Devinder Sanitations Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1996

Reported in : (1996)(88)ELT589TriDel

Appellant : Devinder Sanitations

Respondent : Collector of C. Ex.

Judgement :

1. By the captioned appeal, the appellants have agitated the imposition of penalty and confiscation of goods.

2. The facts of the case, in brief, are that the Central Excise officers visited the premises of M/s. Devinder Sanitation. It was learnt that Shri P.C. Gupta was running the above unit manufacturing sanitary fittings. It was noticed that Shri Gupta disclosed that the factory was bifurcated in the year 1977 by creating another unit in the name and style of M/s. S.B. Enterprises in the same premises. It was therefore, alleged that bifurcation of the unit was resorted to avail the benefit of exemption under Notification No. 105/80 as amended by Notification No. 77/80 with the intention to contain the aggregate value of clearances from the two units to remain within the exemption limit. Show cause notice was accordingly issued to the appellants asking them to explain as to why duty should not be demanded after clubbing the clearances of the two units and why penalty should not be imposed.

3. Shri A.C. Jain, the Ld. Advocate appearing for the appellants submits that the adjudicating officer on the question of computing the value of clearances held "This point was examined by me at length and detailed figures of individual figures of clearances for the year 1983-84 and 1984-85 were called from the party and these were got verified through the jurisdictional officers who reported that the value referred in the show cause notice did not include the value of the traded goods and on exclusion of the same the actual value of clearance during 1983-84 and 1984-85 do come under exemption limit and the party was entitled for the benefit of Notification No. 105/80 as amended by Notification No. 77/83 which absolves the party from the responsibility of paying duty on their goods manufactured by them. The Ld. Counsel submitted that the only allegation in the show cause notice was that clubbing was resorted to evade payment of duty whereas in the findings of the adjudicating authority, the appellants were absolved of this charge. He submits therefore, that nothing survives.

4. The Ld. Counsel also cited and relied upon the decision of the Hon'ble Allahabad High Court in the case of E. Septon and Company Pvt.

Ltd. v. Superintendent of C. Ex. and Anr. reported in 1985 (19) E.L.T.57 whereunder the Hon'ble High Court held as under : "Lastly it was argued by the Additional Standing Counsel, appearing for the Union of India, that even if the ice is exempted from payment of excise duty, it does not cease to be excisable goods within the meaning of Section 2(d) of the Act and the petitioner is legally obliged to take a licence for manufacturing excisable goods as contemplated under Rule 174 of the Rules. This argument is also wholly untenable. A Division Bench of this Court in M/s. Nagarath Paints Private Limited v. The Union of India and Ors. (Civil Misc.

Writ No. 2615 of 1972) decided on 5th December, 1977, expressed its agreement with the observation made in a decision of the Delhi High Court in Snlekh Ram and Sons v. Union of India 1972 Tax Law Reports 1771 which followed the decisions of the Supreme Court in Kailash Nath v. State of U.P. A.I.R.J.K. Steel Ltd v. Union of India A.I.R. 1970 SC 1173 that if the Central Excise Act and the notification are read together, the effect is that goods exempted from excise duty

are taken out of the First Schedule to the Act, and, therefore, such goods cease to be excisable goods within the meaning of Section 2(d) of the Act. In view of the aforesaid decision of this Court as well as the facts stated in the preceding paragraphs the stand taken by the respondents appears to be palpably unjustified and illegal inasmuch as the commodity produced by the petitioner is exempted from payment of excise duty and once it is exempted from excise duty, the same shall be deemed to have been taken out of the First Schedule to the Act and the petitioner cannot be compelled to obtain a licence as contemplated under Rule 174 of the Rules. In this view of the matter it must be held that the petitioner is not required to obtain a licence for manufacturing the ice in the Ice Factory." The Ld. Counsel argued that as the goods were not excisable therefore, the question of imposition of penalty does not arise because Rule 173Q and its various provisions only apply to excisable goods. The Ld.

Counsel also cited and relied upon the decision of the Hon'ble Patna High Court in the case of Tata Yodogawa Limited v. Asstt. Collector of Central Excise, Jamshedpur and Others reported in 1983 (12) E.L.T. 17 wherein it was held that "In view of the facts that the petitioners bonafide did not apply for licence for removing the goods for which the duty was payable under Item 68 or did not file revised classification list, it is a case of honest and genuine belief of a person that no duty was payable under that item. That being the position the imposition of penalty was not justified. Reference may be made to Hindustan Steel Limited v. State of Orissa A.I.R. 1970 S.C. 253." The Ld. Counsel also referred to this Tribunal's judgment reported in 1996 (83) E.L.T. 648 wherein it was held that penalty was not imposable if there was no intention to evade payment of duty. He also referred to Board's letter dated 16-4-1981 in support of his contention that no penalty was imposable if the declaration is not filed. He submitted that in view of the submissions made by him, the order imposing penalty may be set aside. He also submitted that the order confiscating the goods may be set aside and the appeal may be allowed.

5. Shri A.K. Agarwal, the ld. SDR submitted that the appellants were required to file a declaration claiming exemption of duty under the relevant Notifications which the appellants did not do. He submitted that though the appellants had crossed

80% of the exemption limit yet they did not obtain a licence. He submitted that the goods mentioned in the tariff are excisable goods and since the goods were manufactured without a licence and removed without payment of duty, the goods have been rightly confiscated and penalty has been correctly imposed. He reiterates the findings of the adjudicating authority.

6. Heard the submissions of both sides. Insofar as the imposition of penalty was concerned, we find that penalty can be imposed under various provisions of Rule 173Q. Going through these provisions, we find that penalty can be imposed only if the goods are excisable. We find that the Hon'ble Allahabad High Court in the case of E. Septan and Company Pvt. Ltd. cited supra had held that if the goods are fully exempt then they are not excisable. This view was expressed by the Hon'ble High Court and therefore, was the law prevailing at that time.

Once the goods become non-excisable, their confiscation become illegal and invalid as also the imposition of penalty in respect of non-excisable goods become unsustainable in law. In this view of the matter, we set aside the order of confiscation of goods as also the imposition of penalty.

7. In the result, the impugned order is set aside. Consequential relief, if any, shall be admissible in accordance with law.