

(2014) 11 SC CK 0101

In the Supreme Court Of India

Case No : Civil Appeal No. 611 of 2009 with C.A. Nos. 1688-1705, 1971-1981, 2710, 3166-3168, 3416, 3574-3576, 5214, 57792, 6909, 7436, 7648-7651 and 8023-8028 of 2004, 1760-1764, 3572-3573 and 5541 of 2005, 99-101 of 2015 @ D. No. 27815 of 2007, 535-538, 605-608, 1

Commissioner of Central Excise, Vapi - Appellant @HASH Synfab Sales

Date of Decision : 26-11-2014

Acts Referred:

Citation : (2015) 318 ELT 38 : (2015) 13 SCC 378

Hon'ble Judges : Dipak Misra and Uday Umesh Lalit, JJ.

Bench : Division Bench

Advocate : S/Shri A.K. Panda, Senior Counsel with Arijit Prasad, Advocates, for the Appellant; Shri V. Sridharan, Senior Counsel, for the Respondent

Final Decision : Allowed

Judgement

Civil Appeal No. 5779 of 2004

1. The present appeal has been preferred by the Revenue against the judgment and order dated 13-8-2003 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Northern Bench, New Delhi [2003 (158) E.L.T. 180 (Tri.-Del.).

2. The factual matrix lies in a narrow compass. The respondent-assessee is engaged in the manufacture of PTY Twisted Yarn falling under Chapter sub-heading 54.02 of the Central Excise Tariff Act, 1985 (for brevity, "the Act"). On the basis of intelligence received by the officers of Anti Evasion directorate that the assessee was indulged in evasion of central excise duty by resorting to undervaluation and clandestine clearances of PTY as it was clearing PTY from its factory gate at a very low value in the name of non-existing firms, while the goods were actually being cleared to godown at Bhiwandi (Maharashtra) and Surat (Gujarat) from where they are subsequently being sold through brokers to actual buyers at a higher value. The search and seizure was conducted and on the basis of search and seizure, a show cause notice was issued to the

respondent. After receipt of the show cause, an explanation was offered stating, inter alia, that the sale to the buyers at Bhiwandi had taken place at the factory gate and not at Bhiwandi as indicated in the show cause. It was further stand of the assessee that normal price for sale to non-Bhiwandi buyers is available and, therefore, the entire show cause notice is based on the assumption that there is no factory gate sale which is unsustainable. In addition, it was set forth that the show cause notice did not indicate on what foundation the allegations have been made because the assessee had invoices for a specific quantity and that specific quantity was delivered to the ultimate buyer and there was no part delivery. Under these circumstances, a prayer was made to drop the proceedings.

3. The Commissioner of Central Excise who is the adjudicating authority did not accept the submissions and repelled the submissions of the assessee and opined that there was suppression; and there was undervaluation by the assessee only to a limited extent. Be it noted, the Commissioner was more influenced by the factum that certain sales were made to genuine buyers and certain sales were made through a broker and the invoice showed name of other buyers.

4. Because of the aforesaid perception, he repelled the stand put forth in the show cause. The Adjudicating authority confirmed the demand of certain sum as duty and imposed the penalty accordingly.

5. On an appeal preferred by the assessee, the Tribunal noted the observations of the Commissioner and recorded as follows :

"4. We find that the learned Commissioner was fully justified in holding that there is no evidence brought out in the case by the Department to prove any flow back which would justify rejection of the invoice value. The Commissioner has observed that even though there is an allegation that time lag between the clearance date and actual sale is about seven days to one month and on the date of actual sale the sale price is more than that was shown in the invoice no facts and figures have been furnished to support this allegation. He has further observed that assuming that sale price at depot was on a higher side even then there is no justification for taking recourse to Valuation Rules as was proposed in the show cause notice. The Commissioner has correctly held that only in those cases where it can be demonstrated that the provisions of Section 4(1)(a) are inapplicable, recourse to Valuation Rules can be taken as provided under Section 4(1)(b). Learned Commissioner has correctly pointed out that if, according to the Revenue there is a sale at the depot, sale price at depot could have been ascertained. Therefore, there is no justification to resort to valuation under Section 4(1)(b) and the Valuation Rules. The Commissioner points out that even though the Department had knowledge about the ultimate actual buyers no effort is seen taken to get information from them as to whether the sale was at a price higher than that was shown in the invoice. According to us the view taken by the Commissioner was correct. So also we find that the adjudicating authority was fully justified in holding that the show cause notice has erred in demanding duty on the entire quantity of goods cleared from the factory including quantity

sold to the buyers other than Bhiwandi buyers."

