(2014) 05 CAL CK 0012

In the Calcutta High Court

Case No : Central Excise Appeal No. 5 of 2013

Commissioner of Central Excise APPELLANT

Vs

Ultra Tech Cement Ltd. RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Citation : (2015) 31 GSTR 42

Hon'ble Judges : Sudip Ahluwalia, J;Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Shib Shankar Banerjee and K.K. Maity, Advocates for the Appellant; Abhishek Anand and Tanmoy Chakraborty, Advocates for the Respondent

Judgement

1. The subject matter of challenge in this appeal is a judgment and order dated September 18, 2012 passed by the learned Customs, Excise and Service Tax, Appellate Tribunal allowing an appeal of the assessee holding, inter alia, as follows:

"Undisputedly, no declaration under the PCTA was made with regard to enhancement of duty on cement to Rs. 900 per metric tonne, which was moved by way of amendment to the Finance Bill, 2008 by the Finance Minister on April 29, 2008. Therefore, the effective date of the enhancement in the present case would be the date of enactment, i.e., May 10, 2008."

Mr. Banerjee, learned advocate appearing in support of the appeal, submitted that clause 84 of the Finance Bill, 2008, as introduced on February 29, 2008, referred to Chapter 25 of the Central Excise Tariff Act. He contended that the declaration made under the provisions of the Provisional Collection of Taxes Act, 1931 with reference to clause 84 of the Bill, as introduced, would automatically take in its fold the amendment subsequently made for the purpose of inclusion of "in tariff items 2523 29 10, 2523 29 20, 2523 29 30, 2523 29 40 and 2523 29 90, for the entry in column (4), the entry Rs. 900 per tonne'' shall be substituted against each of them". He, in support of his submission, relied upon section 4 of the aforesaid Act of 1931 which provides as follows:

"Effect of declarations under this Act, and duration thereof.--

(1) A declared provision shall have the force of law immediately on the expiry of the day on which the Bill containing it is introduced.

(2) A declared provision shall cease to have the force of law under the provisions of this Act--

(a) when it comes into operation as an enactment, with or without amendment, or

(b) when the Central Government, in pursuance of a motion passed by Parliament, directs, by notification in the Official Gazette, that it shall cease to have the force of law, or

(c) if it has not already ceased to have the force of law under clause (a) or clause (b), then on the expiry of seventy-fifth day after the day on which the Bill containing it was introduced."

2. He drew our attention to clause (a) of sub-section 2 of section 4. It is on this basis that he contended that the inclusion of the aforesaid new item would also be affected by the declaration.

3. This submission of Mr. Banerjee has been seriously challenged by Mr. Abhishek Anand. He submitted that the power of amendment provided under section 4 of the Act of 1931 has to be read in the light of section 2 thereof which defines a "declared provision". A declared provision means a provision in a Bill in respect of which a declaration has been made under section 3. It is evident that the declaration under section 3 was made with reference to clause 84 of the Bill as originally introduced which did not include the aforesaid entry introduced for the first time on April 29, 2008 when the Bill was passed by the Lok Sabha.

4. We have considered the rival submissions advanced by the learned advocates appearing for the parties. We are inclined to think that the learned Tribunal has taken a correct view of the matter. A declared provision in the Bill may ultimately be passed with or without amendment. Obviously, an amendment can be made applicable to an entry which was originally there in the Bill. An entry which was not there at all and was subsequently brought in, cannot be said to have been protected by the declaration made under section 3 of the Act of 1931. We, for the aforesaid reasons, are in agreement with the views expressed by the learned Tribunal and are of the opinion that this appeal is of no merit and is, therefore, dismissed.

