

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NOS. 273-274 OF 2001

COMMR. OF CENTRAL EXCISE, NEW DELHI

Appellant (s)

VERSUS

M/S. JERSY INDIA LTD & ANR.

Respondent(s)

(with application for stay and with office report)

Date: 10/01/2007 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s) Mr. K.Radhakrishnan, Sr. Adv.

Mr. T.A.Khan, Adv. for

Mr. P. Parmeswaran, Adv.

For Respondent(s) Mr. R.Krishnan, Adv. for

Mr. C.N. Sree Kumar, Adv.

For Official Liquidator Mr. Ravindra Kumar, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeals are disposed of.

(Parveen Kr. Chawla)

(Kanwal Singh)

Court Master

Court Master

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.273-274/2001

Commissioner of Central Excise, New Delhi

..Appellant

Versus

M/s. Jersy India Ltd. & Another

..Respondents

O R D E R

This appeal is directed against the final judgment and order dated

21st March, 2000 passed by the Central Excise and Gold (Control) Appellate

Tribunal, New Delhi (for short 'the Tribunal') in Final Order No. 96-97/2000-

D in Appeal Nos. E/82/99 and E/926/99-D. Revenue is in appeal before us.

The issue involved in this appeal is 'whether the product knitted

fabric and cotton containing elastomeric yarn of width exceeding 30 cm. were

classifiable under Heading 6002.30 or under 6002.92'. According to the

revenue the same is classifiable under heading 6002.30 but the Tribunal by

its order has decided the issue against the revenue and in favour of the

assessee. Revenue involved in the instant case is Rs.1.46 crores.

M/s Jersey India Ltd., hereinafter referred to as the 'assessee', was engaged in the manufacturing of knitted fabrics of cotton and other knitted fabrics containing elastomeric yarn falling under Chapter 60 of the Schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as the 'Tariff Act, 1985') and had been processing of such knitted fabrics since September, 1994 without obtaining Central Excise Registration Certification as required under Rule 174 of the Central Excise Rules, 1944 (hereinafter referred to as the 'Rules'). The assessee was also engaged in the export of such knitted fabrics and was also undertaking knitting and processing of such fabrics on job work basis.

A team of Central Excise Officers from the Anti Evasion, Central Excise Commissionerate, Delhi-Gurgaon, visited the factory premises of the assessee on 28.1.1998. The unit was found in operation and it was admitted by the representative of the assessee that lycra and spandex yarn was used for giving elastic effect in the blended fabric and that this yarn had elastic properties as well. Samples of the elastic/elastomeric yarn and knitted fabric containing elastic/elastomeric yarn were drawn. The same was sent to the Chief Chemist, Central Revenue Control Laboratory, Pusa, New Delhi. The Chief Chemist in his report dated 16.3.1998 confirmed that the knitted fabric was of cotton containing 9.3% elastomeric yarn and the samples of

yarn were elastomeric yarn.

Assessee was served with two show cause notices dated 23.7.1998 and 2.11.1998 directing it to show cause as to why

"(1) the party should not get themselves registered with the Central Excise Department under Rule 174 of the Central Excise Rules, 1944;

(2) their fabric namely the knitted fabrics of cotton containing elastomeric yarn, of width exceeding 30 cm. should not be classified under Chapter Heading No. 6002.30 for charging appropriate rate of Central Excise Duty leviable thereon;

(3) SSI benefit for the applicable period as stated above or grey/unprocessed fabrics of cotton containing elastomeric yarn of a width exceeding 30 cm. should not be denied for the contravention and reasons as stated above, and Central Excise duty should not be recovered/penalty levied amounting to Rs.60,18,712 and Rs.12,68,206."

Extended period of limited under Section 11A of the Central Excise Act, 1944, hereinafter referred to as 'the Act', was invoked.

The assessing authority after going through the relevant record confirmed the demand duty of Rs.60,18,712.00 and Rs.12,68,206.00.

Equivalent penalty of Rs. 60,18,712.00 and Rs.12,68,206.00 was imposed under the provisions of Section 11-AC of the Act and also imposed Rs.50,000/- for contravening the provisions of Rule 174 of the Rules.

Aggrieved against the aforesaid order, assessee filed an appeal before

the Tribunal which has been accepted by the impugned order. Being, aggrieved, the present appeals have been filed by the Revenue.

The Tribunal decided the case on merits only and did not go into the question of invocation of the extended period of limitation under Section 11A of the Act.

On the previous date of hearing, it was brought to our notice by the counsel appearing for the assessee that the company had been ordered to be wound up by an order dated 12th July, 2001 by the High Court of Punjab & Haryana at Chandigarh in C.P. No. 102 of 2001. Official liquidator was appointed who is now in-charge of the affairs of the company. Accordingly, on an oral request of the counsel for the parties, official liquidator of the High Court of Punjab & Haryana at Chandigarh was added as a party respondent to represent the respondent-company. Notice was issued to the official liquidator. Shri Ravindra Kumar, Advocate is appearing on behalf of the official liquidator.

Shri Ravindra Kumar, Adv. has brought to our notice that after obtaining permission from the High Court of Punjab & Haryana, the assets/properties of the company were put to sale. The auction sale conducted by the official liquidator was confirmed by the High Court on 28.10.2003 in favour of M/s. Gulbash Hosiery Mills.

The official liquidator thereafter filed an application before the High Court seeking a direction from the High Court to pay dividend to workmen and secured creditors as per claim filed. The High Court by its order dated

24.3.2005 allowed the said application. In pursuance to the aforesaid order the official liquidator has disbursed the claims of the secured creditors. After disbursing the amount the official liquidator is now left with a balance sum of Rs.14,55,545.50 which is to be adjusted towards government commission, liquidation expenses and other related expenses.

In view of the fact that the company in question and its assets/properties have already been sold and there is nothing which can be recovered by the revenue, we put an end to this litigation leaving the question of law open.

The Appeals are disposed of.

.....J.
[ASHOK BHAN]

NEW DELHI ;
JANUARY 10, 2007.

.....J.
[LOKESHWAR SINGH PANTA]