

Ramson Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-16-1996

Reported in : (1997)(90)ELT61TriDel

Appellant : Ramson Industries

Respondent : Collector of Central Excise

Judgement :

1. These are six appeals as per the numbers shown on the respective files. In fact two appeals are filed by the assessee and the other two appeals are filed by the Department. At the first instance the assessee has filed appeals to South Regional Bench at Madras wherein the Registry has given the Nos. E/149-150/87-MAS and on subsequent transfer of the file, Central Registry has given the number for the same appeals as E/2718-2719/87-B. Accordingly the number given by the Central Registry is a substitute for the old numbers given by the Madras Registry and in effect these are only four appeals. Registry could have removed the old numbers. In the circumstances, Registry is directed to delete the old numbers and accordingly both the old numbers given by the Madras Bench have become infructuous and as such are not sustainable. The Department has filed two appeals in E/1920-1921/86-D against the impugned order passed by the Additional Collector.

2. Shri P. Das, Id. SDR submitted that in the instant case show cause notice was issued on 9-1-1984 covering the period 1979-80 and 1980-81.

In the case of appeals filed by the party in Appeal Nos.

E/2718-2718/87-B show cause notice dated 18-1-1985 covers the periods 1980-81, 1981-82 and 1982-83. Shri P. Das submitted that one unit M/s.

Ramson Industries was owned by Smt. Indra Rani and the other unit M/s.

Libra Industries is owned by one Smt. Ponnammamma. He submitted that Smt.

Ponnammamma is wife of Shri Bharathan and Smt. Indra Rani is the daughter of Mr. Bharathan. As such Mr. Bharathan is the main person who is carrying on the manufacturing activity in both the units and both units are controlled by him. He submitted that both Smt. Ponnammamma as well as Smt. Indra Rani have categorically given a statement stating that they are not aware of the manufacturing /business activity of the units and both the units are managed by Shri Bharathan. He contended that the Addl. Collector in the earlier order erred in holding that these two units are independent units and the same cannot be clubbed. He also submitted that Addl. Collector was not right in holding that demand is barred by time since they have suppressed the facts and Department was justified in invoking the larger period, since Section 11A as such was clearly mentioned in the show cause notice.

3. Shri Nambirajan, appearing for the assessee in all these cases submitted that nothing was brought on record to show that these units were set up by Shri Bharathan. On the other hand the units are managed by the ladies on their individual capacity and the original statement was given by them under duress and the same was retracted by them on the very next day. He submitted that apart from the merits of the case, demand was clearly barred by time in the appeals filed by the Department since there was no mention of proviso to Section 11A nor averments were specific as envisaged under Section 11A of the Act. In support of his contention, he referred to the decision of the Supreme Court in the case of HMM Ltd. reported in 1995 (76) E.L.T. 497.

4. As regards appeals filed by the party he submitted that item in question is not liable to duty in view of the exemption Notification No. 3/86, dated 16-1-1986

issued by the Central Govt. under Section 11C of the Central Excises and Salt Act.

5. The relevant Notification No. 3/86 is reproduced for the sake of ready reference :- "In exercise of the powers conferred by Section 11C of the Central Excises and Salt Act, 1944 (1 of 1944), the Central Govt., being satisfied that according to a practice that was generally prevalent regarding levy of the duty of excise (including non-levy thereof), under the said Act, the duty of excise on cycle accessories, falling under Item No. 68 of the First Schedule to the said Act, was not being levied under Section 3 of the said Act during the period commencing on the 19th June, 1980 and ending with the 17th March, 1985, hereby directs that the whole of the duty of excise payable under the said Act on such cycle accessories, but for the said practice, shall not be required to be paid in respect of such cycle accessories on which the said duty of excise was not being levied during the period aforesaid in accordance with the said practice." 6. We have carefully considered the submissions made both sides. On going through the show cause notice dated 9-1-1984 in Appeal Nos.

E/1920-1921/86-B we find that except clear mention of Section 11A, there was no specific mention of suppression to invoke the larger period. Supreme Court time and again has clearly said that commissions and omissions to be clearly brought out in the show cause notice to invoke the larger period including in the case of HMM Ltd. referred to above. Since such specific allegations are not forthcoming in the show cause notice and in the absence of averments as envisaged under Section HA of the Act, we accept the plea of the respondents that demand was clearly barred by time in the appeals filed by the Department. With reference to the appeal of party it is (sic) academic interest to decide the excisability in view of the fact that Government of India has issued exemption notification exempting the items, i.e., cycle accessories falling under Item 68 of the 1st Schedule to the said Act commencing from 19-6-1980. Accordingly demand from 19-6-1980 is not sustainable. In the result, we accept the plea of the party and accordingly all these appeals are disposed of in the above terms.