
(2009) 12 MAD CK 0190
In the Madras High Court
Case No : C.M.A. No. 387 of 2009

Commissioner of Central Excise

APPELLANT

Vs

SRF Ltd.

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 191BB
Central Excises and Salt Act, 1944 — Section 11A

Citation : (2010) 251 ELT 499

Hon'ble Judges : T.S. Sivagnanam, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : T.R. Senthilkumar, C.G.S.C, for the Appellant; K.S. Venkatagiri, for V. Lakshmikumaran, for the Respondent

Final Decision : Dismissed

Judgement

F.M. Ibrahim Kalifulla, J.—The Commissioner of Central Excise, Chennai, is the appellant. The challenge is to the order of the second respondent/Tribunal dated 18-6-2007, passed in Appeal No. E. 1184/2004.

2. The brief facts are that M/s. Apollo Tyres, Trichur, who are engaged in the manufacture of tyre and its exports, applied for permission with the Assistant Collector of Central Excise, Trichur, for procurement of 250 metric tonnes of Nylon Yarn under Rule 191-BB from the first respondent herein. The order however, stated that tyre manufacturer should follow the terms and conditions laid down under Notification 33/90-C.E. (N.T.) dated 5-9-1990. A separate certificate was issued along with the order dated 7-10-1991. It was further reinforced that the applicant M/s. Apollo Tyres, Perambra, under the permission granted can get the Nylon Yarn processed into fabrics at the premises of the first respondent herein, on job work basis on fulfilment of the following conditions:

(1) The quantity of yarn and fabrics released as per this permission shall be intimated to this office.

(2) Separate account shall be maintained by M/s. SRF Ltd. Madras right from yarn stage until the clearance of fabrics.

(3) Procedure prescribed under Notification No. 33/90-C.E. (N.T.) shall be followed strictly.

(4) Waste/bye-products, if any, generated in the process shall also be transmitted to the applicant along with the finished fabrics.

3. It is not in dispute that between 15-11-1991 and 29-11-1991, 250 metric tonnes of yarn procured from the first respondent were processed into tyre cord fabrics and the entire quantity was forwarded to M/s. Apollo Tyres Ltd., Perambra, without payment of duty based on the permission granted by the Assistant Collector, Trichur, dated 7-10-1991. Subsequently, on 6-1-1992 the Assistant Collector of Central Excise, Trichur, passed an order to the effect that the permission granted by the said office in the letter dated 7-10-1991 is withdrawn with immediate effect and that the manufacturer should apply to the Collector of Central Excise, Trichur.

4. It is in the above said background, a show-cause notice came to be issued by the Assistant Collector of Central Excise, Madras-III Division, on 31-1-1992. Pursuant to which the Assistant Collector raised a demand of Rs. 60,15,625/- for clearance of Nylon Yarn and a sum of Rs. 10,50,000/- towards duty on tyre cord fabric cleared u/s 11A of the Act. On appeal by the order in Appeal No. 211/95(M) dated 25-10-1995, the Commissioner of Customs & Central Excise (Appeals), while setting aside the demand with regard to confirmation of duty liability to the extent of Rs. 60,15,625/- on nylon yarn, confirmed the duty of Rs. 10,50,000/- on the tyre cord fabrics cleared by the first respondent. There was further appeal at the instance of the Commissioner of Central Excise, Madras, before CEGAT in Appeal No. 211/95. There was also an appeal by the first respondent against the very same order in so far as it related to levy of duty on Nylon Tyre Cord fabric. In the said appeals an order of remand came to be passed on 16-1-1998 in Order Nos. 1341 and 1342 of 1998. By the said order, while setting aside the original order, remitted the matter for de novo enquiry with certain observations. Thereafter, the present order in original dated 31-5-2004 came to be passed by which a demand of duty on nylon yarn as well as the nylon tyre cord fabric of Rs. 60,15,625/- and Rs. 10,50,000/- respectively came to be passed. Against this order, the present appeal has been preferred.

5. The following substantial questions of law have been raised by the appellant:

(i) Whether on the facts and circumstances of the case the Appellate Tribunal is right in law in holding that the letter from the Assistant Collector dated 7-10-1991 withdrawing the facility of non-payment of excise duty on Nylon yarn with immediate effect, was only of prospective effect not of retrospective effect?

