(2006) 04 P&H CK 0043

High Court Of Punjab And Haryana At Chandigarh

Case No: CEA No. 9 of 2004

J.C.T. Limited		APPELLANT
	Vs	
Commissioner of Central Excise		RESPONDENT

Date of Decision: April 18, 2006

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11B
- Constitution of India, 1950 - Article 141

Citation: (2006) 202 ELT 773

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Advocate: V.K. Aggarwal and Avneesh Jhingan, for the Appellant; Manjit Singh Guglani, CGC, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The appellant made an application for refund of excise duty paid during the period April 1990 to June 1990, on the ground that the product was cleared by paying higher duty as against duty specified under the notification. Application for refund was rejected on the ground that the appellant had already recovered the duty from the customers. On appeal to the Tribunal, matter was remanded for a fresh decision, after making observation that the Assistant Commissioner should verify the claim of the appellant that their selling rates remained unchanged irrespective of the duty burden. The said observation was made on the basis of judgment of the Madras High Court in Dollar Company, Madras Vs. Government of India, . It was also observed that amended provisions of Section 11B of the Central Excies and Salt Act, 1944 (for short, the Act) may also be examined.

2. After remand, it was observed by the learned Assistant Commissioner that there was no increase in the selling price and in fact selling price had decreased but since price was inclusive of duty, it could be presumed that burden of duty was passed on. This view was affirmed by the Tribunal, relying upon judgment of the Hon''ble Supreme Court in Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others, and also after referring to observations of the Tribunal in 2003 (155) ELT 271 .

3. Observations of the Hon''ble Supreme Court in Mafatlal (supra), which were relied upon, are as under:

Just because duty is not separately shown in the invoice price, it does not follow that the manufacturer is not passing on the duty. Nor does it follow therefrom that the manufacturer is absorbing duty himself. The manner of preparing the invoice is not conclusive....

4. Learned Counsel for the appellant submitted that substantial question of law to the effect that "the Tribunal could not take a view contrary to its earlier view while remanding the matter", arises for consideration. Reliance is placed on judgment of the Hon''ble Supreme Court in Bhopal Sugar Industries Ltd. v. Income Tax Officer, Bhopal 1960 (40) STC 618 and judgment of the Allahabad High Court in Geep Industrial Syndicate Ltd. Vs. Assistant Collector of C. Ex., . Reliance is also placed on East India Sandal Oil Industries v. State of Andhra Pradesh 1983 (54) STC 88.

5. Learned Counsel for the Revenue, however, submitted that in view of direction in the order of remand that Section 11B of the Act was also to be examined along with judgment of the Madras High Court, the Assistant Commissioner was justified in holding that inference of passing on of burden could be drawn even if the price remained the same or price was reduced. It is also submitted that observations of the Hon''ble Supreme Court could not be ignored.

6. After hearing learned Counsel for the parties, we do not find any substantial question of law arising in the present case. Decision of the Tribunal is in accordance with law settled by the Hon''ble Supreme Court in Mafatlal (supra) and also Section 11B of the Act. The order of remand did not debar the Assistant Commissioner from looking into the provisions of Section 11B of the Act or drawing an inference that the element of duty had been passed on.

7. Judgments relied upon by the learned Counsel for the appellant are distinguishable. In Bhopal Sugar Industries (supra), the Income tax Officer refused to carry out the direction of the Income tax Appellate Tribunal and a writ petition filed to compel the Income tax authority to carry out the direction was dismissed on the ground that the Tribunal''s order was erroneous. In that situation, it was observed by the Hon''ble Supreme Court that the Judicial Commissioner ought not to have gone into correctness of the order of the Tribunal in a writ petition filed for a direction to carry out an order which had become final. It is seen from the said

judgment that the order of the Judicial Commissioner was not supported on behalf of the respondent. In any case, in the present case, direction of the Tribunal has not been disregarded and in fact, the Tribunal itself has affirmed the order of the Assistant Commissioner. Moreover, in the present case, judgment of the Hon''ble Supreme Court had been rendered, which could not be ignored, which was not the situation in the judgment relied upon. Similarly, Geep Industrial Syndicate and East India Sandal Oil Industries (supra) are also distinguishable, as the Assistant Commissioner cannot be held to have disregarded the remand order. The said judgments cannot be read as holding that a Supreme Court judgment ought to be ignored, merely on the ground that different direction was issued in a remand order. Judgment of the Hon''ble Supreme Court remains binding under Article 141 of the Constitution.

8. We may also refer, in this regard, to judgments of the Hon''ble Supreme Court in Shenoy and Co., Represented by its Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, , which has been reiterated in Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another, , wherein, it was observed:

This being the position, notwithstanding the enunciation of the principle of res judicnta and its applicability to the litigation between the parties at different stages, it is difficult for us to sustain the argument of Mr. Rao that an indefeasible right has accrued to the respondents on the basis of the judgment in their favour which had not been challenged and that right could be enforced by issuance of a fresh mandamus. On the other hand, to have the uniformity of the law and to have universal application of the law laid down by this Court in Venkntagiri''s case, it would be reasonable to hold that the so-called direction in favour of the respondents became futile inasmuch as the direction was on the basis that the amendment Act is constitutionally invalid, the moment the Supreme Court holds the act to be constitutionally valid. We are, therefore, of the considered opinion that no indefeasible right on the respondents could be said to have accrued on account of the earlier judgment in their favour notwithstanding the reversal of the judgment of the High Court in Venkatagiri''s case.

9. In Collector of Central Excise, Indore Vs. M/s. Hindustan Lever Ltd., Chhindwara, , it was held:

...That apart, even in law, so far as this Court is concerned, it is not bound by the finding of the Tribunal rendered in the first instance while remanding the case to the lower authorities because this Court is now hearing an appeal against the order of the Tribunal in which the earlier order has merged. This Court in the case of Jasraj Inder Singh Vs. Hemraj Multanchand, has held (Para 14 of AIR):

In an appeal against the High Court''s finding the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a

subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other court of coordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher court when it hears the matter in appeal.

(Emphasis supplied)

10. Therefore, the above contention of the respondent has to be rejected.

Thus, no substantial question of law arises.

Accordingly, this appeal is dismissed.