Commissioner of Central Excise Vs. Ambari Tea Co. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Calcutta

Decided On : Apr-06-2006

Judge : M Ravindran

Appellant : Commissioner of Central Excise

Respondent : Ambari Tea Co. Ltd.

Judgement :

1. These two appeals are filed by the Revenue against the impugned Order-in-Appeal dated 9-3-2005.

2. The issue involved in these cases is regarding the interest chargeable from the respondents on the delayed payments of additional duties of excise on Tea and Tea Waste. The respondents had discharged their liability for additional duty of excise, voluntarily. The Department sought to recover interest from them under the provisions of Rule 8 of the Central Excise Rules, 2002. The respondents contested the show cause notice. The adjudicating authority confirmed the recovery of interest. On appeal, the Commissioner (Appeals) set aside the Order-in-Original and allowed the appeals of the respondents herein.

Hence these appeals by the Revenue.

3. The learned J.D.R. submits that the interest is chargeable under the provisions of Rule 8 of the Central Excise Rules, 2002, as the respondents had availed the benefits for payments of additional duty of excise in terms of the provisions of Rule

8. He, therefore contends that since Rule 8 in itself, encompasses for payment of interest for delayed payment of duty, interest is leviable.

4. The learned Senior Advocate appearing for the respondent companies submits that Section 157 of the Finance Act, 2003 does not specifically mention for recovery of interest for any delayed payment of additional duty of excise. In support of his submission, he relies upon two decisions of the Honourable Supreme Court - one in the case of India Carbon Ltd. v. State of Assam reported in STC (106) - 460 (SC) and the other in the case of Collector of Central Excise, Ahmedabad v. Orient Fabrics Pvt. Ltd. 5. Considered the submission made by both sides, and perused the records. I find from the records that the respondents were required to discharge the additional duties of excise on Tea and Tea Waste under the provisions of Section 157 of the Finance Act, 2003. The said provisions are as under : - 157. Additional duty of excise (tea and tea waste). - (1) In the case of goods specified in the Fourth Schedule, being goods manufactured in India, there shall be levied and collected for the purposes of the Union, by surcharge, an additional duty of excise, at the rate specified in the said Schedule.

(2) The additional duty of excise referred to in Sub-section (1), shall be in addition to any other duties of excise chargeable on such goods under the Central Excise Act or any other law for the time being in force.

(3) The provisions of the Central Excise Act and the rules made thereunder, including those relating to refunds and exemptions from duties and imposition of penalty, shall, as far as may be, apply in relation to the levy and collection of the additional duty of excise leviable under this section in respect of the goods specified in the Fourth Schedule as they apply in relation to the levy and collection of the duties of excise on such goods under that Act or those rules, as the case may be.

The provisions of Central Excise Rules were made applicable in respect of refunds, exemptions from duty and imposition of penalty under Sub-section 3 of Section 157 of the Finance Act, 2003. This sub-section does not provide for recovery of any interest from the violator. An identical provisions in respect of levy and collection of additional duties of excise was before the Honourable Supreme

Court in the case of Collector of Central Excise, Ahemedabad v. Orient Fabrics Pvt. Ltd. (Cited supra). The Honourable Supreme Court in paras 5 and 6 of the said decision has held as under: 5. In order to appreciate the issue, it is relevant to set out the Sub-section (3) of Section 3 of the Act, as applicable in this matter and which runs as under: (3) The provisions of the Central Excise and Salt Act, 1944 and the rules made thereunder including those relating to 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 duties of excise on the goods specified in Sub-section (1).

6. A perusal of the said provision shows that the breach of the provisions of the Act has not been made penal or an offence and no power has been given to confiscated the goods. It only provides for application of the procedural provisions of the Central Excise and Salt Act, 1944 and the Rules made thereunder. It is no longer res integra that when the breach of the provisions of the Act is penal in nature or a penalty is imposed by way of additional tax, the constitutional mandate requires a clear authority of law for imposition for the same. Article 265 of the Constitution provides that no tax shall be levied or collected expressly provided. The Act created liability for additional duty for excise, but created no liability for any penalty. That being so, the confiscation proceedings against the respondents were unwarranted and without authority of law.

5.1 I find that the provisions of Sub-section 3 of Additional Duties (Goods of Special Importance) Act, 1957 were identical to the wording of the Sub-section (3) of Section 157 of the Finance Act, 2003. Hence I find that the ratio of the Honourable Supreme Court's decision in the case of Collector of C. Ex., Ahmedabad v. Orient Fabrics Pvt. Ltd. (supra) squarely covers the issue in these cases.

5.2 Following the Honourable Supreme Court's decision, I do not find any merits in the appeals filed by the Revenue. The appeals are, therefore, dismissed.