

SUPREME COURT OF INDIA

Commissioner of Central Excise, Chandigarh

Vs.

Metro Tyres Limited

C.A.No.7262 of 2003

(S. H. Kapadia, S. N. Variava and Dr. AR. Lakshmanan JJ.)

01.02.2005

ORDER

1. These three Appeals are being disposed of by this common order as the impugned Order in Civil Appeal No. 3409/2004 and 5084/2004 merely follows the order impugned in Civil Appeal No. 7262/2003.

2. The question involved in these cases is whether an intermediate product manufactured by the Respondent, namely, tyre bead wire ring, is excisable to duty. The Commissioner (Appeals) held that it was excisable to duty relying upon:

“(a) the fact that one M/s. Hindustan Tyre Company, Ludhiana was paying duty on similar goods;

(b) An affidavit of one Shri Surinder Singh, partner of M/s. Gurpreet Rubber Industries to the effect that they purchased bead wire rings from M/s. Khosia Enterprises for use in Animal Drawn Vehicles and moped tyres;

(c) Statement of one Shri Om Parkash Pahwa, partner of M/s Ram Lubhaya and Company, stating that they manufacture tyre bead rings on job work basis for M/s. Ralson (India) Ltd.; and

(d) Supplementary classification list filed by one M/s. Govind Rubber Limited.”

3. It appears that the said Shri Surinder Singh and Shri Om Parkash Pahwa did not subject themselves to cross examination even though a request for cross examining these parties was made. Attention of the Commissioner was drawn to the decision of the Tribunal in the case of *Collector of Central Excise, Panaji Goa v. M.R.F. Ltd. reported in¹*. The Commissioner distinguished the decision by holding that in this case there was proof of marketability.

4. The Tribunal has reversed the decision of the Commissioner holding that there is no proof of marketability and therefore the earlier decision continues to apply. The Tribunal noted that

Shri Surinder Singh did not come for cross examination. It also noted that according to Shri Surinder Singh, bead wire rings were purchased from Khosia Enterprises and the owner of Khosia Enterprises has given a statement which showed that bead wire rings sold by Khosia Enterprises were not rubberised. The Tribunal also notes that there is no proof to show that the duty which had been paid by M/s. Hindustan Tyre Company was on identical goods.

5. We have asked Counsel for the Revenue to show us whether there is any material on record to show that the duty paid by M/s. Hindustan Tyre. Company was in respect of identical goods. Except for the statement made by the Commissioner in his order, no other material could be shown to us that the product of M/s. Hindustan Tyre Company was an identical product.

6. In our view, the Tribunal has rightly not placed any reliance on the affidavit of Shri Surinder Singh and Shri Om Parkash Pahwa. The burden to show marketability is on the Department, In our view, the Department has not discharged the same.

7. We, therefore, see no reason to interfere. The Civil Appeals are accordingly dismissed. There will be no order as to costs.

¹1999 Indlaw CEGAT 3476