Commissioner of Central Excise Vs. Sidharth Processors

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-09-1996

Reported in : (1996)LC72Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Sidharth Processors

Judgement :

1. The appeal is moved by the Revenue against the order of the Commissioner of Central Excise (Appeals) allowing the appeal of the respondents.

2. The issue relates to refund of handlooms cess collected under the Khadi and other Handloom Industries Development Act, 1953. There is no dispute that the refund is otherwise entitled to the respondents. But the objection raised is that the refund, if it is sanctioned, would involve unjust enrichment to the respondents and applying the ratio of the judgment of the Bombay High Court in the case of M/s. Roplas (India) Ltd., [1988 (38) E.L.T. 27 (Bom.)] the refund was rejected by the Asstt. Commissioner. On appeal against the said order, the Commissioner (Appeals) allowed the appeal. Revenue is aggrieved by the said order.

2A. Shri Puri, the ld. SDR pleads that according to Sub-section (2) of Section 3 of the Khadi and other Handloom Industries Development Act, Cess is also a duty of excise and it is to be collected in the same manner as excise duty leviable under the Central Excises & Salt Act.

Hence, as per the amended provisions of Section 11B, in any refund which could be sanctioned, the Assistant Commissioner has to apply the amended provisions of Section 11B, as per the Supreme Court decision in the case of Union of India v. ITC Ltd. reported in 1993 (67) E.L.T. 3 (S.C.). He, therefore, pleads that the Commissioner (Appeals) is be justified in allowing the appeal of the respondents.

3. After hearing both the sides, I find that the question to be considered is whether the entire provisions of Central Excises & Salt Act could be applied in regard to the levy and collection of cess under the Khadi & other Handloom Industries Development Act, 1953. On a perusal of the entire Act relating to the cess, I find that there is no machinery provision for applying the provisions of the Central Excises & Salt Act, 1944 to the levy and collection of cess under the aforesaid Act. Similar machinery provisions are available in the case of Additional Duties of excise (Goods of Special Importance) Act, 1957 and Additional Duties of Excise (Textiles & Textile Articles) Act, 1978. As per Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 it is laid down.

"The provisions of the Central Excises & 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 the duties of excise on the goods specified in Sub-section (1)." Similar provisions are also found in Sub-section (3) of Section 3 of Additional Duties of Excise (Textiles and Textile Articles) Act, 1978.

However, in the case of Khadi and Other Handloom Industries Development Act, 1953, no such machinery provisions are contained in the said Act.

Moreover, Section 5 of the said Khadi Act makes separate provisions for carrying out the purposes of this Act, which also includes the question of grant of exemption. In the context of the provisions of the said Khadi Act, it would appear to me, that the machinery provisions relating to refund and exemption as available in Central Excises & Salt Act, have not been brought in for purpose of levy and collection of Handloom Cess. Delhi High Court in the case of M/s. Pioneer Silk Mills [1995 (80) E.L.T. 507 (Del.)] have held that where penal provisions were not specifically mentioned in the machinery provisions of the Act, they cannot be invoked. This is in regard to the interpretation of Section 3(3) of the Additional Duties of Excise (Goods of Special Importance) Act. In such a position, when there is no machinery provision at all in the Khadi & other Handloom Industries Development Act, 1953 for applying the provisions relating to refund and exemption contained in CESA, 1944, the Department may not be entitled to invoke the amended provisions of Section 11B in the context of the Supreme Court judgment in the case of ITC Ltd. I, therefore, do not find any reason to interfere with the order of the Commissioner (Appeals). The appeal from the revenue is therefore, rejected.