

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. 7045-7048 OF 2000

Leader Engg. Works

Appellant (s)

Versus

Commissioner of Central Excise,
Chandigarh

Respondent (s)

(with appl(s) for stay and with office report)

With
C.A. No. 3582/2005 (With appl(s) for ex parte stay and with office report)

Date: 02/02/2006 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE P.K. BALASUBRAMANYAN

For Appellant(s) Mr. Sudhir Malhotra, Adv.
Mr. Sanjeev Malhotra, Adv.

For Respondent(s) Mr. K. Radha Krishnan, Sr. Adv.
Ms. Neelam Sharma, Adv. for
Mr. P. Parmeswaran, Adv.

UPON hearing the counsel the Court made the following
O R D E R

CA Nos. 7045-48/2000 are allowed. No costs.
C.A. No. 3582/2005 is dismissed with no order as to costs.

(J.S. Rawat) (Parveen Kr. Chawla) (Khushi Ram)
AR-cum-PS Court Master Court Master

[Signed orders placed on the file].

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs. 7045-7048 OF 2000

Leader Engg. Works

Appellant (s)

Versus

Commissioner of Central Excise,
Chandigarh

Respondent (s)

O R D E R

These appeals have been filed under Section 35L(b) of the Central

Excise Act, 1944 (for short "the Act") impugning the Final Order No.

1501-1504/2000-B dated 29.9.2000 in Appeal No. E/232-235/2000-B

passed by the Customs, Excise and Gold (Control Appellate Tribunal, New

Delhi (for short "the Tribunal") wherein and whereunder the Tribunal set

aside the order passed by the Commissioner(Appeals), Central Excise and

Customs (for short "the Commissioner") and denied the benefit of

exemption under Notification Nos. 70/77-CE and 64/95-CE.

The appellant-assessee is engaged in the manufacture of valves

and cocks falling under sub-heading 8481.80. Although the goods

manufactured by the appellant are exigible to excise duty but because of the

exemption notification No. 70/77-CE dated 7th of 1977 which was in

operation till 15th of March, 1995 and the exemption notification No.64/95-

CE dated 16th March, 1995, which is still in force w.e.f. 16th March, 1995,

issued by the Central Government in exercise of the powers conferred on it

by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944

read with sub-section (3) of Section 3 of the Additional Duties of Excise

(Gold of Special Importance) Act, 1957, exempting all goods except

cigarettes falling under heading No. 24.03, if supplied as stores for consumption on board a vessel of the Indian Navy.

Against the specific orders placed with them, the appellants supplied valves and cocks on the strength of certificates issued by the shipbuilders, i.e., M/s. Garden Reach Shipbuilders and Engineers, Calcutta (GRSE), M/s. Goa Shipyard Ltd, Goa (GSL) and M/s. Mazagon Dock Ltd., Bombay (MDL), certifying that the goods are supplied "as stores for consumption on board a vessel of Indian Navy".

The appellant did not pay any excise duty. The appellant was served with nine show cause notices for different periods between September 1994 and April 1996, demanding payment of excise duty on the ground that the shipbuilders were engaged in the manufacture and construction of new ships and also in repair of old ships as well and therefore the goods sold to these companies were not entitled to the benefit under the aforesaid notifications.

The authority in original passed two sets of orders; dated 27th of December, 1996 and 16th of April, 1997. The order dated 27th December, 1996 related to five show cause notices whereas the order dated 16th April, 1997 adjudicated upon the remaining four of them. The authority in original in its original order dated 27th December, 1996 held that the goods supplied to GRSE and GSL were in order and meant for use as stores by the Indian Navy and granted them the benefit under the aforesaid notifications whereas it denied the same in respect of the goods supplied to the MDL.

In the order in original dated 16th April, 1997 the authority took the same view and allowed the benefit of the exemption notifications for the goods sold to GRSE and GSL and denied the benefit thereof for the same goods supplied to MDL.

The department accepted the said decision and did not challenge the grant of the benefit under the exemption notifications in respect of the goods supplied to GRSE and GSL and denied the benefit for the goods supplied to MDL. Thus, to the extent of the goods supplied to GRSE and GSL, the order attained finality.

The department filed appeal against the order granting exemption benefit to the goods supplied to GRSE and GSL, while the assessee appealed against the denial thereof in respect of the goods supplied to MDL. The appeal filed by the assessee was accepted and that of the department was rejected by two separate orders.

By Order dated 17th January, 1999 in the appeal filed by the assessee against the order dated 27th December, 1996, the Commissioner partly set aside the order in original dated 27th December, 1996 (which was the order impugned before him) and granted the benefit of the exemption notifications to the assessee in respect of the goods supplied to MDL as well. By the second order dated 20th of October, 1999 in the appeal filed by the revenue against the order dated 16th April, 1997 granting the benefit to GRSE and GSL, the appeal was dismissed while that filed by the assessee against denial of the benefit of the exemption notification to the goods

supplied to MDL was accepted. Thus, as per two orders of the Commissioner, the assessee got the benefit of exemption notifications in relation to the goods supplied to all the shipbuilders.

Strangely enough the revenue did not file appeal against the order passed by the Commissioner dated 17th of January, 1999 and the same attained finality. The revenue challenged the order of the Commissioner dated 20th of November, 1999. The Tribunal accepted the appeal relying upon its earlier decision in Collector of Central Excise, Bombay v. Moosa Haji Patrawala Pvt. Ltd. [1999 (114) ELT 620 (T)] .

