(2006) 03 SC CK 0086

In the Supreme Court Of India

Case No : Civil Appeal No''s. 641 and 642-643 of 2001

Kartar Rolling Mills APPELLANT

Vs

Commissioner of Central Excise, New Delhi RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57F(2), 57G, 9(2)
Central Excises and Salt Act, 1944 — Section 11A, 35L

Citation : (2006) 03 SC CK 0086

Hon'ble Judges : G. P. Mathur, J;Ashok Bhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This order shall dispose of all the three appeals as the facts are identical in these appeals. For the sake of convenience, the facts are taken from Civil Appeal No. 641 of 2001.

2. This is a Statutory Appeal filed u/s 35L(b) of the Central Excise Act, 1944 against the order passed by the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi (for short 'the Tribunal') in Final Order No. 1055/2000-B (composite Final Order Nos. 1052-1055/2000-B), dated 3-7-2000 passed in Appeal No. E/2635/99-B.

Brief Facts:

3. The appellants were manufacturing hot rolled untrimmed sheets/circles of copper & copper alloys falling under chapter Heading No. 7409 of the Schedule to the Central Excise Tariff Act, 1985. The appellants were holding a Central Excise registration certificate and were clearing the goods on payment of Central Excise duty till 28-2-1994. They surrendered their Central Excise registration certificate with effect from 24th March, 1994. Show cause notice was issued under the Act on 12th of July, 1994 to show cause as to why the duty amounting to Rs. 2,14,780/- for the period from 1st March, 1994 to 31st March, 1994 and Rs.

87,512/- for the period 1st April, 1994 to 10th April, 1994 be not imposed and recovered under Rule 9(2) of the Rules read with Section 11A of the Act. Notice for levy of penally was also issued. The duty demand of Rs. 2,14,780/- and Rs. 87,512/- in respect of the goods cleared by them during the period 1-3-1994 to 31-3-1994 and 1-4-1994 to 10-4-1994 respectively were confirmed by Additional Commissioner, Central Excise, Gurgaon and a penalty of Rs. 28,000/- was also imposed on them vide Order-in-Original No. 55/1995, dated 16th March, 1995, inter alia, on the following grounds:

(i) The suppliers had sent raw material for job work under Rule 57F(2) of Central Excise Rules, 1944 to the appellants, after filling intimation under Rule 57F(2) of Central Excise Rules, 1944, but failed to follow the provisions of Chapter VAA of Central Excise Rules, 1944 and also did not pay any duty on the goods job worked upon.

(ii) Hence, the documents based on which job work was done were not proper document under Rule 57F(2) of Central Excise Rules, 1944 and nor the exemption under Notification No. 214/86 was attracted on intermediate products.

(iii) Even though Rule 57F(2) procedure was followed in as much goods were received by the appellants under prescribed challans, the benefit under the said rule was not available for the following reasons:

(a) Declaration under Rule 57G of Central Excise Rules was not filed.

(b) Credit under Rule 57A of Central Excise Rules was not availed.

(c) Duty liability in terms of Notification No. 1/93 was not discharged by the suppliers of the semi-finished goods/raw material.

4. Appeal filed by the appellants before the Commissioner (Appeals) was dismissed.

5. Aggrieved against the aforesaid order, the appellants filed an appeal before the Tribunal which remanded the case for fresh adjudication with the following observations:

(i) Notification No. 59/94 (which amends Notification No. 1/93 and grants SSI benefits to goods under dispute) and this aspect should have been examined by the adjudicating authority as well as Commissioner (Appeals).

(ii) Notification No. 214/86 fixes responsibility for payment of Central Excise duty on suppliers of raw material/semi-finished goods and lays down that the procedure for movement of goods shall be the same as prescribed under Rule 57F(2) and it is for the supplier to comply and department to verify whether the conditions of Notification No. 214/86 have been observed. The duty liability if any, which may arise in case of non-fulfilment of conditions prescribed in Para 2 would lie on the suppliers of raw material or semi finished goods as the responsibility has been explicitly cast on him as a principal manufacturer.

