(2012) 08 SC CK 0018

In the Supreme Court Of India

Case No : I.A. No. 2 of 2012 in Civil Appeal No. 1466 of 2011 and I.A. No''s. 3-4 of 2012 in C.A. No''s. 1468-1469 of 2011

GTC Industries Ltd. APPELLANT

Vs

Collector of Central Excise, New Delhi RESPONDENT

Date of Decision : 27-08-2012

Acts Referred:

Citation : (2012) 286 ELT 340

Hon'ble Judges : T.S. Thakur, J;Fakkir Mohamed Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : Rohina Nath, Nisha Baghchi, Sujeet Das and Umesh Kumar Khaitan, for the Appellant; M. Parasaran, ASG, Arijit Prasad, G. Dhingra, Arvind Kumar Sharma and B. Krishna Prasad, for the Respondent

Final Decision : Dismissed

Judgement

1. By our order dated 25-4-2011, we had directed issue of notice to the Respondents subject to payment of the entire amount determined by the Customs, Excise & Service Tax Appellate Tribunal [CESTAT] within a period of three months from the date of the said order 2011 (264) ELT 433 The Appellant company, we are told has deposited the amount of penalty levied against it but the principal amount of Rs. 3.85 crores has not been paid. Mr. Mohan Parasaran, learned ASG, appearing on behalf of the Respondents, argued that in terms of our order mentioned above, these appeals should stand be deemed to have been dismissed without any further reference to the court.

2. Counsel appearing for the Appellant company, however, disputed this position and contended that the CESTAT has not determined the liability towards excise duty against the Appellant. All that was levied against the Appellant was a penalty of Rs. 2.74 lakhs, which the Appellant has already deposited.

3. A reading of para 34.7 of the order passed by the CESTAT would show that the CESTAT has relying upon the decision of this Court in New Horizons Ltd. and Anr.

v. Union of India and Ors.1995 (1) SCC 478 found that GTC had gained at the cost of Revenue who was controlling KCPL and JKCL from the stage of manufacture till marketing of the goods. The CESTAT has further held that the Appellant alone had gained at the cost of Revenue as it was controlling the MRP and had realised sale proceeds over and above the said price. Para 34.7 of the CESTAT Order reads as under:

Shri Parasaran also relied on the judgment of Apex Court in the case of New Horizons Ltd. and Anr. v. Union of India and Ors. 1995 (1) SCC 478 to argue that the Courts can always see through corporate veil to ascertain the true nature of the company. Doctrine of lifting veil, piercing the veil, peeping or seeing through the veil is invoked when the corporate personality is found to be opposed to justice, convenience or interest of Revenue. We do agree with him that Courts come to rescue of Revenue where subterfuge to it is caused inside corporate veil. We have noticed that GTC was controlling KCPL and JKCL beginning from manufacture till marketing of the goods. Such finding alone was enough to hold that GTC had gained at the cost of Revenue controlling the MRP and realised sale proceeds over and above the MRP declared.

4. In the light of the above and in view of the order passed by us on 25-4-2011, we have no manner of doubt that the Appellant was duty bound to deposit the amount of excise duty determined by CESTAT within a period of three months from the 25-4-2011, if it was interested in pursuing the present appeals. Since the Appellant has failed to do so, the inevitably result of such failure is the dismissal of these appeals. We accordingly dismiss these appeals on account of failure of the company to deposit the amount determined by CESTAT as excise duty.