So far as this case is concerned, leaving the question of law open and in the peculiar facts of the present case, we allow these appeals to avoid passing of contradictory and inconsistent orders arising out of the same/similar show cause notices based on the similar set of materials. No costs.

.....J.
(ASHOK BHAN)

New Delhi;
February 02, 2006.

.....J.
(P.K. BALASUBRAMANYAN)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3582 OF 2005

M/s Leader Engineering Works

Appellant (s)

Versus

Commissioner of Central Excise,
Chandigarh

Respondent (s)

O R D E R

This is a statutory appeal filed by M/s Leader Engineering Works now known as Leader Valves Limited (hereinafter referred to as the 'appellant') under Section 35L(b) of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') against Final Order No. 178/05C dated 17th February, 2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short 'the Tribunal') in Appeal No. E/1649/04-NB(C) whereby and whereunder the Tribunal has rejected the appeal filed by the appellant, thus denying the benefit of exemption notification No. 64/95-CE dated 16.03.1995 to it.

Facts:

Appellant is engaged in the manufacturing of Valves & Cocks, Sanitary Bathroom Fittings, Axle Box falling under Sub-heading 8481.80, 7415.32, 7418.90, 7412.20 and 8607.00 of the first Schedule to Central Excise Tariff Act, 1985 (for short 'the 1985 Act') and having Registration Certificate No. J-1/Ch.84/46/92. The appellant was availing the facility of CENVAT credit under Rule 57AA/57AB of erstwhile Central Excise Rules, 1944. Notification No. 64/95-CE dated 16.03.1995 provided exemption to all goods other than cigarettes if supplied as stores for consumption on board a vessel of Indian Navy.

The appellant during the period January 2000 to December, 2000

availing the benefit of Notification effected clearance of the goods without payment of duty on the basis of supply/purchase orders by M/s Mazagaon Dock Limited, Mumbai (for short 'MDL'), M/s Garden Reach Ship Builders & Engg. Limited, Calcutta (for short 'GRSE') and M/s Goa Shipyard Limited, Goa (for short 'GSL') as agent of Indian Navy and on behalf of Indian Navy and on the strength of the certificates given by the Indian Naval Officers stating therein that the goods purchased by MDL, GRSE and GSL were for supply 'as stores for consumption on board a vessel of Indian Navy'.

Revenue, during the course of checking of RT-12 returns and other relevant documents submitted by the appellant for the period January, 2000 to December, 2000, observed that the appellant had wrongly availed the benefit of Notification No. 64/95-CE dated 16.03.1995 by clearing excisable goods during the period January, 2000 to December, 2000 without payment of Central Excise Duty amounting to Rs.2,93,040/- against clearance of excisable goods to the ship builder companies namely MDL, GRSE and GSL. The goods had been supplied by the appellant directly to MDL, GRSE and GSL on the basis of their supply/purchase orders and had not been supplied to the Indian Navy to be used as stores for consumption on board a vessel of Indian Navy. M/s MDL, GRSE and GSL were mainly engaged in the manufacturers/construction of new ships and also repair of old ships.

Two show cause notices dated 1.2.2001 and 27.7.2001 were issued

to the appellant demanding duty and penal action under Rule 173Q of the

Central Excise Rules, 1944 (for short 'the Rules') was also proposed.

Appellant filed its reply to the show cause notices. The averments made in

the show cause notices were denied.

The adjudicating authority observing that the goods were being

directly received by the ship builders engaged in the

manufacturing/construction of new ships and repair of old ships for further

consumption on board by Indian Navy and not by Indian Navy directly, the

conditions as stipulated in the notification No. 64/95-CE dated 16.3.1995

are not satisfied and accordingly denied the benefit of the notification. The

order-in-original confirmed the demand of Rs.2,93,040/- against the

appellant under Section 11A of the Act. The interest at the appropriate rate

applicable was ordered to be charged from the appellant under Section

11AB of the Act. The adjudicating authority also imposed the penalty of

Rs.30,000/- under Rule 173Q of the Rules.

The order passed by the adjudicating authority was upheld in

appeal by the Commissioner(Appeals).

Being aggrieved, the appellant filed the appeal before the Tribunal

which has been dismissed by the Tribunal relying upon its earlier decision

in Collector of Central Excise, Bombay v. Moosa Haji Patrawala Pvt. Ltd.

reported in 1999 (114) ELT 620 (Tribunal). It has been held by the

Tribunal that the benefit under the notification was admissible only if the

goods were supplied directly to the Indian Navy as stores for consumption on board a vessel of the Indian Navy and not through the ship builders on a certificate issued by the Indian Navy that the goods supplied by the appellant would be used for the manufacture of the ships. That the certificate issued by the Indian Navy would not be sufficient to extend the benefit of the notification as if the goods are supplied as stores for consumption on board a vessel to the Indian Navy.

We agree with the view taken by the Tribunal. The words of the exemption notification are clear and unambiguous. Goods other than cigarettes are exempted from duty if the same are supplied as stores for consumption on board a vessel of Indian Navy or Coastguard. The purchase order has been issued by ship builders on behalf of the Indian Navy, Government of India under the Ministry of Defence for manufacture of warship in yard. As per notification the goods supplied to the ship builders will not qualify for exemption and only the goods supplied to the Indian Navy directly will qualify for exemption.

For the reasons stated above, we do not find any merit in this appeal and dismiss the same with no order as to costs.

..J.

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(ASHOK BHAN)

New Delhi;
...J.
February 02, 2006.

.....
(P.K. BALASUBRAMANYAN)

