A M/S. PEACOCK INDUSTRIES LTD.

v.

UNION OF INDIA AND ORS.

(Civil Appeal No. 6144 of 2010)

B SEPTEMBER 5, 2022

[M. R. SHAH AND KRISHNA MURARI, JJ.]

Central Excise Act, 1944 – s.173L – Central Excise Rules – Claim for refund of excise duty – Assessee if entitled to the refund to the extent of the value of the returned goods – Held: No cogent evidence was led by the assessee on the value of the returned goods – Value of the returned goods depend on the defects found in the manufactured goods which are returned – It varies considering the defects – Therefore, the assessee has to lead the evidence with respect to each consignment of the returned goods, which the assessee failed to prove in the present case – Further, as the value of the returned goods determined by the Deputy Commissioner at Rs.8 to 10 per kg is found to be less than the amount of duty already paid, the appellant is rightly denied the refund of the excise duty paid – Denial of the refund is in consonance of s.173L(v) – Concurrent findings recorded by the adjudicating authority, the Tribunal and the High Court on the value of the returned goods not required to be interfered with in the present proceeding more particularly when the same was determined by the Deputy Commissioner/Assessing Authority after giving opportunity to the assessee – Neither the Deputy Commissioner nor the Tribunal or even the High Court have committed any error in rejecting the refund claim of the assessee.

Central Excise Act, 1944 – s.173L – Value for refund u/s.173L – Held: For the purpose of considering the value for refund u/s.173L what is required to be considered is the value of the returned goods – As per explanation to clause (v) of s.173L, "value" means the market value of the excisable goods and not the exduty value thereof – Therefore, the submission on behalf of the assessee that the returned goods may be treated as a raw material and therefore the "value" of the raw material can be considered for the purpose of "value" while determining the refund u/s.173L cannot be accepted.

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Dismissing the appeal, the Court

HELD: 1.1 Neither the Deputy Commissioner nor the Tribunal or even the High Court have committed any error in rejecting the refund claim of the assessee. At the outset, it is required to be noted that after giving an opportunity to the assessee on the value of the returned goods and considering the material on record including the market survey report the Department determined the value of returned goods at Rs.8 to 10 per kg. No cogent evidence was led by the assessee on the value of the returned goods. The assessee only produced the invoices with respect to secondary market. However, it is required to be noted that the value of the returned goods depend on the defects found in the manufactured goods which are returned. It varies considering the defects. In some returned goods the defect might be 5% and in some goods the defect might be 80% to 90%. Therefore, the assessee has to lead the evidence with respect to each consignment of the returned goods, which the assessee failed to prove in the present case. The Department heavily relied upon the market survey report and thereafter determined the value of the returned goods as Scrap at the rate of Rs.8 to 10 per kg. The assessee participated in the proceedings before the Deputy Commissioner. The assessee neither asked for copy of the market survey report nor asked for any cross examination on the market survey report and/or led any cogent evidence on the value of the returned goods. Such a grievance of non-supply of market survey report was even not raised before the learned Tribunal. Therefore, thereafter it is not open for the assessee to raise the issue with respect to non-supply of the market survey report for the first time before the High Court. [Para 3][224-F-H; 225-A-C]

1.2 The submission on behalf of the assessee that as the returned goods can be reusable for the manufacture of the products and therefore the value of the raw material can be considered for the purpose of determination of the value for refund is concerned the same is not supported by any statutory provision, more particularly Section 173L of the Central Excise Act and/or

even the Central Excise Rules. Therefore, for the purpose of considering the value for refund under Section 173L what is required to be considered is the value of the returned goods. As per explanation to clause (v) of Section 173L, "value" means the market value of the excisable goods and not the exduty value thereof. Therefore, the submission on behalf of the assessee that the returned goods may be treated as a raw material and therefore the "value" of the raw material can be considered for the purpose of "value" while determining the refund under Section 173L cannot be accepted. As the value of the returned goods determined by the Deputy Commissioner at Rs.8 to 10 per kg is found to be less than the amount of duty already paid, the appellant is rightly denied the refund of the excise duty paid. Denial of the refund is in consonance of Section 173L (v) of the Central Excise Act. There are concurrent findings recorded by the adjudicating authority, the Tribunal and the High Court on the value of the returned goods which are not required to be interfered with by this Court in the present proceeding more particularly when the same was determined by the Deputy Commissioner/Assessing Authority after giving opportunity to the assessee. [Paras 4, 4.1 and 5][225-C-D; 226-B-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6144 of 2010.

