(2008) 07 SC CK 0091

In the Supreme Court Of India

Case No : Civil Appeal No''s. 6398-6403 of 2002

Commnr. of Central Excise, N. Delhi and Others	APPELLANT
Vs	
G.T.C. Industries Ltd. and Others	RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

Citation : (2008) 132 ECC 1 : (2008) 158 ECR 1 : (2008) 228 ELT 505

Hon'ble Judges : V. S. Sirpurkar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Vikas Singh, ASG, R.K. Shukla, Naveen Parkash and B.V. Balaram Das, Joseph Vellapally, Adv K.K. Gupta, Nisha Bakshi and B.R. Sabharwal, for the Appellant;

Final Decision : Dismissed

Judgement

1. M/s. G.T.C. Industries Limited (respondent herein) are the manufacturers of cigarettes. They also get cigarettes manufactured by other small cigarette manufacturers on job work basis. This batch of appeals relate to duty demands and penalties in respect of cigarettes manufactured by the job worker manufacturers on account of G.T.C.

2. The period under consideration in these appeals is 1.4.1983 to 31.1.1986 during which period excise duty was leviable on the basis of the sale price declared on the cigarette packets. Intelligence was gathered that the respondents had been evading central excise duty on cigarette consciously and deliberately manufacturing deceptively similar version of certain regular brand showing lower sale price as compared with that of the regular brand. However, selling the deceptively similar brand at the same price as the regular brand in the market and collecting the difference between the two sale price mentioned on the cigarette packets by various means as "flow back".

3. Searches were conducted on 21.1.1986 on the premises of M/s. G.T.C. Industries Limited as well as at the premises of their job-workers and thereafter

elaborate investigation was conducted by the Director General, Anti Evasion of the Central Excise Department. As a result, show cause notices were issued to M/s. G.T.C. Industries Ltd., Vadodara on 23.3.1988, M/s. G.T.C. Industries Ltd., Mumbai on 29.3.1998, M/s. Shri Chandra Tobacco, M/s. Suvarna Filters and M/s. Universal along with M/s. G.T.C. on 25.3.1988, M/s. Kanpur Cigarette on 30.3.1988 and to M/s. J.K. Cigarette on 4.7.1998. Similar notices were issued to job workers as well.

4. The Collector, Central Excise, New Delhi after appreciating the evidence on record, confirmed the duty demand and penalty and held that there was a flow back to M/s. G.T.C. Industries Ltd.- respondent. Aggrieved by the order of the learned Collector, M/s. G.T.C. Industries Limited and other respondents filed appeals before the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal). The Tribunal by the impugned order, without referring to the finding of flow- back, accepted the appeals filed by the respondents on the ground that the same were concluded against the Revenue by the Tribunal in identical set of facts relating to manufacture of ITC brand cigarettes in the matter of 1998 (62) ECC 591 . Insofar as the appeal of I.T.C., which was decided against I.T.C. by the Tribunal, was allowed by this Court in I.T.C. Ltd. Vs. Commissioner of Central Excise, New Delhi and Another, .

5. The Tribunal did not advert to the question as to whether there were allegations in the show cause notice regarding the flow back and its effect. The Tribunal has not even taken note of the finding recorded by the Collector of Central Excise regarding the flow back. We are handicapped by the fact that the court of fact i.e. the Tribunal has not recorded any finding regarding the flow back to GTC. Since there is an allegation of flow back in the show cause notice and a finding recorded by the Collector of flow back, the Tribunal should have adverted to this fact and recorded its finding. We are not satisfied in the way in which the order has been recorded by the Tribunal. We are also not satisfied with the finding recorded by the Tribunal on the question of limitation. According to us, there should have been a detailed finding by the Tribunal on the question of limitation. Accordingly, we set aside the impugned order and remand the matter to the Tribunal to decide the same afresh in accordance with law keeping in view the observations made in this order.

6. Nothing stated in this order be taken as an expression of opinion on the merits of the dispute.

7. All contentions are left open.

8. The Tribunal should record a separate finding on the question of liability in the case of GTC Industries Limited vis-a-vis job workers.

9. Since, this is an old case and the litigation has been going on for the last several years, we would request the Tribunal to decide the matter as early as possible, preferably within a period of six months from the date of communication of this order.

10. With these observations, the appeals stand disposed of. There shall be no order as to costs.

