

Lml Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-25-1990

Reported in : (1992)(40)LC418Tri(Delhi)

Judge : V T K.S., J Balasundaram, S Peeran

Appellant : Lml Limited

Respondent : Collector of Central Excise

Judgement :

1. Shri Santhanam, General Manager (Legal) of the appellants submitted that at para 16 of the Tribunal's order, the Tribunal has stated the period covered by the Show Cause Notice dated 19.5.1986 was 31.1.1985 to 30.9.1985 which is a factual error and it should be correctly 31.1.1985 to 13.9.1985 as the demand in respect of waste raised in show cause notice of 19.5.1986 was for that period only, and urged that this error should be rectified in the Tribunal's order.

2. It was, further, submitted that the Tribunal's findings on the various demands follows the amounts listed in annexure IV to the show cause notice in which items 6 and 7 are those relating to demands consequent upon discrepancies in the Central Excise records detected when compared with the appellants' balance-sheets. While referring to this aspect, in para 9 and giving a finding thereon in para 20 of its order, the Tribunal has referred to only s1. No. 6 of annexure IV to show cause notice and has omitted to mention s1. No. 7 of that annexure. Sh. Santhanam pleaded that this is also an error apparent on the face of the record

which should be rectified.

3. It was also argued that at page 48 of the Tribunal's order dealing with appeal No. E/3419/87-D, the Tribunal has held that demand for duty for a period beyond 6 months in the show cause notice issued by the Superintendent is without jurisdiction. Having done so, it was urged, the Tribunal ought to have set aside the fine in lieu of confiscation also as lack of jurisdiction goes to the very fact of the matter, and in this context, Supreme Court decision in the case of Kiran Singh v. Chaman Paswan was cited as also Tribunal's decision in the case of Pratap Rajasthan Copper Foils and Laminates v. C.C.E..

4. It was submitted that the Tribunal ought to have granted relief by way of set off of duty already paid on split yarn against the duty now held to be payable on mother yarn for the relevant period because, according to applicants, the absence of specific provision in the statute to grant set off cannot stand in the way of the appellate jurisdiction of the Tribunal. Its powers under Section 35C of CESA 1944 are identical with those under Section 224 of Income Tax Act and the Delhi High Court's decision in the case of CIT v. Ramanand Sachdeva was cited in support wherein the High Court upheld the order of the Tribunal upholding the adjustment of the Tax already paid by the HUF in respect of the same income and for the same year against such income which was subsequently held to be taxable in the hands of the assessee in his status as individual. Supreme Court's decision in the case of C.I.T. v. Nelliappan was also cited wherein Supreme Court had held that Tribunal is not precluded from adjusting lax liabilities. This Tribunal in its order in the case of General Industrial Society v. C.C.E. which was followed in the case of Rajasthan Spg. and Wvg. Mills v. C.C.E. had held set off admissible on account of duty already paid on constituent yarns under same Tariff Entry 18E of C.E.T. It was urged that the Tribunal in its order herein, therefore, erred in expressing its inability to grant relief of set off as not being envisaged in Central Excise Act and Rules and on the ground that the Tribunal is not a court of equity.

5. Shri L.C. Chakraborty, the Ld. D.R. appearing for the department, contended that there was no ground to set aside redemption fine on the goods because the case involved seizure of 640 cartons of mother yarn found unauthorisedly

removed from the place of manufacture wherein Rule 9 for clandestine removal had been involved and the Tribunal had given a clear finding that the offence was established. The issue is not an error as apparent on the record. Regarding the plea that the Tribunal should have granted relief of set off duty, this was also not a matter of rectification of error as the Tribunal has given its reasons in its order with which if the applicants felt aggrieved an appeal could be preferred in accordance with law. The Ld. D.R. also referred to the proviso to notification 47/85 dt. 17.3.1985 which shows both mother yarn and split yarn are dutiable and for split yarn to be exempt duty liability should have been discharged on mother yarn. This is a condition for the exemption and, in the facts of the present case, it cannot be said to have been fulfilled. As for the Tribunal's decisions permitting set off cited by the applicants it was contended that this Tribunal in its Larger Bench decision in the case of Guardian Plasticote v. C.C.E. had upheld dutiability of two goods even though they may fall under the same sub-item in the Tariff.