(iii) That in normal course the responsibility under Central Excise Law is on the manufacturer (including job worker) but once the government has chosen to depart from this principle explicitly and made provisions to take care of the resultant situation by making a specific provision in the Notification No. 214/86, it is not the case law cited by the D.R. but the plain language of the notification, which will have to be taken note of.

6. The Deputy Commissioner vide his Order dated 29-5-1998 confirmed the demand and also imposed a penalty of Rs. 28,000/-. It was held that clearance of the appellants had crossed Rs. 75 lakhs before 28th February, 1994, hence Notification No. 1/93 i.e. SSI benefit was not available during 1st March, 1994 to 31st March, 1994; the clearance of the appellants had crossed Rs. 200 lakhs in the financial year 1993-94 hence Notification No. 1/93 i.e. SSI benefit was not available during 1st April, 1994 to 10th April, 1994; that in terms of Tribunal's Judgment in the case of 1997 (71) ECR 97 as the conditions in the Notification No. 214/86 had not been observed, the goods manufactured by the appellants were liable to Central Excise duty and the duty liability was on the appellants. It was also held that in view of this Court's decision in the case of Union of India and others Vs. Kamlakshi Finance Corporation Ltd., , the order passed by the Tribunal in the case of Jinabakul Forge Pvt. Ltd. (supra) was of binding nature.

7. Aggrieved by the decision of the adjudicating authority, the appellants filed appeals which were dismissed by the Commissioner (Appeals). Being further aggrieved, the appellants filed appeals before the Tribunal which have been dismissed by the impugned order.

8. Before the Tribunal, twofold arguments were raised (i) since the goods were not marketable, no excise duly was leviable and (ii) that the appellants were covered by the exemption Notification No. 214/86 and, therefore, entitled to the exemption from payment of excise duty.

9. Tribunal has rejected the first contention holding that the finding recorded by it in the order of remand regarding the marketability of the goods and levy of excise duly, having not been challenged, has become final and cannot be re-agitated again. On the second point, while upholding the order of the authorities below, the Tribunal observed:

...We find that no evidence has been brought on record by the appellants to prove that the supplier of the raw material had supplied the materials to them under the provisions of Notification No. 214/86. In view of absence of any material to this effect, it is not open to the appellants to claim that they were working under the provisions of Notification No. 214/86. The copies of challans brought on record by the appellants only refer to the movement of excisable goods under Rule 57F(2). In view of this, the reliance placed by the appellant on the observation of the Tribunal in respect of Notification 214/86 in the remand order is not tenable.

10. Before us, in addition to the two points which were urged before the

Tribunal; Counsel for the appellants for the first time urged that the benefit of the Notification No. 83/94-C.E., dated 11-4-1994 be extended to the appellants with effect from 1-3-1994, in other words to give effect to the said notification with retrospective effect.

11. In the order of remand, the Tribunal had specifically held that the products manufactured by the appellants were marketable and therefore exigible to the levy of excise duty. The finding recorded in the order of remand regarding the marketability of the goods and exigibilily to the levy of excise duty having not been challenged, has become final and it is not open to the appellants to challenge the same. On the second point, we find that the appellants failed to bring any evidence on record to prove that the supplier of the raw materials had supplied the materials lo them under the provisions of Notification No. 214/86. The conditions laid in the notification for its applicability were not satisfied. The finding recorded by the Tribunal and the authorities below on this point is a finding of fact which cannot be interfered with in the absence of any material to the contrary. Since the third point had not been raised before the Tribunal and has been raised before us for the first time, the appellants are not entitled to raise the same in this Court. Otherwise also, we do not find any merit in this submission. It is trite to say that exemption notification have to be construed strictly. Since the notification came into effect from 11-4-1994, the benefit of the notification cannot be extended to the appellants retrospectively w.e.f. 1-3-1994.

12. For the aforesaid reasons, we do not find any merit in these appeals and dismiss the same with costs.