

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3389-3390 OF 2001

Commissioner of Central Excise, Aurangabad

Appellant(s)

Versus

M/s. Balakrishna Industries & Anr.

Respondent(s)

With
CIVIL APPEAL NOS. 4960-4962 OF 2004

O R D E R

This order shall dispose of two sets of appeals. In both the sets of appeals Revenue is the appellant and M/s. Balakrishna Industries and M/s.

Modistone Ltd. are the respondents-assessees in the respective set of appeals. Modistone Limited having been closed being a sick unit, a

Official Liquidator was appointed. On the application for bringing t

Official Liquidator on record, notice was issued by this Court on 25th April,

2006. The Official Liquidator is not represented before us in sp

service.

The first set of appeals, i.e., C.A. Nos. 3389-3390/2001 is directed against Final Order No. C-I/3513-14/WZB/2000 dated 6th October, 2000 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, West

Regional Bench at Mumbai [for short "the Tribunal"] in Appeal No. E/3097-3098/1999-Mum. wherein and whereby the Tribunal has set aside the order in original passed by the Commissioner of Central Excise, Mumbai, confirming the demand raised by the show cause notice and also levying the penalty, while the second set of appeals is directed against Final Order No. C-1/2943-2945 WZB/2003 in Appeal No. E/345, 1391 and 1392/2001 passed by the Customs, Excise & Service Tax Appellate Tribunal, Mumbai [for short "the Tribunal"] wherein while recording that the show-cause notices issued to both the assessees were on the similar lines, the Tribunal followed the ratio in its earlier order in the case of Balkrishna Industries.

Though, both the sets of appeals are directed against different orders passed by the Tribunal, since the point involved in both the sets of appeal is same and the subsequent order impugned in the second set of appeals follows the earlier order in the first set of appeals, we dispose the same by this common order.

For sake of convenience, the facts are referred from the first set of appeals.

The assessee-M/s. Balkrishna Industries is engaged in the manufacture of various sizes of tyres falling under Chapter 40 of the Central Excise Tariff Act, 1985. The assessee manufactured tyres for different vehicles but the dispute is regarding the rate of duty payable on (1) 7.50-16 of a kind used in light commercial vehicles (LCV) as well as in Tractor

Trailer; and (2) 6.00-16 of a kind used in Jeep and Tractor Front.

Though the sizes of tyres meant for Tractor Trailer and LCV was same i.e. 7.50-16, the rate of duty leviable on these two types of tyres was different. Similarly, the size of tyres meant for Tractor Front and Jeep was same, i.e. 6.00-16, the rate of duty leviable on these varieties of tyres were different.

The assessee was served with the notice dated 31st March, 1997 to show cause as to why the exemption granted under Notification No. 34/91 dated 1st March, 1991, as amended from time to time, be not denied and consequential differential excise duty recovered.

Allegation against the assessee was that tyres meant for LCV were cleared as Tractor Tractor tyres by paying lower rate of duty in terms of Notification No. 34/91. Similarly the assessee was clearing the Jeep tyres in the guise of Tractor Front Tyres by taking benefit of exemption of duty under the same notification.

The Commissioner, the authority in original, Mumbai, confirmed the demand vide his order dated 30th March, 1999 [issued on 20th May, 1999] and sought to recover duty in the sum of Rs.10,60,78,334/- with equal amount of penalty imposed on the assessee. A penalty of Rs.5 lakhs was also imposed on the Executive Director under Rule 209A of the Central Excise Rules, 1944.

Aggrieved against the order passed in original, the assessee filed an appeal which has been accepted by the Tribunal by the impugned order,

which is under challenge in the present set of appeals. The Tribunal set aside the findings on merits as well as regarding invocation of proviso to Section 11A of the Act for extended period of limitation and imposition of the penalty.

Mr. Lakshmikumaran, learned counsel appearing for the assessee stated, at the outset, that the revenue has not challenged the findings recorded by the Tribunal on merits in the special leave petition(s). The only finding challenged in the appeal is the setting aside of finding regarding invocation of proviso to Section 11A of the Act for availing of the extended period of limitation of five years and the levy of penalty.

Having gone through the grounds of appeal, we find that the revenue, in fact, has not challenged the findings recorded by the Tribunal on merits in appeals.

Since the revenue has not challenged the findings recorded by the Tribunal on merits, they are confirmed. Once it is held that no differential duty was leviable, question of levy of penalty does not arise.

In the second set of appeals, the Tribunal has followed its earlier decision in the case of M/s. Balakrishna Industries. Since we are dismissing the appeals filed by the revenue against M/s. Balakrishna Industries, the present set of appeals is liable to be dismissed as well. Otherwise also, we find that the finding recorded by the Tribunal are findings of fact which do not call for interference by this Court.

For the reasons stated above, the appeals fail and are dismissed

accordingly with no order as to costs.

.....J.

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(ASHOK BHAN)

.....J.

.....
(LOKESHWAR SINGH PANTA)

New Delhi;
.....J.
August 03, 2006.

.....
(MARKANDEY KATJU)