05 metre on each side, installed in such factory shall be construed as one chamber and any fraction exceeding such rail length of any such chamber shall be computed on a pro-rate basis;

(ii) to (iv)....."

4. We are not referring to other parts of the rules, 1998 as we are concerned only with the aforesaid Rules 3(1), 3(3) and explanation-1 to Rule 5. explanation-

I rule 5 is to the following effect:-

"Explanation-I. - For the purposes of this notification, a float drying machine or any other equipment of a length 3.05 metres installed in or attached to a stenter for aiding the process of heat setting or drying of the fabrics shall be deemed to be one chamber of a stenter and any fraction of such length shall be computed on a pro-rata basis."

5. The aforesaid rules were superseded by the "Hot Air Stenter Independent Textile Processors Annual Capacity Determination Rules, 2000, which came into force from 1st day of March, 2000. In the said rules, there are no major changes except explanation-1 to rule 5 which clarifies that the galleries installed in or attached to a stenter shall not be deemed to be one chamber of a stenter. Explanation-I to rule 5 is as under:-

"Explanation-I. - For the purposes of this notification, a float drying machine or any other equipment, except the galleries, of a length 3.05 metres installed in or attached to a stenter for aiding the process of heat setting or drying of the fabrics shall be deemed to be one chamber of a stenter and any fraction of such length shall be computed on a pro-rata basis."

6. The aforesaid explanation makes it clear that the galleries are required to be excluded while taking into consideration the float drying machines or any other equipment which is installed in or attached to a stenter for aiding the process of heat setting or drying of the fabrics.

7. At the time of hearing of this matter, the learned attorney general submitted that the Tribunal erroneously referred to the rules of 2000 because the rules which came into force from December, 1998 are superseded by the rules which are framed in 2000. It is his contention that the rules which are framed in 2000 are independent one and no assistance from the 1998 rules can be derived for interpreting those rules. He further submitted that explanation I to rule 5 is not a clarificatory one but it is a substantive provision.

8. In our view, the said submission cannot be accepted and the tribunal has rightly rejected the same.

9. Admittedly, within a short span of one year and three months, rules framed in 1998 were superseded by similar rules which came into force from 1st March, 2000 making the position clear. It is also to be stated that before framing the said rules, doubts were raised by various Commission rates as to whether that the galleries should or should not be included in term 'any other equipment installed in or attached to a stenter'.

10. This is made clear in the trade notice dated 27th February, 1999. In the said notice, it is inter alia stated that the issue which required consideration is - whether closed spaces known as 'galleries' on either side of the stenter which are meant mainly for heat insulation purposes are to be taken into account for purposes of computing the production capacity and number of chambers; and

further whether for purposes of capacity determination the length of each chamber is to be measured separately or whether by dividing the total rail length of a stenter by the number of chambers? To this issue, it was clarified as under : -

"As regards points (iv) & (v), it is clarified that as 'galleries' are installed or attached to the stenter and aid the process of heat setting or drying of the fabrics, these galleries provide heat insulation on either side of the stenter. As per explanation-I to notification No. 42/98-CE(NT), a float drying machine or any other equipment of a length 3.05 metres installed in or attached in a stenter for aiding the process of heat setting or drying of the fabrics shall be deemed to be one chamber of a stenter and any fraction of such length shall be computed on a pro-rate basis. It is thus clarified that they should be taken into account for the purposes of computation of the production capacity and the number of chambers."

11. In view of this trade notice, the dispute has arisen and it has been contended that the galleries which are attached to the chambers on either side of the stenter cannot be included because its purpose is only limited. The tribunal arrived at a conclusion that the explanation to rule 5 makes it clear that a float drying machine or any other equipments mentioned therein must be for aiding the process of heat setting or drying of fabrics. The tribunal observed that a float drying machine is aiding the process of heat setting or drying of fabrics and other equipments contemplated by explanation-I should also have like utility.

12. This part of the reasoning of the tribunal cannot be said to be illegal or erroneous because the explanation itself specifies that other equipment attached to a stenter should also be for aiding the process of heat setting or drying of the fabrics. The tribunal found that a gallery, which is having no fan or radiator attached to it, cannot come within the purview of interpretation as contemplated by explanation-I. Further, on the basis of the aforesaid amended rules, the tribunal negated the contention raised by the department that while counting number of chambers in each of the hot-air stenters, the galleries attached to it would be deemed to be one chamber of a stenter. Amended rules clarify and remove the ambiguity particularly which arose because of the trade notice.

13. It is to be stated that in exercise of the powers conferred u/s 3A of the Act, the 1998 rules were framed, which came into force on 10th December, 1998. Those rules were superseded by the rules, 2000, which came into effect from 1st March, 2000. As such, there is not much difference between these rules. The aforesaid rules are also deleted from 1st March, 2000 and no new rules were framed. Thereafter, Section 3A which was inserted in 1997 itself stood omitted by Act 14/2001. So, at present, neither the relevant provisions nor the rules are in existence. In this view of the matter, contention raised by the learned attorney general does not require much consideration. Further, it cannot be held that the tribunal committed any error in relying upon the doctrine of contemporanea expositio to remove ambiguity in understanding the language of the 1998 rules. Hence, in our view, the impugned order passed by the tribunal does not call for

any interference.

14. In the result, the appeals and the SLPs are dismissed. There shall be no order as to costs.