(2002) 12 SC CK 0046

In the Supreme Court Of India

Case No : Civil Appeal 4259 of 1995

Garden Silk Mills Ltd. APPELLANT

Vs

Collector of Central Excise and Customs RESPONDENT

Date of Decision : 18-12-2002

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35L

Citation : (2003) 151 ELT 259 : (2003) 11 SCC 393

Hon'ble Judges : M. B. Shah, J;D. M. Dharmadhikari, J

Bench : Division Bench

Advocate : Sameer Parekh, Shakun Sharma and P.U. Parekh, for the Appellant; Raju Ramachandrna, A.S.G., Krishnan Venugopal, Hemant Sharma and B. Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard the learned counsel for the parties. Being aggrieved and dissatisfied with the judgment and order dated 22nd November, 1994 passed by the Customs, Excise and Gold (Control) Appellate Tribunal in Appeal No. E/850/91, the appellant has filed this appeal. The Tribunal by the impugned judgment arrived at the conclusion that ''tapsa yarn'' manufactured by the appellant was classifiable under Central Excise Tariff Chapter Heading 56.06. Being aggrieved by the same, the appellant has filed this appeal.

2. It has been contended by the learned counsel for the appellant that subsequent to the aforesaid judgment the Tribunal has taken a contrary view in 1998 (75) ECR 239 and in 2000 (119) ELT 189 . It is pointed out that in both these cases the Tribunal has referred to the circular dated 10th October, 1988 issued by the Department, the relevant part of which reads as under :

"In view of the above, it is clarified that the instructions in Board''s letter F. No. 56/3/87-CX., dated 26-4-88 is applicable to such types of fancy yarns in which there is a core yarn and that the instructions contained in Board''s F. No. 55/9/87-

CX., dated 30-6-87 are not sought to be modified by the letter dated 26-4-88 and that both the instructions may be read separately. In view of the definitions of single yarn, multiple (folded) yarns and cabled yarns as given in the HSN Explanatory Notes relating to Chapters 50 to 55 and particularly in respect of yarns as given at pages 707 and 778 of the HSN Explanatory Notes, the single multiple (folded) and cabled yarns, whether plain or fancy, if they conform to the definitions of single multiple (folded) yarn and cabled yarns as discussed above, would be classifiable in Chapters 50 to 55 of the Central Excise Tariff depending upon the predominance; of the textile materials and subject to the Section note of Section XI and the relevant Chapter notes of the Central Excise Tariff."

3. Relying upon the decision rendered by the Tribunal in Pratik Crimpers (supra) the Tribunal had decided other matter of Kapadia Enterprises v. Collector, Central Excise. Against the judgment and order the Department preferred appeal which was dismissed by this Court in lime as reported in 2001 (133) E.L.T. A260.

4. Learned counsel for the appellant therefore, submitted that in view of the aforesaid two judgments rendered by the Tribunal and also the fact that against the judgment rendered by the Tribunal in Pratik Crimpers case (supra), this appeal requires to be allowed. As against this, learned Additional Solicitor General for the respondent submitted that the question whether appellant was using core yarn or not requires to be examined on the basis of the evidence which is led by the parties. Hence matter may be remitted to the Tribunal for decision it in accordance with law.

5. Considering the fact that there is no definite finding rendered by the Tribunal whether appellant was using core yarn in manufacturing tapsa yarn, matter requires to be re-examined by the Tribunal by considering the evidence which is led by the parties.

6. In this view of the matter, this appeal is allowed, impugned order passed by the Tribunal is set aside, matter is remitted to the Tribunal for deciding the case in accordance with law. There shall be no order as to costs.