CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 10.04.2017

Excise Appeal No. 2175 of 2008

(Arising out of order-in-original No. 37/2008/CE/JP-II dated 21.07.2008 passed by the Commissioner of Central Excise-II, Jaipur)

CCE, Jaipur-II Appellant- Revenue

Vs.

Mathania Fabrics Respondent -assessee

AND

Excise Appeal No. 2226 of 2008

(Arising out of order-in-original No. 37/2008/CE/JP-II dated 21.07.2008 passed by the Commissioner of Central Excise-II, Jaipur)

M/s Mathania Fabrics Appellant-assessee

Vs.

CCE, Jaipur-II Respondent

Appearance:

Sh. O.P. Agarwal, Advocate for the assessee
Sh. H. C. Saini, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order Nos. 52877 – 52878/ 2017

Per: **Justice (Dr.) Satish Chandra**:

Both the cross appeals have been filed against the order-in-original No. 37/2008/CE/JP-II dated 21.07.2008 passed by the Commissioner of Central Excise-II, Jaipur.

2. Brief facts of the case are that during the period under consideration (09.02.1984 to 08.02.1989), the appellant was engaged in bleaching and stentering of cotton fabrics without aid of power or stream and claimed exemption from duty in terms of Notification No. 130/82-CE dated 20.04.1982 but since power was used in lifting of water and also for transferring of fabrics, so, the exemption was not allowed. Finally, the matter reached to the Hon'ble Supreme Court who vide its order dated 04.01.2008 observed that the exemption was not admissible for the purpose of recomputation. The matter was remanded to the Commissioner for determining the duty for a period of five years prior to date of show cause notice. In compliance, the Commissioner vide its impugned order has computed the duty. Being aggrieved, both the parties have filed appeals before this Tribunal.

3. With this background, we heard Sh. O.P. Agarwal, ld. C.A. for the assessee and Shri H. C. Saini, ld. AR for the Revenue. We also perused the material available on record.

4. During the course of argument, Ld. C.A. submits that the Notification No. 5/99 dated 28.02.1999 was amended vide Notification No. 35/1999 dated 04.08.1999 where an explanation was added and accordingly if the power was used, even then levy of duty and exemption was available. However, he submits that the explanatory memorandum was never brought to the notice of the Hon'ble Supreme Court. So, the order was passed by the Hon'ble Supreme Court on 04.01.2008 is *per incurium*.

5. After hearing the rival submissions we are of the view that the order passed by the Hon'ble Supreme Court has been implemented as the order of the Hon'ble Supreme Court is always a law. If it was *per incurium,* the liberty was with the assessee to approach the Hon'ble Supreme Court in the miscellaneous application. But the same legal course was not taken up by the appellant. It is impossible to the Tribunal to correct the direction of the Hon'ble Supreme Court.

6. In the instant case, the Commissioner by its impugned order has implemented the direction of the Hon'ble Supreme Court and computed the duty. There is no calculation mistake in duty. When it is so, then we find no reason to interfere with the impugned order. The same is hereby sustained alongwith the reasons mentioned therein.

7. In the result, both the appeals are dismissed by upholding the order-in-original in toto including the penalty.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant