

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

**CIVIL APPEAL NOs. 5217-5218/2009**

**UNIWORTH INTERNATIONAL LIMITED THROUGH  
ITS DIRECTOR & ANR. APPELLANT(S)**

**VERSUS**

**COMMISSIONER OF CENTRAL EXCISE,  
NAGPUR RESPONDENT(S)**

**WITH**

**CIVIL APPEAL NOs. 5593-5595/2009**

**O R D E R**

1. Feeling aggrieved and dissatisfied with the impugned order(s) dated 24-03-2009 passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") passed in Excise Appeal Nos.5511-5515/2004, by which the learned Tribunal has dismissed the said appeals preferred by the appellants herein, the original appellants have preferred the present appeals.

1.1 The facts relating to the present appeals in nut-shell are as under-

The appellant/Uniworth Textiles Limited was at the relevant time

contd..

100% Export Oriented Unit (EOU) engaged in the processing and clearance of the goods falling under Chapters 51 and 55 of the Central Excise Tariff Act, 1985. As per para 9.9 (b) of the Export and Import Policy 1997-2002, prevailing at the relevant time, the entire production of EOU shall be exported except the following -

“(i) “Prime quality goods” upto 50% of FOB value of export in Domestic Tariff Area.

(ii) “Rejects” upto 5% of FOB value of export in DTA.

Subject to payment of duties of excise at concessional rates under Notification No.2/95-CE dated 04.01.1995, the appellant/Uniworth Textiles Limited, cleared certain goods into (Domestic Tariff Area) DTA and declared the same as “Rejects” though subsequently it was found that the goods which were cleared were prime quality goods.” Two show cause notices dated 13.08.2002 and 22.07.2003 covering the period “August 1997 - June, 2001” and “July 2001 - March 2002” were issued invoking the extended period of limitation under the proviso to Section 11A of the Central Excise Act, 1944 alongwith other co-noticees including Uniworth International Limited (found to be related Company) alleging that -

contd..

(i) UTL had sold its entire goods (rejects) in DTA to UIL only during the said period;

(ii) UTL & UIL are “related person” as per Rule 2(2)(iv) of Customs Valuation Rules 1988;

(iii) Such relationship had influenced price of fabrics (rejects) and, therefore, was not acceptable in terms of Rule 4(3) of CVR 1988 and, proposed to be rejected under Rule 10 of CVR 1988 and the value of such rejects be determined in terms of Rule 7 of CVR 1988;

(iv) The fabrics sold by UTL and UIL as “rejects” were nothing but prime and flawless fabrics and, therefore, benefit of Notification No.2/95-CE would not be available and, duties of excise are liable to be paid under proviso to Section 3 of the CEA 1944.

1.2 After giving an opportunity to all the notices, the Commissioner of Central Excise passed OIO dated 30.06.2004 confirming the show cause notices by observing and holding that the goods which were cleared were, as such, not the “Reject” goods but in fact the prime

contd.

quality goods and under the guise of clearing "Reject" the prime quality goods were exported and sold into DTA to avail the benefit of Notification No.2/95-CE dated 04.01.1995.

1.3 The Commissioner also did not accept the transaction values declared by the Uniworth Textiles Limited declared while clearing the goods and, therefore rejected the same under Rule 10-A and directed to re-determine the value of the goods by taking recourse of Rule 7. The Commissioner also upheld the invocation of the extended period of limitation. The Commissioner confirmed the duty demand against the Uniworth Textiles Limited and imposed the penalties upon Uniworth Textiles Limited and Uniworth International Limited and other individuals of the aforesaid two companies under Rule 209A of Central Excise Rules, 1944.

