Collector of Central Excise Vs. Shree Parmesh Silk Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-1996

Reported in : (1996)(87)ELT562Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Shree Parmesh Silk Mills

Judgement :

1. Invoking the provisions of Section 35G of the Central Excises & Salt Act, 1944, the Department has sought for reference on the issue as framed by them, representing to be the issue of law arising out of the Order No. 29CB/95-WRB, dated 20-11-1995 in Appeal No. E/224/88-Bom, where the issue involved was of ordering confiscation and imposition of penalty when the duty demand was raised under the provisions of Additional Duty of Excise (Goods of Special Importance) Act, 1957. This Bench vide the impugned order followed the decision of the Delhi High Court in Pioneer Silk Mills v. Union of India now reported in 1995 (80) E.L.T. 507 and on the decision of the Tribunal in Syntex Processor v.Collector of Central Excise - 1994 (71) E.L.T. 386 (Tribunal) and set aside the confiscation as also the penalty amount.

"Whether the Man-made Fabrics which are excisable goods and on which Additional Duty of Excise is payable in terms of Section 3(2) of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, shall also attract penal provisions of confiscation and penalty as in the case with all other excisable goods finding mention in the first Schedule to the Central Excise Tariff Act, 1985." 3. Shri

K.M. Mondal, the ld. SDR has submitted that the decision of the Delhi High Court has been challenged before the Supreme Court and need not be taken as a decided case law and decision of the Tribunal, having been based on the said decision of the Delhi High/Court, need not be also accepted as such. He submits that the Gujarat High Court have in Maheshwari Mills Ltd. v. Union of India - 1988 (35) E.L.T. 252 (Gujarat) held that provisions of the Central Excises and Salt Act, 1944, would apply for recovery of the Additional Duty of excise. He also refers to the decision of the Supreme Court in Ujagar Prints etc.

v. Union of India - 1988 (38) E.L.T. 535 (SC) as also the Tribunal North Bench decision in Oriental Textile Processing Company v.Collector of Central Excise - 1991 (54) E.L.T. 147 (Tribunal). He submits that the ratio of all these decisions indicate that all the provisions of the Central Excises and Salt Act, 1944 including those of ordering confiscation and imposition of penalty would, stand applicable. Accepting that the Section 3(3) of the Additional Duties and Excise (Goods of Special Importance) Act, 1957 has stood amended subsequent to the decision of the Delhi High Court, he pleads, the same have to be taken as merely of a clarificatory nature and not the one filling of the lacuna said to have been left in the said Act, as is reflected from the judgment of the Delhi High Court. He, therefore; submits that the issue of law as framed by them be referred to the High Court for an appropriate consideration.

5. Considering the submissions, the decision of the Gujarat High Court referred to by the ld. SDR relates only to the mode and manner prescribed for collection of the duty and does not touch the issue of imposition of penalty or ordering confiscation. The decision of the Supreme Court in Re : Ujagar Prints also does not cover up the issue as has been projected here, and there is no indication available to hold that the penal provisions under the Central Excises and Salt Act, 1944 also would apply to the Act under consideration. The Delhi High Court have Re : . Pioneer Silk Mills, discussed at length the relevant provisions specially with reference to ordering confiscation of the goods and imposition of penalty in relation to evasion of the Additional duty of excise and have given the positive finding that those provisions cannot be invoked. There is no stay given by the Supreme Court against the operation of the said order and as such, as on today, the decision of

the Delhi High Court remains a good law.

Further, necessary amendment has been brought out in the Act itself, so as to over-come the difficulty experienced because of the judgment of the Delhi High Court. Said amendment has been made only after the Delhi High Court delivered the aforesaid judgment and even in the aims and objects, there is no mention that the amendment is merely of a clarificatory nature. This therefore, shows that the amendment is of a substantive nature and the same cannot have any retrospective operation as no such mention is made.

6. Considering all these aspects, it cannot be held that any uncertainty prevails as to the interpretation of Section 3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 as it existed prior to its amendment, in the year 1994. That being the position, therefore, there is no justifiable ground existing for referring the issue to the High Court. The prayer, is therefore, rejected.