6. Thereafter, the Tribunal noted the contentions of the assessee and placed reliance on Punjab Oil & Silicate Mills v. C.C.E. [1993 (65) E.L.T. 268] and on the basis of this authority, took the view that there was no proof of undervaluation. The Tribunal further opined that though there was an allegation of undervaluation, yet there was no whisper of any evidence or pro-back additional consideration from the buyer to the manufacturer either directly or through any channel. The Tribunal noted the finding recorded by the Commissioner and thereafter proceeded to state thus :

"7. In Punjab Oil & Silicate Mills, the Department while alleging clandestine manufacture and removal of the goods relied on the figures furnished by the assessee to the Department of Industries or as admitted by the party in their affidavits filed before the Department for getting the coal. The Tribunal took the view that any information obtained from the Department of Industries is not sufficient proof to show that the goods were manufactured unless it was substantiated with other evidence of clandestine removal of the manufactured goods. It was also held that even admission, confession or sworn statement given by the appellants before other authority in different context for different purpose cannot be taken as conclusive proof in the absence of positive evidence adduced by the Department. At best it may be an inference but not substantial proof. Similar view was taken in Rishab Refractories Pvt. Ltd. [1996 (87) E.L.T. 93]. In an earlier decision of this Tribunal in Alwyn Industrial Corporation v. CCE, New Delhi [1988 (33) E.L.T. 376], the Department sought to place reliance on two letters of State Bank of India informing the excise authorities that the appellant had obtained cash credit limit of Rs. 50,000/-, that loan amount was sanctioned for manufacture of electric wires and cables and as per stock statement received from the appellants manufacturing of cable was done by them. The bank had forwarded 12 stock statements submitted by the assessee. The assessee had denied manufacture of wires and cables. Tribunal took the view that letters received from the bank cannot be relied on to come to the conclusion that the assessee had manufactured wires and cables without any corroborating evidence. In the light of the above authorities we hold that the Commissioner was justified in taking the view that undervaluation cannot be found against the assessee on the basis of bank statements."

7. At this juncture, we may profitably note that in certain cases, another Commissioner had accepted the similar submissions raised by the assessee as in the case of Beekaylon Synthetics v. Commissioner of C.Ex., Surat/Mumbai [2003 (158) E.L.T. 307]. The said order was assailed by the Revenue before the Tribunal and the Tribunal, on the basis of the reasoning which have been reproduced above, dismissed the appeal of the Revenue.

8. We have heard Mr. A.K. Panda, learned Senior Counsel along with Mr. Arijit Prasad for the Revenue and Mr. V. Sridharan, learned Senior Counsel for the respondent.

9. On a perusal of the order passed by the Commissioner and that of the Tribunal, it is luminescent that the assessee used to sell the PTY Twisted Yarn, the manufactured item to number of buyers as has been found by the Department. Some buyers were taking directly and some sales were made through the brokers. However, the invoices used to be raised in the name of certain buyers. This practice was prevalent since long even when the Excise was not leviable. That apart, it is noticeable that there is no finding that the price that was collected in respect of the items, whatever grade or size may be, from the genuine buyers or the broker, were different and moreover, the duty has been paid at the gate at the same rate at the time of transit on the same quantum. As it appears, the allegation of the Revenue against the assessee is that the broker used to sell it to a third party at a higher price. It is also reflectible that the adjudicating authority has placed reliance on the approximate stock value statement which was given to the bank to arrive at the conclusion that the assessee had undervalued the sale. The Tribunal, by adequate reasoning has repelled the said analysis made by the Commissioner and disposed it of. It has rightly done so. That apart, the Revenue has not established by way of adducing any cogent evidence that the assessee had any godown for the purpose of selling the goods at his behest. Be it stated, the matter would have been on a totally different footing, had the Revenue been able to produce some evidence on that score and further had there was a price difference in the invoices that were prepared in favour of the genuine buyers and the brokers. In the absence of any material on record, we are impelled to think that the factual analysis made by the Tribunal cannot be found fault with.

10. Consequently, the appeal filed by the Revenue, being devoid of merits, stands dismissed. There shall be no order as to costs.

11. Delay condoned.

12. All these appeals are disposed of in terms of the order passed in Civil Appeal No. 5779 of 2004.