

A COMMISSIONER OF CENTRAL EXCISE, CHANDIGARH

v.

M/S SUPREME FABRICS LTD.

DECEMBER 12, 2007

B

[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Central Excise Act, 1944:

C

s. 3(4)(d)(ii)—Loading charges incurred while effecting clearance from factory gate—Assessee claiming deduction/abatement from assessable value—HELD: Tribunal rightly held that as demand of duty on 'loading charges' arose subsequently and the amounts were total consideration collected as loading charges, the same should be taken as cum-duty prices and demand to be calculated after allowing abatement of excise duty payable.

D

Srichakra Tyres Ltd. v. Collector of Central Excise, Masdras, (1991) 108 ELT 361 (Tribunal), followed.

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2873 of 2002.

F

From the Final Order No. 16/2002-A dated 8.1.2002 passed by the Customs Excise and Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/1372 2001-A with E Cross/170/2001-A.

R.S. Shukla, Vikas Sharma and Rashmi Malhotra (for B. Krishna Prasad) for the Appellant.

The following Order of the Court was delivered :

G

ORDER

None appears on behalf of the sole respondent.

The issue involved in this case is whether accruing, loading charges collected by the assessee were liable to be treated as cum-duty price and

H

if so whether the Department was obliged to make the demand after allowing abatement for central excise duty payable on such loading charges [see para 2(ii) of the civil appeal paper book].

M/s Supreme Fabrics Ltd., Ludhiana claimed deduction from assessable value on account of loading charges incurred while effecting clearances from the factory gate.

The AO held that deduction was not admissible in terms of Section 4(4)(d)(ii) of Central Excise Act, 1944. The AO took the view that the amount of loading charges was includible in the assessable value. The AO took the view that the assessee had omitted to include such loading charges in the assessable value and, therefore, it was not entitled to deduction/abatement on account of the said charges.

Aggrieved by the decision, the assessee carried the matter in appeal to the Commissioner (A). It was held that the said loading charges were includible in the assessable value, however, following the judgment of the Tribunal in the case in *Srichakra Tyres Ltd. v. Collector of Central Excise, Madras*, (1999) 108 E.L.T. 361(Tribunal), the assessee was entitled to abatement. We quote hereinbelow the relevant paragraph from the order of the Commissioner (A), which reads as under:

“Regarding calculation of assessable value I agree with the appellants that value should be treated as cum-duty-price. This issue has been decided by CEGAT-LARGER BENCH. That under Section 4(4)(d)(ii) of CEA 1944-Excise duty held payable subsequently is to be abated from total sale price realization by treating it as cum-duty price for determination of the assessable value and quantum of duty demand payable. [*Srichakra Tyres Ltd. & Ors. v. CCE* (1999(32)RLT-I(CEGAT)]. As in this case demand of duty on ‘loading charges’ has arisen subsequently and these amounts are total consideration collected as loading charges should be taken as cum-duty prices and demand has to be calculated after allowing abatement of C.Ex.duty payable.”

The said order of the Commissioner came to be upheld by the Tribunal Hence, the Department has come to this Court by way of civil appeal.

A Shri R. Shukla, learned counsel appearing on behalf of the Department, stated that the loading charges collected by the assessee was part of cost of production and, therefore, the assessee was not entitled to the benefit of abatement. It was further contended on behalf of the Department that the Department had not accepted the judgment of the
 B Tribunal in the case of *Srichakra Tyres Ltd.* (supra) and that the Department had preferred Civil Appeal Nos. 5862-5863/99 against the judgment of the Tribunal in *Srichakra Tyres Ltd.* (supra). According to the learned counsel, the matter is pending before this Court. According to the learned counsel the law laid down by the Tribunal in the judgment
 C in *Srichakra Tyres Ltd.* (supra) is not correct.

We find no merit in the above arguments. At the outset, it may be stated that there is no averment in the grounds of appeal filed by the Department before the Tribunal that the loading constituted cost of production. Secondly, we find from the record that the Department's Civil
 D Appeal Nos. 5862-63 of 1999, which has been referred to in the synopsis at page 'D' have been dismissed by three-Judge Bench of this Court vide Order dated 26.2.2002, which are reproduce hereinbelow:

E “After hearing the learned counsel for the parties on the facts of this case, we are of the opinion that the stand of the respondents is correct. Various calculations have been made and we have taken into consideration *the subsequent price* which has been approved by the Department with effect from 8.10.1992 and it clearly appears to us that the revision of the price was cum-duty and,
 F therefore, the element of duty in the increased amount had to be deducted. The appeals are dismissed.

No costs.”

(emphasis supplied)

G For the aforesaid reasons, there is no merit in the civil appeal and the same is accordingly dismissed with no order as to costs.

R.P.

Appeal dismissed.