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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CEAC 18/2011
+ CEAC 21/2011
+ CEAC 22/2011

COMMISSIONER OF CENTRAL EXCISE Appellant
Through: Mr. Rajeeve Mehra, ASG with Dr.
Ashwani Bhardwaj, Mr. Rajeeve
Mehra, Mr. Gaurav Dhingra and Mr.
Ashish Virmani, Advocates.

versus

GTC INDUSTRIES LTD AND ANR. Respondent
Through: Ms. Nisha Bagchi, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V.EASWAR

S. RAVINDRA BHAT, J.: (OPEN COURT)

1. These three appeals are directed against a common judgment and order of the Central Excise and Service Tax Appellate Tribunal ('CESTAT', for short) dated 27.10.2010 in Excise Appeals No.5209/1992, 5236/1992 and 5235/1992. The Tribunal had upheld the order in original and its findings, as to the liability of M/s. GTC Industries Ltd. The allegations against M/s. GTC Industries Ltd. were that its manufacturing activities were carried on by two units KCPL and JKCL. In para 34.7, the CESTAT had noticed that GTC Industries Ltd. was controlling since beginning the manufacturing and marketing. It further cast the liability upon it (GTC Industries Ltd.). Later in para 35.3 of the impugned order the Tribunal observed as under: -

"35.3 We have found that the manufacturing activity was carried out by KCPL and JKCL. The goods manufactured were marketed by GTC. The event of levy being manufacture, loss of Revenue was attributable to the activity of manufacture and KPCL and JKCL

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was liable to duty imposed by adjudication order. When ownership of goods is not material for the purpose of levy, following the Apex Court's decision Empire Industries Ltd. – 1985(20) ELT 179 (SC) we hold that the duty liability shall be of the manufacturer i.e. KCPL and JKCL who had manufactured the cigarettes.”

2. The Revenue is in appeal in all these three cases contending that the liability is that of GTC Industries Ltd. and not just of two units.

3. The assesseees i.e. GTC Industries Ltd. and other two units KCPL and JKCL were also aggrieved and preferred separate civil appeals in Supreme Court being Civil Appeal Nos.1466/2011, 1468/2011 and 1469/2011. The Supreme Court directed the pre-deposit of the excise duty by an order which was not complied with. In these circumstances, the Court rejected the appeals in the following terms: -

*“IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION*

I.A. No. 2

IN

CIVIL APPEAL NO. 1466 OF 2011

*M/S GTC INDUSTRIES LTD.(NOW
GOLDEN TOB.*

Appellant (s)

Versus

|COLLECTOR OF CEN.EXC.NEW DELHI

Respondent (s)

WITH

I.A. Nos. 3-4

IN

CIVIL APPEAL Nos. 1468-1469 OF 2011

ORDER

By our order dated 25.04.2011, we had directed issue of notice to the respondents subject to payment of the entire amount determined by the Customs, Excise & Service Tax Appellate Tribunal [CESTAT] within a period of three months from the date of the said order. The appellant company, we are told has deposited the amount of penalty levied against it but the principal amount of ₹3.85 crores has not been paid. Mr. Mohan Parasaran, learned ASG, appearing on behalf of the respondents,

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argued that in terms of our order mentioned above, these appeals should stand be deemed to have been dismissed without any further reference to the court.

Counsel appearing for the appellant company, however, disputed this position and contended that the CESTAT has not determined the liability towards excise duty against the appellant. All that was levied against the appellant was a penalty of ₹ 2.74 lakhs, which the appellant has already deposited.

A reading of para 34.7 of the order passed by the CESTAT would show that the CESTAT has relying upon the decision of this Court in New Horizons Ltd. & Anr. Vs. Union of India & Others, 1995 (1) SCC 478, found that GTC had gained at the cost of Revenue who was controlling KCPL and JKCL from the stage of manufacture till marketing of the goods. The CESTAT has further held that the appellant alone had gained at the cost of Revenue as it was controlling the MRP and had realised sale proceeds over and above the said price. Para 34.7 of the CESTAT Order reads as under:-

"Shri Parasaran also relied on the judgment of Apex Court in the case of New Horizons Ltd. & Anr. Vs. Union of India & Others, 1995 (1) SCC 478 to argue that the Courts can always see through corporate veil to ascertain the true nature of the company. Doctrine of lifting veil, piercing the veil, peeping or seeing through the veil is invoked when the corporate personality is found to be opposed to justice, convenience or interest of Revenue. We do agree with him that Courts come to rescue of Revenue where subterfuge to it is caused inside corporate veil. We have noticed that GTC was controlling KCPL and JKCL beginning from manufacture till marketing of the goods. Such finding alone was enough to hold that GTC had gained at the cost of Revenue controlling the MRP and realised sale proceeds over and above the MRP declared."

In the light of the above and in view of the order passed by us on 25.04.2011, we have no manner of doubt that the appellant was duty bound to deposit the amount of excise duty determined by CESTAT within a period of three months from the 25.04.2011, if it was interested in pursuing the present appeals. Since the appellant has failed to do so, the inevitably result of such failure is

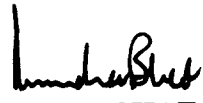
the dismissal of these appeals. We accordingly dismiss these appeals on account of failure of the company to deposit the amount determined by CESTAT as excise duty.

.....J.
[T.S. Thakur]

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

New Delhi,
August 27, 2012.”

4. This Court is of the opinion that in terms of the above order the grievance cannot be gone into by this Court, since the entire controversy has been settled by the Supreme Court as is evident from the above extract. The appeals are accordingly disposed of.


S. RAVINDRA BHAT, J


R.V.EASWAR, J

OCTOBER 18, 2012
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