

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CENTRAL EXCISE APPEAL NO.96 OF 2008

...

Sarla Performance Fibers Ltd. ..Appellant

v/s.

The Commissioner of Central Excise

& Customs ..Respondent

...

Mr.V.Sridharan with Mr.Prakash Shah & Mr.J.H.Motwani
i/b PDS Legal for the Appellant.

Mr.K.R.Chaudhary with Mr.S.D.Bhosale for the
Respondent.

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CORAM: D.K.DESHMUKH &

J.P.DEVADHAR, JJ.

DATED: 20TH AUGUST, 2008

P.C.:

1. By consent of parties, the appeal is heard

finally.

2. The question that arises for consideration in this appeal is whether the goods manufactured by hundred per cent EOU (Export-Oriented Undertaking) when sold in India can be subjected to levy of Education Cess under the Central Excise Act.

3. We have heard the learned Counsel appearing for both sides. It, prima facie, appears that under proviso to Section 3 of the Central Excise Act the goods, which are manufactured in E.O.U., when they are brought to any other place in India, for the purpose of calculating excise duty they are treated as imported goods. Therefore, it appears that by proviso to Section 3 of the Central Excise Act statutory fiction is created that the goods though actually manufactured in India are treated as imported goods for the purpose of calculating and levying the excise duty. Perusal of Section 93 of the Finance Act prima facie shows that for the purpose of levying the education cess on excisable goods the education cess is treated as part of excise duty. We, therefore, find prima facie substance in the submission made on behalf of the Appellant that when the goods manufactured by E.O.U., which are

brought to any other place in India are to be treated as imported goods for the purpose of levying excise duty, the same fiction will have to be extended while calculating and levying the education cess. We are not expressing any final opinion on this question. We find from the order of the tribunal that the tribunal has not approached the question from this perspective. In our opinion, the tribunal should have considered the purpose for which the statutory fiction has been created by the legislature and whether considering that purpose the fiction can be extended while levying education cess under Section 93 of the Finance Act also.

4. We have been informed that any decision taken on this question is likely to affect a number of EOUs and therefore, in our opinion, the tribunal should also consider issuing general notice making it know that any person representing EOU can address the tribunal on this question so that a well-considered decision on the subject can be taken. In our opinion, therefore, following order would meet the ends of justice.

O R D E R

(i) The order impugned in the appeal is set aside.

(ii) The appeal is remitted back to the tribunal for denovo consideration and decision in accordance with law.

(iii) The tribunal shall, before deciding the appeal, consider the question whether in view of importance and likely far reaching effect of their decision, it will be appropriate to issue a general notice enabling any person, who may be adversely affected, being given an opportunity of being heard.

(iv) Appeal disposed of.

(D.K.DESHMUKH, J.)

(J.P.DEVADHAR, J.)