CASE NO.:
Appeal (civil) 2358-2359 of 2000

PETITIONER:
COMMISSIONER OF CENTRAL EXCISE AHMEDABAD

RESPONDENT:
JALARAM WOOD CRAFTS (P) LTD.

DATE OF JUDGMENT: 12/03/2003

BENCH:
SYED SHAH MOHAMMED QUADRI & ASHOK BHAN

JUDGMENT:
JUDGMENT

2003(2) SCR 1047

The following Order of the Court was delivered :

SYED SHAH MOHAMMED QUADRl, J. These two appeals relate to the same assessee and arise from the common Final Order Nos. 718-719/ 99-D of the Customs, Excise and Gold (Control ) Appellate Tribunal, New Delhi (for short, the Tribunal) in Appeal Nos. E/A 4559/94-D and 4460/94-D, dated August 5, 1999.

When these appeals came up for admission on March 3, 2000, they were directed to be tagged with Civil Appeal Nos. 11441-11442/95. This was obviously for the reason that the question which was involved in those appeals was pressed into service in these appeals also. Be that as it may, Mr. Anoop Chaudhary, the learned senior counsel appearing for the Revenue, opened his case disputing that these appeals are covered by the decision in Civil Appeals No. 11441-11442/95, (Collector of Central Excise, New Delhi v. Universal Electrical Industries and Anr., dated March 11, 2003.

We may note a few relevant facts of this case.

The assessee is manufacturing plywood veneer, panel flush door, panel doors, veneer timber board and block boards. It is also manufacturing glue,

\007 ’

UF resins and wood veneer, which are used as inputs for the manufacture of the afore-mentioned final products. Admittedly, the assessee is a SSI Unit. Under Notification No, 175/86, dated 1.3.1986, it is entitled to exemption for clearance of the goods upto a limit of Rs.20 lakhs. The assessee enjoyed that benefit. On February 25, 1992 and on September 23, 1992, the Assistant Collector, Central Excise, Division Gandhinagar Vidhyalaya, issued a notice to the assessee to show cause as to why the benefit of notification No.217/ 86, dated April 2, 1986, should not be denied to it as its final products were cleared under full exemption and why the central excise duty amounting to Rs. 93, 147 and Rs. 32,607 should not be demanded. The assessee, in reply, stated that as per Explanation-Ill of Notification No. 175/86, the clearance value of inputs that were used in the manufacture of final products, was not to be taken into account while computing the aggregate value of the final products. In his order dated December 30, 1992, the Assistant Collector noted that the assessee had availed the benefit of Notification No.217/86 for the inputs-glue, UF resin and wood veneer-used for the manufacture of their final products-plywood, veneer, panel flush door, panel doors, etc. It was also noted that the assessee had availed SSI exemption under Notification No. 175/86 and cleared the goods under full exemption for first clearance of Rs.20 lakhs. In regard to the defence of the assessee in reply to the show cause notices, it is interesting to notice the following comment of the Assistant Collector:

"The point raised by the assessee in their defence reply regarding Explanation-Ill of the Notification No. 175/85 is not understandable. The said explanation is for computing aggregate value of clearances of final product for the purpose of Notification No. 175/86 which is not at all the point of dispute in this case."

Thus expressing, the Assistant Collector confirmed the demand. On appeal to the Collector, Central Excise and Customs (Appeals), by the assessee, it was pointed out that the exemption under Notification No. 217/86 for the intermediate products manufactured by the assessee, namely, glue, UF resin and wood veneer etc. used in the manufacture of final products, namely, plywood, veneer, panel flush doors etc., is not available to the assessee as the final products were exempted under Notification No. 175/86. In regard to the defence of the assessee, the Appellate Collector noted.

"The disputed issue is regarding the availability of the benefit of the Notification No. 217/86. Hence the appellants reference to explanation III under notification 175/86 is simply not relevant."

The assessee carried the matter in further appeals to the Tribunal. By the impugned order, the Tribunal allowed the appeals holding that the dispute was covered by its earlier order in the case of Universal Electrical Industries v. C.C.E., (1994) 70 ELT 279.

In as much as the respondent did not enter appearance inspite of service of notice, we requested Mr. V. Lakshmi Kumaran, Advocate, to assist us as amicus curiae in this case. We record our appreciation for the valuable service he has rendered in putting up the case of the unrepresented respondent to assist the Court.

In the light of the contentions of the learned counsel, after giving our anxious consideration, we are of the view that the point raised in these appeals is squarely covered by the decision of this Court in C.A.Nos.l 1441-11442/ 95, dated March 11, 2003. The assessee is a SSI unit and is entitled to exemption under Notification No. 175/86. It is not in dispute that both the inputs as well as the final products are specified goods as they have been mentioned in the annexure to the notification. For purposes of computing the aggregate value, both Explanation II and Explanation III have to be read together and the clearance value of the inputs will have to be excluded. This is what the assessee stated in its reply which was not appreciated either by the Assistant Collector or the Collector (Appeals ). Even if the claim of exemption by the assessee in regard to the inputs is based on Notification No. 217/86 and it is not entitled to the same, it hardly makes any difference as the inputs fall within the meaning of 'specified goods' in Notification No. 175/86. Therefore, their clearance value ought to have been excluded while arriving at the aggregate value for the purposes of Notification No. 175/86.

It is true that, read by itself, Notification No. 217/86 applies only to such inputs which are used in the manufacture of final products which are not entitled to any exemption under the Central Excise Act. 1944. But that question would become irrelevant if the inputs are entitled to exemption under Notification No. 175/86 itself.

However, Mr. Chaudhary submitted that it is not clear from the record as to whether the same inputs in regard to which exemption under Notification No. 217/86 was claimed by the assessee had gone into the manufacture of final products which are said to have been cleared upto a limit of Rs. 20 lakhs. It will suffice to observe that we leave it open to the Excise authorities to verify the said fact. If the claim of exemption under Notification No. 217/ 86 is in regard to inputs which have gone into manufacture of the final products which were cleared under Notification No. 175/86, there can be no further demand of excise duty, even though the assessee claimed exemption under Notification No. 217/86. But, if under Notification No.

175/86 the clearance value of the inputs was already excluded in arriving at the aggregate value of Rs. 20 lakhs and claim for exemption of inputs under Notification No. 217/86 relates to different final products which are exempt under a different Notification, then the assessee will be liable to pay the duty in demand.

Accordingly, following the decision in Civil Appeal Nos. 11441-1142/ 95, dated March 11, 2003, we confirm the order of the Tribunal and dismiss these appeals.

There shall be no order as to costs.