1.4 Being aggrieved, the appellants herein filed the present respective appeals before the learned Tribunal. By the impugned judgment and order, the learned Tribunal has dismissed the said appeals upholding the order in original passed by the Commissioner,

contd..

however, has remanded the matters to the Commissioner for re-valuation under Rule 7. The impugned common judgment and order passed by the Tribunal is the subject matter of the present appeals at the instance of Uniworth Textiles Limited and Uniworth International Limited. At this stage, it is required to be noted that so far as Uniworth Textiles Limited is concerned, who sold/cleared the goods is held to be the related company.

2. We have heard Shri Rupesh Kumar, learned counsel appearing on behalf of the appellants and Shri V.C. Bharathi, learned counsel appearing on behalf of the Revenue.

3. Shri Rupesh Kumar, learned counsel appearing on behalf of the appellants has made the following submissions -

1. That the goods in question were rightly declared as 'rejects' and therefore, the benefit of Notification No.2/95-CE was rightly obtained;

2. that the extended period of limitation was wrongly invoked as the Superintendent was aware of the valuation and even vide notice dated 30.11.1998, the appellants were called upon to give explanation,

contd..

which was furnished and, therefore, the Authorities were not justified in invoking the extended period of limitation;

3. that in any case and assuming all the allegations against the appellants to be true, in that case also, the excise duty leviable would be under Section 3(1) and not under proviso to Section 3(1) of the Central Excise Act, as claimed by the Revenue.

3.1 Shri Rupesh Kumar, learned counsel appearing on behalf of the appellants has submitted that as the approval/permission which was granted by the appropriate Authority to import the goods was the rejected goods and not the prime quality goods (as subsequently found), in that case, it can be said that there was no approval by the appropriate authority to clear the goods actually imported and, therefore, proviso to Section 3(1) shall not be applicable and the duty leviable shall be under Section 3(1) of the Central Excise Act, which is a charging Section.

3.4 Reliance is placed on the decisions of this Court in the cases of ***SIV Industries Ltd. Vs. Commissioner of Central Excise & Customs (2000) 3 SCC 367, Commissioner of Central Excise, Visakhapatnam -II Vs. NCC Blue Water Products Limited (2010)***

contd..

**12 SCC 761 and Sarla Performance Fibers Limited and others Vs. Commissioner of Central Excise Surat II (2016) 11 SCC 635.**

4. While opposing the present appeals, learned counsel appearing on behalf of the Revenue has vehemently submitted that the appellants cannot be permitted to take the advantage or disadvantage of their own illegalities. It is submitted that the appellants cannot be permitted to take the benefit of their own wrong and/or the violation by them. It is submitted that what is required to be considered is whether the appellants were allowed to import the goods or not. It is submitted that once the permission/approval was granted to import the goods and subsequently it was found that the appellants, in fact, imported the goods by mis-declaration and availed the benefit of Notification No.2/95-CE illegally, thereafter, the appellants cannot be permitted to say that there was no approval/permission to import the prime quality goods and, therefore, they shall be entitled to pay the lower rate of duty under Section 3(1). It is submitted that, therefore, in the facts and circumstances of the case, the decisions relied upon on behalf of the appellants shall not be applicable at all.

Contd..

4.1 It is submitted that once it was found that the appellants mis-declared the goods and imported that goods showing as "Reject" and subsequently it was found that the goods which were imported were not the "Reject" but they were prime quality goods and by that availed benefit under Notification No.2/95-CE illegally and fraudulently, the Authorities were absolutely justified in invoking the extended period of limitation under proviso to Section 11(a) of the Central Excise Act.

Making above submissions, it is prayed to dismiss the present appeals.

5. Heard learned counsel for the respective parties at length.

5.1 At the outset, it is required to be noted that in the present case the appellants sold the prime quality goods mis-declaring the same as "Rejects" to the related company UIL and availed the benefit of concessional rate of duty under Notification No.2/95-CE. There are finding of facts recorded by all the authorities below that the appellants mis-declared the goods and sold prime quality goods as rejects and availed the benefit of concessional rate of duty illegally and fraudulently and by misdeclaration the authorities were justified in

contd..

invoking the extended period of limitation. Therefore, the submission on behalf of the appellants that the authorities were not justified in invoking the extended period of limitation has no substance.

