

Commissioner of C. Ex., Vs. Standard Tapuln Industries

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-07-2002

Reported in : (2002)LC815Tri(Delhi)

Judge : K Usha, N T C.N.B., K Kumar

Appellant : Commissioner of C. Ex.,

Respondent : Standard Tapuln Industries

Judgement :

1. Justice K.K. Usha, President. - This appeal was also posted for being heard by a Larger Bench along with Appeal No. E/1530/2001 on the question of merger.
2. The present appeal at the instance of Revenue is directed against order-in-appeal No. 1281/CE., Chd/2K, dald 30-6-2000 in which the Commissioner (Appeals) confirmed the amount of duty as demanded by the Assistant Commissioner but set aside the penalty. Against the above order the assessee filed an appeal before this Tribunal challenging the demand of duty. The appeal No. E/3Q40/2000-D was disposed of by this Tribunal under Final Order No. 57/2001-D, dated 1-2-2001. It is reported as Standard Tarpaul Industries v. CC.E, Chandigarh [2001 (129) E.L.T. 736 (Tribunal) - 2001 (43) RLT 178 (CEGAT-Del.)]
3. The assessee is a manufacturer of sleeping bags. The challenge was against classification as well as computation of the assessable value.

The Tribunal confirmed the classification as ordered in the impugned orders. But on the question of computation of assessable value, it was held that by applying the ratio in *Srichakra Tyres* [1999 (108) E.L.T.361 (Tribunal) = 1999 (32) RLT 1 (CEGAT-LB)] the sale price has to be treated cum-duty price in cases where sale price is the total realization by the assessee. It was held that the authorities had wrongly computed the assessable value treating the sale price as assessable value. The matter was remitted to the jurisdictional Deputy Commissioner for recomputing the Central Excise duty correctly and directing the appellant to make payment of the duty on such re-computation.

4. The present appeal was filed by the Revenue pursuant to order in review passed by the Commissioner of Central Excise, Chandigarh on 18-9-2000 in exercise of its power under Section 35B(2) of the Central Excise Act, 1944. It is, therefore; clear that when this Tribunal disposed of the appeal filed by the assessee from the very same order the appeal filed by the Revenue was already pending before this Tribunal. The facts in this case are entirely different from the facts in Appeal No. E/1530/2001 wherein the review by the Board was itself much after the decision of the Tribunal on the appeal filed by the assessee. According to us the ratio of the decision in *Commissioner of Sales Tax v. Vijai Int. Udyog* - (1984) 4 SCC 343 would be applicable in the facts of the present case. It was held therein that two cognate appeals against the same order should be taken and decided together. On account of the mistake of the Tribunal in not clubbing the two appeals, statutory right of appeal of one party cannot be so negated. The doctrine of merger will not be applicable in such circumstances.

5. In the present case it was due to a mistake that the two appeals were not heard together. When the assessee's appeal was disposed of, apparently the Revenue did not point out that its appeal is also pending before this Tribunal challenging the very same order. In any view of the matter since the issue of merger does not arise in the facts of this case we are returning this appeal for being heard by a Bench of two Members.

6. Registry to post the appeal for further hearing before a Bench of two Members expeditiously.

