(2001) 09 RAJ CK 0108

In the Rajasthan High Court

Case No : Tax Ref. No. 3 of 2000

The Union of India APPELLANT

Vs

Agrawal Designing RESPONDENT

Date of Decision : 27-09-2001

Acts Referred:

Additional Duties of Excise (Goods of Special Importance) Act, 1957 — Section 3
Central Excises and Salt Act, 1944 — Section 35H
Finance Act, 1994 — Section 63

Citation : (2002) 3 WLN 668

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—This is an application u/s 35-H of the Central Excise Act, 1944 (hereinafter to be referred to as ''the Act'') for the issuance of a direction to the Central Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (for short ''the CGAT) to draw up a statement of the case and refer the following questions, said to be questions of law arising out of its order Annexure/3 dated 3.5.1999 to this Court:

(1) Whether in absence of any special penal provisions in Section 3(3) of the Act, 1957 the penal provisions relating to confiscation and imposition of penalty are applicable to Man Made Fabrics which are ''excisable goods'' finding mention in Schedule to the Central Excise Tariff Act, 1985 though they are liable to additional duty of excise duty?

(2) What is the impact of amendment in Sub-section 3(3) where the Parliament has amended the said section by introducing words ''offence and penalties'' (which are introduced in 1994) on the present proceeding?

2. The brief facts of this case as found by the Tribunal are: that the Officers of the Central Excise Department visited the factory premises of the respondent

assessee on 21.4.1973 and found that he was engaged in the process of mercerising cotton fabrics with the aid of power; that a certain quantity of cotton fabrics so mercerised on 19.4.1993 was found lying in the factory; that the said quantity of goods was seized as the respondent has manufactured the same without taking central excise licence or complying with other central excise formalities; that on scrutiny of the records in the factory, the Officers found that the respondents had already cleared 125144.66 sq. meters of mercerised cotton fabrics without payment of Duty. Therefore, the Collector Central Excise ordered to confiscation on the aforesaid goods with option to the assessee to redeem the same on payment of Rs. 50,000/- as redemption fine and imposed a penalty of Rs. 40,000/- on the respondent assessee. The Tribunal vide its final order dated 3.5.1999 disposed of the appeal setting aside the confiscation, redemption fine and penalty but confirming the demand of duty of Rs. 14.354.98P. on the quantity of fabrics processed with the aid of power prior to 11.4.1993.

3. At the time when the Officers of the Central Excise Department visited the factory premises of the respondent assessee, Sub-section (3) of Section 3 of the Additional Duties of Excise (Goods of Special Importance)'' Act, 1957 was as under:

(3) The provisions of the Central Excise and Salt Act, 1944 (1 of 1944), and the rules made thereunder including those relating to the refunds and exemptions from duty, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1).

However, by Section 63(a) of the Finance Act, 1994 (32 of 1994), Sub-section (3) of Section 3 of the aforesaid Act was substituted as under:

(3) The provisions of the (Central Excise Act, 1944) (1 of 1944) and the rules made thereunder, including those relating to the refunds, exemptions from duty, offences and penalties, shall, so far as may be, apply in relation to the levy and collection of the additional duties as they apply in relation to the levy and collection of the duties of excise on the goods specified in Sub-section (1).

4. The contention of the learned Counsel for the respondent-assessee has been that the substituted provision in the Act of 1957 which specifically incorporated provision relating to the levy of penalty under the Central Excise Act, 1944, made it applicable only with effect from the date when the said amendment was brought in to effect vide Finance Act, 1994 and is not retrospective in operation so far as the levy of penalty under the provisions of the Act of 1957 is concerned. It has been the case of the Revenue that since all provisions relating to levy and collection of additional duties as they apply in relation to the levy arid collection of excise duty on the goods covered under the Central Excise Act were made applicable by Sub-section (3) of Section 3 of the Act of 1957. The levy of penalty being an ancillary to the process of collection was already in existence and, therefore, the substituted provision must be deemded to be clarificatory in

nature so far as it relates to the question of penalty and not of substituted provision to be operative retrospectively particularly keeping in view that the Act of 1957 is not an independent legislation but is merely supplementary to the existing law relating to the levy of excise duty.

5. In our opinion, the aforesaid question by any stretch of imagination cannot be said to be a question of fact and must be held to be a question of law which directly arises from the appellate order of the Tribunal. The fact that some of the High Courts have taken a particular view does not lose its character as a question of law because such decisions do not attain finality so far as the other High Courts in the country are concerned.

6. It has been pointed out by the learned Counsel for the petitioner that the decision of the Delhi High Court in Pioneer Silk Mitts Pvt Ltd.''s case (supra) is subject to the appeal before the Supreme Court and the appeal is still pending consideration. Moreover in the matter of taxing statute, each period for which tax is levied is independent and the principle of res judicate is not applicable. In these circumstances, we are of the view that the Tribunal was in error in refusing to make a reference of the question of law, which arose apparently out of its order, to this Court.

7. Accordingly, this application is allowed and we direct the Central Customs Excise and Gold (Control) Appellate Tribunal, New Delhi to draw up a statement of the case and refer the aforesaid question of law sought to be referred by the petitioner to this Court. No order as to costs.