(2003) 12 SC CK 0102

In the Supreme Court Of India

Case No : Civil Appeal No. 1905 Of 1998

Industrial Cables India Ltd. APPELLANT

Vs

Collector of C. Ex., Chandigarh RESPONDENT

Date of Decision : 18-12-2003

Acts Referred:
Tariff Act, 1934 — Section 2A

Citation : (2004) 112 ECR 503 : (2004) 163 ELT 407 : (2003) 12 SCC 426

Hon'ble Judges : S. N. Variava, J;H. K. Sema, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal is against an order of the Central Excise Gold (Control) Appellate Tribunal (for short "CEGAT") dated 25th November, 1997.

2. Briefly stated the facts are as follows :-

The appellants applied for exemption from payment of duty under Notification No. 68/71-C.E., dated 25th May, 1971. The said Notification, inter alia, reads as follows :-

"G.S.R. 821 :- In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, the Central government hereby exempts articles made of plastics, all sorts, falling under sub-item (2) of item No. 15A of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), Except -

(i) rigid plastic boards, sheeting, sheets and films, whether laminated or not; and

(ii) flexible polyvinyl chloride sheeting, sheets films and lay-flat tubing’s not containing any textile material,

from the whole of the duty of excise leviable thereon : Provided that -

(a) such articles are produced out of the artificial resins or plastic materials in any form falling under sub-item (1) of the said item, on which the duty of excise or the additional duty u/s 2A of the Indian Tariff Act 1934 (32 of 1934), as the case may be, has already been paid; or

(b) such articles are produced out of scrap of plastics."

3. The appellants also claimed exemption on the ground that the tapes manufactured by them were used for captive consumption and therefore no duty was payable under Rules 9 and 49 of the Central Excise Rules (as they then stood).

4. The Assistant Collector of Central Excise rejected the appellants' application. However the Appellate Collector, by an order dated 18th February, 1982, partly accepted the appellants' contention. It was held that the tapes were used within the factory i.e. for captive consumption and therefore duty was not leviable. On the question whether the appellants were entitled to the benefit of the above said Notification, it was held as follows :-

"The question of application of exemption notification cited by the appellants would arise only if any quantity of tape is cleared as such and not otherwise."

5. It is thus to be seen that the Appellate Collector specifically did not go into the question as to whether or not appellants were entitled to the benefit of the Notification. This question was left open on the basis that such exemption would only be available if tapes were being cleared. This indicates that the Appellate Collector did not decide whether the appellants were manufacturing tapes.

6. On 20th February, 1982 Rules 9 and 49 of the Central Excise Rules were retrospectively, amended and duty became payable even on goods consumed captively. The appellants filed a refund claim on 13th April, 1982, On 1st April, 1985 a show cause notice was issued to the appellants as to why his refund claim should not be rejected in view of the amendment of Rules 9 and 49. The appellants filed their written submission and contended that the order of the Appellate Collector dated 18th February, 1982 had become final and that therefore the appellants were entitled to refund. This contention was rejected by the Assistant Collector. It was held that the appellants were manufacturing sheets and not tapes and therefore the benefit of the above mentioned Notification was not available. It was held that in view of amendment of Rules 9 and 49 appellants were bound to pay duty. The appeal before the Appellate Collector, Central Excise was rejected on 31st May, 1991. CEGAT has also dismissed the appeal by the impugned Judgment

7. We are unable to accept the submission that in view of the order of the Appellate Collector dated 18th February, 1982 it was not open to the Department to raise a contention that the appellants were manufacturing sheets and not tapes. As has been set out herein above, the Appellate Collector left this question open. Merely because the appellants had claimed exemption from duty also on the ground that they were entitled to the benefit of Notification would not entitle them to avail of such benefit unless the question was specifically decided in those

proceedings. As the question was left open the Department could continue to contend that what was being manufactured was sheets and not tapes.

8. We also see no substance in the submission that the show cause notice was restricted to retrospective applicability of Rules 9 and 49 and that it was therefore not open to the Department to contend that the benefit of Notification was not available. In reply to this show cause notice the appellants contended that they were entitled to the benefit of the aforementioned Notification. This contention had to be answered. If it was found that there was no substance in this contention it had to be rejected by giving reasons.

9. In the above view, we see no infirmity in the order of the Tribunal. The appeal stands dismissed. There will be no order as to costs.