From the Judgment and Order dated 06.02.2008 of the High Court of Judicature for Rajasthan at Jodhpur in Other Tax Reference Civil No. 26 of 2004.

Ms. Christi Jain, Puneet Jain, Ms. Shipra Singh, Yogit Kamat, Umang Mehta, Ms. Shruti Singh, Mann Arora, Ms. Pratibha Jain, Advs. for the Appellant.

N. Venkataraman, ASG, Arijit Prasad, Sr. Adv., M. K. Maroria, H. R. Rao, Rupesh Kumar, Udai Khanna, Mrs. Anil Katiyar, B. Krishna Prasad, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.02.2008 passed by the High Court of Judicature for Rajasthan at Jodhpur in Tax Reference Civil No.26 of 2004, the dealer – assessee has filed the present appeal.

2. The facts leading to the present appeal in a nutshell are as under:

2.1 That the appellant – assessee is a manufacturer of plastic moulded furniture. The assessee submitted a claim for refund of the excise duty, on the basis of its having accepted the rejected goods, returned to it by its distributors, for which it had issued credit notes to the parties.

2.2 It was the case on behalf of the assessee that the assessee is entitled to the refund to the extent of the value of the returned goods under Section 173-L of the Central Excise Act and the Rules, 1944 thereunder. It was the case on behalf of the assessee that the value for the purpose of refund shall be considered after considering the market value of goods returned as second-hand goods. In the alternative, it was the case on behalf of the assessee that as the returned goods can be again reused as raw material the value of raw material can be the value for the purpose of refund. A show cause notice was issued by the Deputy Commissioner. Ample opportunity was given to the assessee on the value of the returned goods. The assessee produced the invoices of the second-hand goods but did not lead any evidence on the value of the goods returned. However, considering the market survey report the Assessing Officer/Deputy Commissioner valued the returned goods at Rs.8 to 10 per kg treating the same as scrap. Thereafter, it was found that the value of the returned goods was to be less than the amount of duty originally paid at the time of their clearance from the factory, the assessee shall not be entitled for the refund considering Section 173-L (v).

2.3 The assessee challenged the order passed by the Deputy Commissioner denying the refund before the learned Tribunal. The learned Tribunal dismissed the appeal. At the instance of the assessee the reference was made to the High Court. Before the High Court it was the case on behalf of the assessee that the order passed by the

A Assessing Authority was in breach of principles of natural justice as the copy of the market survey report was not furnished to the assessee. It was also the case on behalf of the assessee that the Department wrongly treated the returned goods as scrap and thereby committed serious error in arriving at the value of the returned goods at Rs.8 to 10 per kg and thereby denying the refund to the assessee.

B

2.4 By the impugned judgment and order the High Court has rejected the reference by observing that the value determined by the Department at Rs.8 to 10 per kg was on appreciation of evidence and after giving opportunity to the assessee and relying upon the market survey report(s) which was neither asked by the assessee nor challenged

C by the assessee and the determination of the value at Rs.8 to 10 per kg can be said to be the question on fact and the same is not required to be interfered with in the reference.

2.5 The High court has also observed in the impugned judgment and order that even before the Tribunal also, no submission was made

D about copy of market survey report having not been given and/or on the alleged violation of principles of natural justice. Thereafter by the impugned judgment and order the High Court has rejected the Reference.

