State of India Ltd. Vs. Union of India

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Court : Delhi

Decided On : May-12-1997

Reported in : 1997(42)DRJ355; 1997(96)ELT248(Del)

Judge : D.K. Jain and; Y.K. Sabharwal, JJ.

Acts : Central Excise Tariff Act, 1985

Appeal No. : C.W.P. Nos. 4529 of 1996 & 7851 of 1996

Appellant : State of India Ltd.

Respondent : Union of India

Advocate for Def. : Shri P.N. Misra, Adv.

Advocate for Pet/Ap. : Shri M. Chandrasekharan, Sr. Adv.,; M. Gourishankar Murthy and;

Judgement :

Y.K. Sabharwal, J.

1. The short question in this petition is about the validity of the order made by the Customs, Excise & Gold (Control) Appellate Tribunal on 30th September, 1996 while deciding the application of the petitioner seeking waiver of the pre-deposit of excise duty till the disposal of petitioner's appeal before the Tribunal. Brief facts

are these :

2. The Assistant Collector of Central Excise by the order of adjudication held that the washing machines manufactured by the petitioner should be classified under sub-heading 8451.00 of the Central Excise Tariff and accordingly dropped the demand based on classification under sub-heading 8450.00. Against the order of adjudication the Assistant Collector of Central Excise preferred a review appeal which was allowed by Commissioner of Central Excise (Appeals) on 23rd May, 1996. The order of adjudication was set aside by the Collector (Appeals) and it was held that the goods are classifiable under Heading 8450 and not under Heading 8451. Thus the demand of about Rs. 31 lakhs was confirmed.

3. Against the order dated 23rd May, 1996 the petitioner has filed an appeal before the Tribunal which is pending. On application seeking waiver of the pre-deposit pending the decision of the appeal, by the impugned order dated 30th September, 1996 the Tribunal has directed the petitioner to deposit a sum of Rs. 15 lakhs and has directed that subject to the said deposit, deposit of the balance duty amount will be waived. It has been further directed that if the petitioner fails to deposit a sum of Rs. 15 lakhs the appeal shall be liable to be rejected.

4. In this petition we are not concerned with the merits of the controversy as to whether the petitioner's washing machines are classifiable under sub-heading Entry 8450 or 8451. The only question with which we are concerned is whether the Tribunal has exercised discretion in directing the petitioner to make the deposit as aforesaid on sound legal principles by considering all the relevant facts.

5. The petitioner has placed on record a letter dated 4th October, 1995 issued by the office of Chief Commissioner endorsing the views regarding classification of washing machines manufactured by the petitioner under Entry No. 8451. The said communication further states that classification of washing machines should be made under Tariff Entry No. 8451 to maintain uniformity. In this case, as already noticed, the original order classified machines under Tariff Entry No. 8451 but the order was reversed in review appeal by Commissioner of Central Excise (Appeals). The petitioner has also made averments in the writ petition that other manufacturers are being given the benefit of classification of Entry No. 8451 and

despite particulars regarding the same being placed before the Commissioner (Appeals) and also the Tribunal this aspect has totally been ignored and has not been considered. There is no specific denial of these averments in counter-affidavit filed by the respondents. The respondents have also not taken the stand that the particulars of other manufactures said to have been supplied by the petitioner before the Commissioner (Appeals) and the Tribunal, should again be supplied to the respondents. In this view we have to assume, for the present purpose, that the other similar manufacturers of similar machines are being given the benefit of Entry No. 8451 and the similar machines are being classified under Entry No. 8451 to maintain uniformity as was desired by the Chief Commissioner in the communication noticed hereinbefore.

6. The question for the present is not of the effect of the aforesaid facts on the appeal of the petitioner when it is decided on merits but is about the effect of non-consideration of these facts by the Tribunal while deciding the stay application of the petitioner. The non-consideration of the vital and relevant facts, in our view, has resulted in vitiating the impugned order of the Tribunal. The facts not considered are -

(a) the order of Asstt. Commissioner being in favor of the petitioner and the same having been set aside in review appeal by the Commissioner of Excise (Appeals).

(b) the communication dated 4th October, 1995 issued by the office of Chief Commissioner, and

(c) the averment that other similar manufacturers were being given the benefit of classification under Entry No. 8451.

7. May not individually but cumulative effect of aforesaid facts should have been considered.

8. In view of the aforesaid, we set aside the impugned order dated 30th September, 1996 and direct the Tribunal to hear the appeal of the petitioner without insisting upon any deposit being made as a condition for hearing the appeal. The writ petition is allowed in above terms leaving the parties to bear their

own costs.

9. Writ petition allowed.