March 05, 2021
ARDR
(14)

WPA 2631 of 2002
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IA 1 of 2009 (Old CAN 5153 of 2009)

Lotus Litho Works & anr.
Vs.
Commission of Central Excise,
Calcutta-1 Commissionerate & Ors.

Mr. J. P. Khaitan, Sr. Adv.,
Ms. Sonali Mukherjee
...for the petitioners.
Mr. Bhaskar Prosad Banerjee,
...for the respondents.

Heard the parties.

The grievance of the petitioners is directed against the orders dated 24th September, 2001, 15th January, 2003 and 1st April, 2002 passed by the Customs, Excise and Gold (Control) Appellate Tribunal.

The salient facts culminated into filing this writ petition, are set out hereinbelow:

a) The petitioner firm is carrying out printing business and receives paper from biri manufacturers which after printing are cut to size if so required;

b) The biri manufacturers use such printed papers for wrapping biris;

c) The respondent authorities had initiated proceedings in respect of the period from 17th June, 1994 to 31st March, 1999 demanding duty for a sum of Rs.1,23,82,634 on account of such printed papers being used by the petitioners by classifying them as an excisable products falling under sub-heading 4823.19 of the Central Excise Tariff. Equivalent penalty and consequential interest was also imposed on the petitioners.

d) Being aggrieved by the said adjudication, the petitioners preferred an appeal before the Tribunal and filed a connected stay application.

e) The principal contention before the Tribunal, on merits, was that the printing of papers and cutting it to size did not amount to manufacture by the petitioners. In any event, the printed papers were a product of the printing industry falling under sub-heading 4901.90 which provided for nil duty.

f) An alternative submission was also made on behalf of the petitioner that if the printed papers were held to be excisable goods falling under Chapter 48 of the Central Excise Tariff they were required to be classified as printed labels under heading 48.21 which attracted nil duty;

g) By an order dated 24th September, 2001, the Tribunal directed the petitioner to pre-deposit a sum of Rs.20 lakhs as a condition precedent. In passing such order, the Tribunal relied on an order passed by the Collector vs. JEH Manufacturing Company Ltd. reported in ***(1990) 108 ELT 280)***.

h) It is pertinent to mention that the petitioner had made an application for modification and/or variation and/or recalling of the order dated 24th September, 2001 on various grounds. However, such application was rejected by an order dated 15th January, 2002. It is *ex-facie* evident from the said order of the Tribunal that did not consider any of the decisions and/or contentions made on behalf of the petitioners.

i) This writ petition is filed primarily challenging the order dated 24th September, 2001 and 15th January, 2002 passed by the Tribunal. During the pendency of this writ petition, the appeal filed by the petitioners was dismissed for non-compliance on 1st April, 2002. The petitioners have brought this fact on record by filing a supplementary affidavit dated July 5, 2002 in this petition.

j) It is in this background that the orders dated September 24, 2001, January 15, 2002 and 1st April, 2002 have been assailed by the petitioners in this petition.

At this stage it is necessary to highlight a subsequent development which has occurred in favour of the petitioners. By a decision passed by the Hon'ble Supreme Court in the case of ***Headway Lithographic Company vs. Commissioner*** reported in ***(2015) 321 ELT 394 (SC)***, the Hon'ble Supreme Court has held that papers printed for wrapping thus fall under sub-heading 4901.90 attracting nil duty.

Accordingly, it is submitted by the petitioners that in view of the pronouncement of the Hon'ble Supreme Court in the aforesaid decision it is not necessary to go into the question whether the process amounted to manufacture or not and the petitioners' appeal was liable to be allowed.

Such submission is not opposed by the respondent authorities.

In view of the peculiar facts and circumstances of this case and keeping in mind the subsequent pronouncement of the Hon'ble Supreme Court, it appears, *prima-facie*, that the petitioners has raised an arguable case for succeeding in the appeal which was dismissed on the ground of failure of the petitioner to make the pre-deposit.

In this connection, Mr. Khaitan relies on a Hon'ble Division Bench judgment in this Court in the case of ***J.N. Chemical Pvt. Ltd. vs. CEGAT*** reported in ***1991 (53) ELT 543 para 7 at 544)***.

It is submitted on behalf of the petitioners that in view of the subsequent pronouncement of the

Hon'ble Supreme Court and the strong *prima-facie*, case in favour of the petitioners, the Tribunal ought to hear out the appeal without requiring the petitioner pre-deposit to any amount.

The petitioners have further highlighted the financial stringency being suffered by the petitioners and the fact that they are unable to make payment of any deposit.

In view of the peculiar facts and circumstances of this case, I set aside the impugned orders dated September 24, 2001, January 15, 2002 and 1st April, 2002 and remand the matter to the Tribunal to hear out the appeal without requiring the petitioner to deposit any amount.

I further direct the Tribunal to decide the appeal on merits without being influenced by any of the observations made at the ad-interim stage of the proceeding or in this order. All points are left open to be decided by the Tribunal, save and except the question of pre-deposit.

With the aforesaid directions, WPA 2631 of 2002 and the connected application stand disposed off. However, there shall be no order as to costs.

(Ravi Krishan Kapur, J.)