3. Having heard Shri Puneet Jain with Ms. Christi Jain, learned counsel appearing on behalf of the appellant and Mr. N. Venkatraman,

E learned ASG appearing on behalf of the Revenue and considering the order passed by the Deputy Commissioner/Assessing Officer and the findings recorded by the Deputy Commissioner, we are of the opinion that neither the Deputy Commissioner nor the Tribunal or even the High Court have committed any error in rejecting the refund claim of the

F assessee. At the outset, it is required to be noted that after giving an opportunity to the assessee on the value of the returned goods and considering the material on record including the market survey report the Department determined the value of returned goods at Rs.8 to 10 per kg. No cogent evidence was led by the assessee on the value of the returned goods. The assessee only produced the invoices with respect

G to secondary market. However, it is required to be noted that the value of the returned goods depend on the defects found in the manufactured goods which are returned. It varies considering the defects. In some returned goods the defect might be 5% and in some goods the defect might be 80% to 90%. Therefore, the assessee has to lead the evidence

H with respect to each consignment of the returned goods, which the

assessee failed to prove in the present case. The Department heavily relied upon the market survey report and thereafter determined the value of the returned goods as Scrap at the rate of Rs.8 to 10 per kg. The assessee participated in the proceedings before the Deputy Commissioner. The assessee neither asked for copy of the market survey report nor asked for any cross-examination on the market survey report and/or led any cogent evidence on the value of the returned goods. Such a grievance of non-supply of market survey report was even not raised before the learned Tribunal. Therefore, thereafter it is not open for the assessee to raise the issue with respect to non-supply of the market survey report for the first time before the High Court.

4. The submission on behalf of the assessee that as the returned goods can be reusable for the manufacture of the products and therefore the value of the raw material can be considered for the purpose of determination of the value for refund is concerned the same is not supported by any statutory provision, more particularly Section 173-L of the Central Excise Act and/or even the Central Excise Rules. Section 173-L of the Central Excise Act reads as under:

> **"173-L Refund of duty on goods returned to factory.** - (I) The Collector may grant refund of the duty paid on manufactured excisable goods issued for home consumption from a factory, which are returned to the same or any other factory for being remade, refined, reconditioned or subjected to any other similar processes in the factory.
>
> Provided that:-
>
> XXX XXX XXX
>
> (2) XXX XXX XXX
>
> (3) No refund under sub-rule (1) shall be paid until the process mentioned therein have been completed and an account under subrule having been rendered to the satisfaction of the collector within six months of the return of the goods to the factory. No refund shall be admissible in respect of the duty paid:-
>
> (i) to (iv) XXX XXX XXX
>
> (v) If the value of the goods at the time of their return to the factory is, in the opinion of the collector, less than the amount of

A duty originally paid upon them at the time of their clearance from the factory,

Explanation - in this clause, "value" means the market value of the excisable goods and not the ex-duty value thereof.''

B 4.1 Therefore, for the purpose of considering the value for refund under Section 173-L what is required to be considered is the value of the returned goods. As per explanation to clause (v) of Section 173-L, "value" means the market value of the excisable goods and not the ex-duty value thereof. Therefore, the submission on behalf of the assessee that the returned goods may be treated as a raw material and therefore the C "value" of the raw material can be considered for the purpose of "value" while determining the refund under Section 173-L cannot be accepted.

5. As the value of the returned goods determined by the Deputy Commissioner at Rs.8 to 10 per kg is found to be less than the amount of duty already paid, the appellant is rightly denied the refund of the excise D duty paid. Denial of the refund is in consonance of Section 173-L (v) of the Central Excise Act. There are concurrent findings recorded by the adjudicating authority, the Tribunal and the High Court on the value of the returned goods which are not required to be interfered with by this Court in the present proceeding more particularly when the same was determined by the Deputy Commissioner/Assessing Authority after giving E opportunity to the assessee.

6. In view of the above and for the reasons stated above, the present Appeal fails and the same deserves to be dismissed and is accordingly dismissed.

F However, in the facts and circumstances of the case there shall be no order as to costs.

Divya Pandey Appeal dismissed.