

(2015) 09 SC CK 0030

In the Supreme Court Of India

Case No : Civil Appeal No. 5617 of 2006.

Commissioner of Central Excise, Delhi - Appellant @HASH GTC Industries Ltd.

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 324 ELT 236

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri P.S. Narasimha, ASG, K. Radhakrishnan, Sr. Advocate, Ms. Shirin Khajuria, Arijit Prasad and B. Krishna Prasad, Advocates, for the Appellant; S/Shri Dushyant A. Dave, Sr. Advocate, Ms. Nisha Bagchi, Ms. Rohina Nath, Ms. Sujata Shiroikar and Umesh Kumar Khaitan, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. This case raises a factual question arising out of three show cause notices which confirmed various duty demands and demands of penalty. The Collector of Central Excise by a voluminous order dated 17-1-1995 ultimately found that M/s. GTC Industries Ltd., the respondent herein, had been claiming the benefit of a concessional rate of central excise duty during the different periods mentioned in the show cause notices under Notification No. 201/85, dated 2nd September, 1995 and Notification No. 78/86, dated 10th February, 1986 on Golden's Style Filter King brand of cigarettes. While sending samples of the packets of cigarettes of the said brand for approval by the Central Excise Authorities, the appellants have declared the maximum retail price Rs. 1.70 per pack of 10 cigarettes and Rs. 3.40 per pack of 20 cigarettes. The specimens were approved accordingly. However, the Department found that the declarations made were deliberately false, as M/s. GTC Industries Ltd. never believed that the retailers would sell the cigarettes and had, therefore, full knowledge that the retail packet would not be sold in accordance with the price declaration made thereon. It was, therefore, alleged that the extra money over and above the prices shown in the invoices was being collected in respect of sale of various brands of cigarettes and extra amount so collected was passed on to the retailers and wholesale dealers

and subsequently in cash to the persons described as "Super Buyers" who were large wholesale purchasers.

2. The learned Collector ultimately found on facts that the Department's case was made out by statements of as many as 44 witnesses who were ultimately cross-examined by M/s. GTC Industries Ltd. These statements were taken from a large number of persons including wholesalers and retail purchasers.

3. The Tribunal in an exhaustive judgment dated 9th December, 2005 [2006 (198) E.L.T. 121 (Tri.-Del.)] after setting out the terms of the Notification No. 11/83, dated 1st March, 1983 as amended by the Notification No. 78/86, dated 10th February, 1986 ultimately found that the product of the 9 respondents were correctly classifiable under sub-paragraph 2 of the table in the said Notification, and not sub-paragraph 3 as was wrongly held by the Collector. This was done after the Tribunal went into the standards terms and conditions of the business with the wholesale buyers and after appreciating the witness statements made and particularly retractions made from the said statements in cross-examination. Ultimately, it held as under :

"As regards security deposit scheme, we note that even after full deposit has been made to GTC towards sale of goods by super buyers the profit of the super buyer cannot be calculated directly in terms of deposit made in excess. The turnover of the super buyer fairly exceeds the deposit amount. Therefore, even after making deposits and paying differential 17% interest the super buyer can make profit in view of its very high turnover. The deposit scheme was started sometime in 1978-79, which is well before the issue of Notification No. 210/85, dated 20th September, 1985. Therefore, it cannot be alleged or found that the scheme was evolved only in order to indirectly receive the excess amount which may be collected by the retailers from the consumers, and, eventually by super buyer. From the affidavit filed by GTC, it is seen that even in the year in which the deposit was made, the turnover of the super buyer was 12 to 15 times of the amount of deposit. However, the deposit scheme was not unique to GTC as several other companies were taking similar deposit and this fact is brought out in the order dated 5th May, 1994 of the Collector of Customs, Mumbai wherein the proceedings raised against GTC were dropped. Even in the case not covered by deposit scheme and where the payment was not made in time, interest at the rate of 18% was being charged by GTC, which is more or less corresponding to differential interest under security deposit scheme. Therefore, the differential interest cannot be considered a ploy to indirectly receive a part of the alleged extra collection received by the super buyer. We, therefore, hold that there is no link between security deposit schemes and so called extra collection."

4. On facts, therefore, the Tribunal found that the case of the Department had not in fact been made out. Apart from this, the Tribunal also relied upon the judgment of this Court in ITC Ltd. v. Commissioner of Central Excise, New Delhi & Anr. [(2004) 7 SCC 591 = 2004 (171) E.L.T. 433 (S.C.)] and found that on a reading of the said judgment, the alternative submission of the respondent was

also made out. We do not find any error in the said judgment either on fact or on law.

5. In the aforesaid circumstances, the appeal lacks merit and is, accordingly, dismissed.