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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-21-2003

Reported in : (2003)LC972Tri(Delhi)

Judge : N T C.N.B., P Chacko

Appellant : Special Prints Limited

Respondent : Cce

Judgement :

1. These appeals are against the order passed by the Commissioner of Central Excise and Customs, Surat in adjudication of a show cause notice issued by him on 12.5.1998 on the basis of the results of the departmental investigation into certain clearances of excisable goods by two of the appellants viz. M/s. Special Prints Ltd and M/s Garden Silk Mills Ltd. The bare facts relevant for the purpose of disposal of these appeals are as under: During the period April 1993 to March, 1998, M/s Special Prints Ltd Surat, on jobwork basis, processed grey man-made fabrics supplied by M/s Garden Silk Mills Ltd, Surat and cleared the processed fabrics to M/s Garden Silk Mills Ltd on payment of Central Excise duty. The show cause notice alleged that the two companies were related persons in terms of Section 4(4)(c) of the Central Excise act and, therefore, M/s Special Prints Ltd should have paid duty on the processed fabrics in terms of the wholesale price at which the goods were sold by M/s Garden Silk Mills Ltd in terms of section 4(1)(a)(iii) of the Act. Therefore, a demand of differential duty amounting to Rs 21,37,51,202/- was raised on M/s Special Print Ltd. During the period from

November 1996 to March 1998, M/s Garden Silk Mills Ltd had, on the jobwork basis, texturised partially oriented yarn (POY) and cleared the same to M/s Special Prints Ltd on payment of Central Excise duty and the latter, in turn, sold the goods to the former, who then sold the goods in the market at a price much higher than the price on which duty had been paid initially by them. The show cause notice alleged that M/s Garden Silk Mills Ltd should have initially paid duty on the texturised yarn in terms of the wholesale price at which they themselves sold the yarn after purchase from M/s Special prints Ltd in the normmal course of wholesale trade in terms of section 4(1)(a)(ii) of the Act. The notice accordingly raised a demand, on M/s Garden Silk Mills Ltd of differential amount of duty of Rs. 60,31,775,30 on the texturised yarn cleared to M/s Special Prints Ltd during the above period. The show cause notice also proposed to impose penalties on the two companies under Section 11-AC of the act and rule 173-Q(1) of the Central Excise Rules, 1944. Penalties under Rule 209-A of the Central Excise Rules were also proposed against shri Soli. J.Bhesania, Director of M/s Garden Silk Mills Ltd and Shri B.J.Modi, Director of M/s special Prints Ltd. The show cause notice, further, implicated two firm namely M/s Garden Associates and M/s Vareli Associates for their alleged involvement by way of transportation of the processed fabrics of M/s Garden Silk Mills Ltd and accordingly, proposed imposition of penalties on them under Rule 209-A ibid. It was also alleged in the notice that four trucks belonging to Shri Alla Bax Mohd Shaikh, Proprietor of Adnan Roadlines, New Agra Road, Mumbai, which were used for transportation of the processed fabrics of M/s Garden Silk Mills Ltd, were liable to confiscation. A penalty was also proposed to be imposed on Shri Alla bax Mohd Shaikh under Rule 209-A ibid.

2. The allegations in the show cause notice were denied by the parties.

TheCommissioner, in the impugned order, confirmed the demands of duty against M/s Special Prints Ltd and M/s Special Prints Ltd and M/s Garden silk Mills Ltd; appropriated the bank guarantee of Rs 2 lakhs furnished by the owner of the trucks at the time of provisional release of the vehicles, towards redemption fine in lieu of confiscation thereof: imposed penalties on the assessee-companies under Section 11AC/Rule 173-Q and also imposed penalties under Rule 209-A on M/s Garden Associates, M/s Vareli Associates, shri S.J.Bhesania, Shri B.J.Modi and

Shri Alla Bax Mohd Shaikh. Hence these appeals.

3. Heard both the sides. The learned Senior Advocate Shri J.F.Pochkhanawala, assisted by the learned Advocate Shri Willingdon Christian, representing the appellants, submitted that the basic issue involved in this case was no longer res integra as it stood settled by the judgement of the Hon'ble Supreme Court in the case of Ujagar Prints Vs. Union of India (1988 (38) ELT 535) as clarified in 1989 (39) ELT 493. The learned Counsel also relied on the apex Court's decision in Pawan Biscuits Co Pvt Ltd Vs. CCE Patna [2000 (120) ELT 24(SC)] as also on the Tribunal's order in S. Kumars Ltd. Vs. CCE Indore [2000 (117) ELT 439] and Prafful Industires & Others Vs. CCE Mumbai [2000 (38) RLT 125.] The learned SDR Shri R.C.Sankhla reiterated the findings as recorded inthe impugned order and also reiterated the Supreme Court's decision in Standard Fire Works Industries & Another Vs. CCE[1987 (28) ELT 56 (SC)].

