(2015) 10 SC CK 0030

In the Supreme Court Of India

Case No : Civil Appeal No. 2792 of 2007

Commissioner of Customs & Central Excise APPELLANT

Vs

P.S.L. Ltd. RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Citation : (2015) 325 ELT 460

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

Bench : Division Bench

Advocate : S/Shri L. Badri Narain, M.P. Devanath, S. Vasudevan, Hemant Bajaj, Anandh K., Aditya Bhattacharya and Ms. L. Charanya, Advocates, for the Respondent; S/Shri Yashank Adhyaru, Senior Advocate, Ashok K. Srivastava, Ms. B. Sunita Rao, Anurag, Pranay R. and B. Krishna Prasad, Advocates, for the Appellant

Final Decision : Allowed

Judgement

1. The respondent herein is the manufacturer of Spirally Welded MS Pipes and Cement guniting of said pipes falling under Chapter Heading 7305.90 of the Schedule to the Central Excise Tariff Act, 1985. They had executed the work order of M/s. L&T, Chennai in respect of their Water Supply Project to the Visakha Industries Water Supply Company Limited promoted by the A.P. Industrial Infrastructure Corporation Limited. For this purpose, M/s. L&T had supplied the Spirally Welded MS Pipes at the rate of Rs. 15,000/- per metric [ton] of pipes sold and paid excise duty declaring that value.

2. The Revenue found that M/s. L&T was buying the aforesaid product from Steel Authority of India Limited (SAIL) at a much higher prices, i.e., Rs. 18,992/- per metric [ton] of pipes rolled and it was the depressed value of Rs. 15,000/- which was shown in the invoices raised by M/s. L&T for supply of this product to the respondent. On that basis, show cause notice dated 2-12-2004 was issued demanding differential duty of Rs. 40,95,850/- towards supply of the aforesaid HR coils purportedly at reduced cost.

3. The respondent was given an opportunity to reply to the said show cause notice. In the reply, the respondent contended that there was a forward contract between the respondent and M/s. L&T for a fixed period and during this period, the price of Rs. 15,000/- was agreed upon. The respondent also tried to disclose the basis of arriving at the aforesaid price. On this basis, it was contended that insofar as the respondent is concerned, the transaction value was Rs. 15,000/- and therefore, the duty was rightly paid thereupon. This contention of the respondent was not accepted by the adjudicating authority in his Order-in-Original. In the detailed order passed by the Additional Commissioner, while confirming the demand in the show cause notice, he also recorded that the transaction between M/s. L&T and the assessee did not appear to be a transaction at arm''s length and the price was suppressed. This order was confirmed in appeal by the Commissioner (Appeals). However, in the further appeal preferred by the respondent-assessee before the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as ''CESTAT''), the appeal of the respondent was allowed vide impugned orders. The CESTAT has also relied upon the judgment of this Court in the case of ''H.B.L. Aircraft Batteries Ltd. v. Commissioner of Central Excise, Hyderabad'' [2004 (5) SCC 664 = 2004 (167) E.L.T. 483 (S.C.)].

4. A neat submission made by the learned senior counsel appearing for the Revenue is that the CESTAT has not discussed the facts of the present case appropriately and has accepted the version of the respondent-assessee blindly without even going into the documents, more particularly, the so called forward contract entered into between M/s. L&T and the assessee which was not even produced by the assessee. He submitted that the finding that the transaction was not at arm''s length which was arrived at on the basis of material on record after detailed discussion has not even been commented upon and is side-tracked. On these facts, his submission was that the judgment of this court in H.B.L. Aircraft Batteries Ltd. could not have been mechanically applied. We find substance in the aforesaid submission of Mr. Yashank Adhyaru.

5. We, thus, allow this appeal and set aside the order of the CESTAT. The case is remitted back to the CESTAT to deal with the aspects as highlighted by the Revenue and thereafter decide the issue afresh. The respondent shall be permitted to file further documents on which it relies upon, after taking due permission from the CESTAT in this behalf.