(ii) Whether on the facts and circumstances of the case the Appellate Tribunal is right in law in cancelling the duty demand on Nylon yam and Nylon Tyre Cord

Fabric on the ground that both the parties followed the procedure laid down under Rule 191-BB read with Notification No. 33/90-C.E. (N.T.)?

6. We heard Mr. Senthilkumar, Senior Central Government Standing Counsel for the appellant and Mr. K.S. Venkatagiri, learned Counsel for the first respondent. We also perused the Notification No. 33/90-C.E. (N.T.) dated 5-9-1990, Rule 191-BB of the Central Excise Rules and the orders of the Assistant Collector of Central Excise, Trichur, dated 7-10-1991 and 6-1-1992 and the show-cause notice dated 31-1-1992 and the consequential orders passed. Having bestowed our serious consideration with regard to the issues raised, we are convinced with the order of the Tribunal and the order of the Tribunal does not call for interference. In fact the question of law raised have to be answered in the negative. As rightly contended by learned Counsel for the first respondent, going by the discretion of the authority in Notification No. 33/90-C.E., dated 5-9-1990, the permission applied for by the first respondent was rightly considered by the Assistant Collector of Central Excise, Trichur, when the order dated 7-10-1991 granting permission to the tyre manufacturer came to be issued along with the certificate dated 7-10-1991 for manufacture and supply of 250 metric tonnes of Nylon Yarn into fabrics. As noted by the Tribunal, in the impugned order, it is not the case of the appellant that there was any breach of condition imposed in the said certificate dated 7-10-1991, nor any of the stipulation contained in the Notification No. 33/90-C.E. (N.T.) dated 5-9-1990.

7. Therefore, the only question to be considered was whether withdrawal of such permission by the very same authority, viz., the Assistant Collector of Central Excise, Trichur, dated 6-1-1992, would in any way impinge upon further action carried on by the first respondent at the instance of M/s. Apollo Tyres, based on the permission letter dated 7-10-1991 and the certificate of the same date. In the communication dated 6-1-1992 the Assistant Collector, Trichur, while withdrawing its earlier permission dated 7-10-1991, specifically stated that such withdrawal would take effect immediately and that the parties should apply to the Collector of Central Excise, Trichur, for permission. Therefore, there can be no dispute nor can the first respondent or the other tyre manufacturer, viz., Apollo Tyres can be faulted for their action based on permission letter dated 7-10-1991 which was in operation between the date of issuance viz., 7-10-1991 and its withdrawal on 6-1-1992. Based on the permission letter 7-10-1991 the entire quantity of 250 metric tonnes of Nylon Yarn, its procurement and its conversion into Nylon tyre cord fabric, had taken place between 5-11-1991 and 21-11-1991. The same was also cleared to M/s. Apollo Tyres Limited, Perambra, without payment of duty which was protected by permission letter dated 7-10-1991. In such circumstances, the subsequent issuance of show-cause notice dated 31-1-1992 to reverse whatever action carried out by the first respondent along with Apollo Tyres Limited on the specious ground that the issuance of such permission could have been validly issued only by the Collector of Central Excise, Trichur, cannot be accepted. The consequential order passed on 16-7-1998 by the Commissioner of Appeals in Appeal Nos. 1341 and 1342 of 1998 were also

not justified and therefore, the Tribunal rightly interfered with the said order by holding that the subsequent letter dated 6-1-1992 cannot be taken to have withdrawn the earlier permission letter dated 7-10-1991 retrospectively. In fact there is no such power said to have vested with the authorities for effecting such withdrawal in a retrospective manner. In any event, as rightly held by the Tribunal, a simple reading of letter dated 6-1-1992 stating that the permission granted on 7-10-1991 was withdrawn with immediate effect can only mean that such withdrawal was to operate prospectively i.e. subsequent to the issuance of the said letter dated 6-1-1992. We also concur with the said conclusion of the Tribunal as any other conclusion would run contrary to the very specific intention conveyed in the letter dated 6-1-1992. Looked at from any angle, we do not find any flaw in the order of the Tribunal and therefore, the same does not call for interference on the substantial questions of law raised at the instance of the appellant. We therefore, answer the questions against the appellant. Appeal fails and the same is dismissed in limine. No costs.