IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CEA No.70 of 2015 (O&M)
Date of decision: May 02, 2016.

Commissioner of Central Excise, Faridabad-II

... **Appellant**

v.

Kapoor Lamp Shade Company (Factory Shop)

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE SURYA KANT**
HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Shri Kamal Sehgal, Advocate, for the appellant.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *Whether to be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral):

The revenue has preferred this appeal, proposing the following questions of law:-

1) Whether the Hon'ble CESTAT is correct in setting aside the Order-in-appeal dated 18.1.2006 passed by the Commissioner (Appeals) by completely ignoring the statements of Shri Rishi Ram Supervisor/Manager of the firm as well as of other suppliers, wherein it had been submitted that items procured by the party were components and items made out of these components were finished goods (made with the help of skilled labours)?

2) Whether the Hon'ble CESTAT is correct in setting aside the Order-in-appeal dated 18.1.2006 by observing that there was no suppression of facts, without considering that the party had suppressed information from the Department, of the activities namely assembling, putting logos and packing in individual containers in their premises with intention to evade payment of Central Excise duty?

3) Whether the Hon'ble CESTAT is correct in setting aside the Order-in-appeal dated 18.1.2006 without considering finding of facts made in Para No.6 of order of Commissioner (Appeals) that:-

(i) the Appellant never cleared any metal parts, glas or plastic tube etc. and a new item with name, purpose, brand and logo, code name had emerged and the same was packed in a unit container for sale and were marketed. The identity of the original part was not visiblein the market in the present case. Such activity amounts to manufacture under Section 2(f) of the Central Excise Act.

(ii) the quantity & value of clearances made by the party during 01.01.1998 to 31.03.2000 were much higher than the value of lamps purchased by them from its manufacturing unit or acquired from other sources, for trading purpose which prove the clandestine removal of goods by the party from their shop?

4) Whether the Hon'ble CESTAT is correct in setting aside the

Order-in-appeal dated 18.1.2006 without considering findings made in Para No.5 of order of Commissioner (Appeals) that the party had purchased various individual parts from suppliers and made clearances of complete items of lamps/lights etc.?

The facts, as have been noticed by the Tribunal in the impugned order dated 27.1.2015, are to the following effect:-

M/s Kapoor Lamp Shade Company (Factory Shop) is a partnership firm which is located in the factory premises of M/s Kapoor Lamp Shade Company which is a Manufacturing Unit. The manufacturing unit is a partnership firm in which the proprietor of M/s Kapoor Lamp Shade Company (Factory Shop) is also a partner. The duty demand and penalty in the instant case was raised against M/s Kapoor Lamp Shade Company (Factory Shop). M/s Kapoor Lamp Shade Company (Factory Shop) procures various components of lamp shades and chandeliers from different sources including M/s Kapoor Lamp Shade Company (Manufacturing Unit) and thereafter pack the same in cartons, put thereon its logo, besides the code number of the product.

The revenue raised the duty demand and penalty on the premise that the assembly of various components of lamp shades and chandeliers amounts to 'manufacture of the lamps and light fittings' covered by the Central Excise Act, 1944. The Tribunal has found, as a matter of fact, that M/s Kapoor Lamp Shade Company (Manufacturing Unit) manufactures various components of lamp shades and chandeliers and supplies to various customers. M/s Kapoor Lamp Shade Company (Factory Shop) is, on the other hand, engaged in fitting of various lamp shades and chandeliers procured from different sources which are re-assembled and thereafter sealed with its own logo and code number.

In the light of these facts, the question that arose for consideration of the Tribunal was, "*whether assembly of different parts of decorative lamp shades and chandeliers amounts to manufacturing*?" The Tribunal has answered the question against the Revenue on the strength of the case law, laying down that assembling of different manufacturing items does not amount to a new manufacturing process and thus, M/s Kapoor Lamp Shade Company (Factory Shop) does not manufacture any lamp shades or chandeliers. The Tribunal has held and rightly so that procuring the manufacturing items and packing them with its own brand name by the assessee, does not amount to creation of a new product which may invite the duty.

The question, "*whether assembly of different parts of decorative lamp shades and chandeliers amounts to manufacturing*?" indeed is no longer *res integra* and stands answered in favour of the assessee and against the revenue by the authoritative pronouncement of the Apex Court ins 2001(130) ELT A259 (SC), which has been earlier followed by different High Courts and the Tribunal in the instant case.

The Tribunal has further held that the demand raised by the Revenue was otherwise also barred by limitation and that the appellant cannot take shelter behind proviso to Section 11-A(1) of the Central Excise Act, 1944, for it was fully aware of the existence of the assessee's unit and its activities.

In the light of the finding of the Tribunal, we do not find any question involved in this appeal requiring adjudication by this Court.

Dismissed.

[**Surya Kant**]
Judge

[**A.B. Chaudhari**]
Judge

May 02, 2016.
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