The Ld. D.R., however, submitted that factual errors pointed out regarding period covered by show cause notice dated 19.5.1986 and regarding findings with reference to sl. No. 6 and 7 of annexure IV to show cause notice may need correction.

6. On a careful consideration of the submissions made by the parties before us, and on a perusal of the record, we are inclined to hold that para 16 of the Tribunal's order needs to be rectified and it is so ordered. Accordingly, in para 16 of the Tribunal's order, at line 72 thereof, the figures and word "31.1.1985 to 30.9.1985" appearing therein shall stand corrected to the figures and word, "31.1.1985 to 13.9.1985." 7. Similarly, it is seen that para 9 of the Tribunal's order deals with goods alleged to be short accounted for in excise records as compared to balance sheet. This is with reference to the various charges as listed in annexure IV to the show cause notice reproduced at para 2 of the Tribunal's order which shows that demand arising out of quantity of goods allegedly short accounted for in excise records as detected from the appellants' balance sheet is covered by sl. No. 6 and 7 of annexure IV to the show cause notice. However, in the order of the Tribunal on these charges at paras 9 and 20 thereof reference to the demand on this account has been made only to sl. No. 6. Since, actually,

demands at both sl. No. 6 and 7 relate to the demand based on a comparison of excise records with balance sheet, the reference to it and the finding thereon by the Tribunal in its order at paras 9 and 20 obviously cover both, and accordingly the omission in these two paras of sl. No. 7 is an error apparent on the face of the record. Therefore, it is ordered that the following obvious errors in the Tribunal's order should be rectified as follows: In para 9 of the order, at line 3, the words and figures, "at sl.

No. 6 of annexure IV" shall be corrected to read as, "at sl. Nos. 6 and 7 of annexure IV".

In para 20 of the order at lines 2 and 3 the words and figures, "at item No. 6 in annexure 4" shall be corrected to read as, "at sl. No. 6 and 7 of annexure IV".

8. It has been argued by the appellants that since the Tribunal had found that show cause notice for demanding duty beyond six months by the Superintendent is without jurisdiction, then for that reason the redemption fine on the goods should also be set aside. As against this, it is found that in respect of the quantity of 634 cartons which had been seized and confiscated, the Tribunal had given a clear finding, "In view of the finding already given by us that mother yarn itself is dutiable under item 18II(i)(a) of Central Excise Tariff, its removal to an unauthorised and unapproved place from the place of manufacture without assessment of duty, thereon, would constitute an offence under Rule 9(2) and to that extent, the Collector's finding that the goods were liable to confiscation is well founded". Therefore, the Tribunal had found that there was violation of Rule 9(2) and upheld confiscation. It was not a case of short levy under Section 11A simpliciter.

9. Regarding the submissions that the Tribunal in its order should have directed that duty already paid on split yarn should be set off against duty found payable on mother yarn, it is held that the Tribunal in its order towards the end of para 14 of its order has considered this aspect and given its findings. The case law now cited before us in this regard were not put forth before the Tribunal when the appeal was argued before it and hence there is no error apparent arising in this matter out of the Tribunal's order.

10. Therefore, except for the apparent errors in the Tribunal's order which need to be and have been rectified in the manner indicated supra, all the other points raised in the rectification applications are not errors apparent on the face of the record arising from the Tribunal's order, as discussed above. In this context, we bear in mind the Hon'ble Supreme Court's observation in the case of T.S. Balaram v. Volkart Bros. 82 ITR 50 (SC), "A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions.... A decision on a debatable point of law is not a mistake apparent from the record."

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