(2008) 04 SC CK 0087

In the Supreme Court Of India

Case No : Civil Appeal No. 8361 of 2002

Commissioner of Central Excise, Chandigarh-I — APPELLANT

Vs

IPF Vikram India Ltd. — RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Central Excise Rules, 1944 — Rule 173C, 173Q
Central Excises and Salt Act, 1944 — Section 11A, 4, 4(1), 4A

Citation : (2008) 129 ECC 198 : (2008) 155 ECR 198

Hon'ble Judges : Dalveer Bhandari, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Gopal Subramanium, ASG, Aruna Gupta and Shailendra Saini, for B.V. Balaran Das, for the Appellant; Ajay Aggarwal, for Rajan Narain, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan and Dalveer Bhandari, JJ.—The Assessee herein is engaged in the manufacture of detergent powder and scouring powder allegedly falling under Chapter Heading 3402.90 and 3405.40 respectively of the schedule to Central Excise Tariff Act 1985. The said activity was carried out by the Assessee on job work basis for its principal, viz., Hindustan Lever Ltd. (HLL). The Assessee filed declaration in Annexure II under Rule 173C of Central Excise Rules, 1944 (for short, "the Act").

2. The Assessee was clearing the goods manufactured by it on stock transfer basis to the depots of their above-named principal in various parts of the country. However, it allegedly did not supply depot sale prices to find out the assessable value for charging Excise Duty. On checking of RT-12 returns it was found that the Assessee had declared the value of the detergent less than the price at which it was being sold. And in respect of scouring powder the Assessee had failed to supply the depot sale price. Therefore, four show cause notices dated, 29th January, 1998, 01st May, 1998, 28th October, 1998 and 18th March,

1999 were issued to the Assessee to show cause as to why duty as per details annexed to the notices be not recovered u/s 11A of the Act and penalty under Rule 173Q of he Central Excise Rules be not imposed upon it.

3. Adjudicating authority held, that the central Excise Duty on the scouring powder was required to be paid as per Section 4 of the Act and in case of detergent the central Excise Duty was chargeable u/s 4A of he Act. The authority-in-original confirmed the demand of differential duty and also imposed penalty.

4. On an appeal filed, Commissioner (Appeals) also confirmed the Order of the authority-in-original holding that since HLL had full control over the job worker right from the State of receipt of raw material in its factory to the stage of clearance of same to their depots. It was held, that central Excise Duty on scouring powder was required to be paid u/s 4 of the Act on depot price. It further held, that the Tribunal''s decision in the Assessee''s own case reported in 2000 (127) ELT 116 was not applicable in the instant case.

5. In the instant case authority-in-original as well as the Commissioner (Appeals) did not accept the contention of the Respondent-Assessee that the point in issue was covered by the earlier decision in the Assessee''s own case reported in 2001 (127) ELT 116 (Tri.) on the ground that there had been an amendment in the definition of the expression, "place of removal" w.e.f. 28th September, 1996.

6. The Customs, Excise and Gold (Control) Appellate Tribunal (for short, "the Tribunal") has set aside the Order of the Commissioner (Appeals) as well as that of the authority-in-original on the basis of Circular No. 251/85/96-CS dated, 14th October 1996 clarifying certain points which had arisen as a result of the amended definition of "place of removal". One such clarification was that if an independent job worker processes the goods and returns it back to the supplier of the goods, the prescription of other "place of removal" in the Budget will not make any difference in such cases.

7. Under the circumstances, the Tribunal rightly concluded that the amendment carried out in the definition of the expression, "place of removal" insofar as the facts of this case are concerned will not make any difference.

8. The Assessee is a job worker. Raw material is supplied to it and after processing, the manufactured product is sent back to the depots of the supplier, viz., Hindustan Lever Ltd. For such products, valuation can be done on the basis of price of comparable goods under Rule 6(b)(i) or failing that under Rule 6(b)(ii) of the Valuation Rules on the basis of the cost of manufacture plus notional profit, in order to arrive at the nearest ascertainable equivalent of the price [stipulated u/s 4(1)(a)] as contemplated u/s 4(1)(b) of the Central Excise Act, 1944.

9. On the facts and circumstances of this case, we are not inclined to interfere with the Order passed by the Tribunal. The appeal is, therefore, dismissed. No costs.