4. We have carefully examined the submissions. The differential duty of over Rs 21 crores confirmed against M/s Special Prints Ltd by the adjudicating authority is on the fabrics processed by them on jobwork basis and cleared to M/s Garden Silk Mills Ltd. The Commissioner has found these two companies to be "related persons" in terms of section 4(4)(c) of the Central Excise Act and, on this basis, held that duty should have been paid on the processed fabrics by M/s Special Prints Ltd (job worker) on the basis of the wholesale price at which M/s Garden Silk Mills Ltd subsequently sold the goods to their wholesale dealers. The Commissioner took the view that, on account of the relationship which he found between M/s Special Prints Ltd and M/s Garden Silk Mills Ltd, the ratio of the decision of the Supreme Court in Ujagar Prints was not applicable to the case. A similar position was taken by the Commissioner while confirming the demand of differential duty of over Rs 60 lakhs against M/s Garden silk Mills Ltd. in which case it was M/s Garden Silk Mills Ltd who undertook the job work of texturising POY and cleared the texturised yarn to M/s Special Prints Ltd. On account of the aforesaid "relationship", the Commissioner took the view that Ujagar Prints was not applicable and, therefore, M/s Garden Silk Mills Ltd. were liable to pay duty on the texturised yarn on the basis of the price at which M/s Special Prints Ltd sold the goods to their wholesale dealers in the market. The rest of the findings of the

Commissioner, whether it be with regard to confiscation or penalty or whateverelse, are only consequential to his decision in regard to the assessable value of the goods (processed fabries/texturised yarn) for the purpose of payment of Central Excise duty by M/s Special Prints Ltd and M/s Garden Silk Mills Ltd. 5. We note that the decision of the Commissioner in regard to valuation of the goods is based on the premise that M/s Garden Silk Mils Ltd. and M/s Special Prints Ltd are "related persons" in terms of section 4(4)(c) of the Central Excise Act. It is on the very same premise that the adjudicating authority considered that the decision of the apex Court in Ujagar Prints was not applicable. However, we do not think that it is necessary in this case to examine the question whether M/s Special Prints Ltd and M/s Garden Silk Ltd are related persons in terms of Section 4(4)(c) of the Central Excise Act inasmuch as this Tribunal has, in the case of S Kumars (supra), held that in the valuation of fabrics processed by a job worker and cleared to a trader who supplied grey fabrics for the job work, the ratio of the judgement of apex Court in Ujagar will be applicable irrespective of whether the trader and jobworker are related. This decision in S.Kumars has been followed with approval by the Tribunal's Larger Bench in the case of Profful Industries (supra). We also find that the ratio of Ujagar Prints has been followed by the Supreme Court in the case of Pawan Biscuits. After noting the similarity of the two cases, their lordships explained the ratio of Ujagar Prints in para 16 of the judgement in Pawan Biscuits (supra), which is extracted below:- "The present case is similar to Ujagar Print's case. In Ujagar Print's case, it was the grey cloth which was given to the processor whereas in the present case it was the raw material for the manufacture of biscuits given to the appellant. After the biscuits are made. they are given back to or are delivered under the instructions of Britannia. The appellant was entitled to receive processing charges which include its expenses plus profits for the purpose of determining the excise value. However, the cost of the raw material supplied by Britannia will have to be included in addition to the appellant's manufacturing costs and profit. What cannot be included on the ratio of Ujagar Prints case is any profit of Britannia or expenses which are incurred after the manufacture of the biscuits by the appellant. Despite repeated attempts made by the learned Counsel for the respondent, we are unable to distinguish this case from the ratio laid down by this Court in the aforesaid two decisions of Ujagar Prints' case." We find that, in so far

as the demand of duty confirmed against M/s Special Prints Ltd is concerned, the position of the assessee is similar to that of Pawan Biscuits Co. Pvt Ltd, who made biscuits on jobwork basis and cleared the same to M/s Britannia Industries Ltd. Accordingly, M/s Special Prints Ltd were not liable to include, in the assessable value of the processed fabrics cleared to M/s Garden Silk Mills Ltd, any profit or expenses incurred on the part of the latter.

The assessable value of the processed fabrics for the purpose of payment of Central Excise duty by M/s Special Prints Ltd would include only the cost of raw material supplied by M/s Garden Silk Mills Ltd, and the processing charges and other expenses and profit of the former (job worker). The same would be the position with regard to the assessable value of the texturised POY cleared by M/s Garden Silk Mills Ltd (as job worker) to M/s Special Prints Ltd, for the purpose of payment of Central Excise duty on the goods by the former. Admittedly, both these companies have paid duty on the respective processed goods on the assessable values determined on this basis. There is no warrant for any such value addition as alleged in the show cause notice and held by the adjudicating authority. The ratio of Ujagar Prints is squarely applicable to the case. Any relationship between the two companies is immaterial as held by the Tribunal's larger Bench in Prafful Industries. The Larger Bench, as we have already noted, has approved the view taken in S.Kumars case which is squarely applicable to the instant case.

6. It was submitted by the learned DR that the Department had filed appeal against the Tribunal's decision in S Kumars and the apex Court admitted the appeal vide 2000 (122) ELT A-113. However, it is seen, there is no stay of operation of the Tribunal's decision in S.Kumars.

Also, no decision of the Supreme Court or any High Court disturbing the precedent value of the larger Bench decision in Prafful Industries has been brought to our notice. The Supreme Court's judgement in Standard Fireworks case cited by the DR does not contain anything having any bearing on the issue we have considered in the instant case.

7. In the result, following the case law already discussed, we set aside the demands of differential duty against M/s Special Prints Ltd and M/s Garden Silk

Mills Ltd. Having rejected the very basis of the Commissioner's decision, we cannot sustain his order. In the result, the impugned order is set aside and the appeals are allowed.

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