5.2 Now so far as the submissions on behalf of the appellants that in any case the appellants would be liable to pay the excise duty under Section 3(1) and not under proviso to Section 3(1) of the Central Excise Act is concerned and the submission on behalf of the appellants that there was no approval by the authority to import the prime quality good/goods and therefore proviso to Section 3(1) shall not be applicable and the reliance placed upon the decisions of this Court referred to hereinabove is concerned, it is required to be noted that it was the appellants who got the approval to sell the goods, sold the goods may be at the relevant time the permission was to sell the goods shown as "rejects". However, thereafter it was found that the permission to import was obtained fraudulently by mis-declaring the same as "rejects" though the goods were of prime quality. Therefore, thereafter the appellants cannot be permitted to say that though the permission was to import the goods declared as rejects, subsequently it was found to be prime quality, there was no approval under proviso

contd..

to Section 3(1). The appellant cannot be permitted to take the benefit of his own wrong and/or fraud committed by it. Once there was an approval/permission to import the goods it is sufficient to attract proviso to Section 3(1) of the Act. Therefore, the submission on behalf of the appellants that in absence of any approval and/or permission proviso to Section 3(1) shall not be applicable has also no substance and has to be rejected.

5.3 Now so far as the valuation of the goods is concerned, it is required to be noted that the appellants sold the goods of prime quality mis-declaring the same as “rejects” and the same was sold to the related company UIL. It has been found that the UIL sold the goods at a higher rate. Therefore, the valuation ordered to be done under Rule 7 on the basis of the same cannot be said to be arbitrary and/or illegal. Cogent reasons have been assigned by the Tribunal while considering the submission on valuation.

6. In view of the above and for the reasons stated above, no error has been committed by the Tribunal in rejecting the appeals preferred by the appellants. We are in complete agreement with the view taken by the High Court.

Contd..

In view of the above and for the reasons stated above, present appeals lack merits and the same deserve to be dismissed and are accordingly dismissed.

.....J.  
(M.R. SHAH)

.....J.  
(C.T. RAVIKUMAR)

New Delhi;  
**April 19, 2023.**

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

Civil Appeal No(s). 5217-5218/2009

UNI WORTH INTERNATIONAL LIMITED THROUGH  
ITS DIRECTOR & ANR.

Appellant(s)

VERSUS

COMMISSIONER OF CENTRAL EXCISE, NAGPUR

Respondent(s)

([ RELEASED FROM PART-HEARD ]  
IA No. 1/2009 - STAY APPLICATION)

WITH

C.A. Nos. 5593-5595/2009 (XVII-A)  
( FOR STAY APPLICATION ON IA 1/2009  
FOR ON IA 59002/2009, IA No. 1/2009 - STAY APPLICATION)

Date : 19-04-2023 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH  
HON'BLE MR. JUSTICE C.T. RAVIKUMARFor Appellant(s) Mr. Rupesh Kumar, AOR  
Ms. Pankhuri Shrivastava, Adv.  
Ms. Neelam Sharma, Adv.  
Mr. Rajeev Sharma, Adv.For Respondent(s) Mr. N. Venkatraman, A.S.G. (Not Present)  
Mr. V.C. Bharathi, Adv.  
Mr. Mukesh Kumar Maroria, AOR  
Mr. Sudhershnan K, Adv.  
Mr. Annirudh Sharma II, Adv.  
Mr. Santosh Kumar, Adv.  
Ms. Vishakha, Adv.

Mr. B. Krishna Prasad, AOR

Mr. A. N. Arora, AOR

UPON hearing the counsel the Court made the following

O R D E R

The appeals are dismissed in terms of the signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)  
ASTT. REGISTRAR-cum-PS(NISHA TRIPATHI)  
ASSISTANT REGISTRAR

(signed order is placed on the file)