(2014) 05 DEL CK 0038

In the Delhi High Court

Case No : CEAC No. 52 of 2014 and CM Appeal Nos. 8623-8625 of 2014

Commissioner of Central Excise APPELLANT

Vs

Sunshine Industries RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2015) 322 ELT 265

Hon'ble Judges : S. Ravindra Bhat, J;Vibhu Bakhru, J

Bench : Division Bench

Advocate : Rahul Kaushik, Advocate for the Appellant;

Judgement

1. The Revenue claims to be aggrieved by an order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), dated 22-8-2013 to the extent that its contentions with respect to the applicability of the extended period of limitation prescribed in Section 11A of the Central Excise Act was not allowed. The assessee claimed the benefit of Exemption Notification No. 8/2000-C.E., dated 1-3-2000 stating that it was manufacturing different sanitary items. The appellant contends that the assessee was affixing the brand names of other manufacturers. The Central Excise authorities issued a show cause notice on 5-7-2002 demanding why action should not be taken for wrongly availing exemption; the authorities also invoked the extended period available under Section 11A of the Act. The final order of the adjudicating authority confirmed the demands besides imposing penalty. The assessee''s appeal was unsuccessful; the Commissioner (Appeals) confirmed the demand.

2. In these circumstances, when the assessee approached the Tribunal, the latter noticed that in view of the previous law declared by a Larger Bench in Prakash Industries v. Commissioner of Central Excise, Bhubaneswar 2000 (119) E.L.T. 30 and subsequently followed in Kohinoor Elastics (P) Ltd. v. Commissioner of Central Excise, Indore-II, 2001 (136) E.L.T. 1155 , the charge of fraud, etc., in claiming exemption for the limited purpose of invoking the extended period was

not available. Therefore, even while upholding the demand for normal period, the Excise authorities were enjoined not to invoke the extended period.

3. It is urged by the Revenue that the ruling in Kohinoor Elastics (supra), is no longer good law in terms of the judgment of the Supreme Court in Kohinoor Elastics Pvt. Ltd. v. Commissioner of Central Excise, Indore, 2005 (188) E.L.T. 3 (S.C.). It was submitted that besides that the assessee was clearly guilty of wilfully availing exemption when none was admissible as it manufactured and sold articles which were marketable independently and were not components and constituents as was argued by it.

4. It is evident from the preceding discussion that the Tribunal accepted the Revenue''s plea but limited the scope of the show cause notice and the demands to the normal period. The logic which persuaded the Tribunal to hold as it did was that at that time, the assessee could reasonably contend that there was a view which supported its declaration. In other words, during the period which was sought to be covered by the show cause notice, the Larger Bench ruling in Prakash Industries (supra) was in force. As far as the merits were concerned, the Tribunal affirmed the findings of the lower authorities.

5. We have considered the rulings of the Tribunal in Prakash Industries (supra) which was followed in Kohinoor Elastics (supra). Undoubtedly, the decision in Kohinoor Elastics (supra) was subsequently overruled by the Supreme Court; yet the fact remains that when the exemption was sought, the assessee could legitimately contend that it was entitled to it on the basis of the prevailing understanding. We are also not persuaded by the submissions that the assessee''s actions or omissions, in any event fell, within the mischief of Section 11A. Prakash Industries (supra) itself was a case where independently marketable items, i.e., bagged cement was in issue. For the above reasons, this Court is of the opinion that no substantial question of law arises. The appeal is accordingly dismissed along with all the pending applications.

