

Collector Central Excise Vs. Executive Engineer

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-1997

Reported in : (1997)(94)ELT505TriDel

Appellant : Collector Central Excise

Respondent : Executive Engineer

Judgement :

1. This reference application is filed by the department against Final Order No. 88/97-D, dated 27-1-1997 (Appeal No. 470/89-D).
2. According to the department, following question is required to be referred to the High Court for its considered opinion :- "Whether extended time limit for issue of show cause notice (issued on 28-11-1984) would be applicable or not in view of manufacture of excisable goods by the assessee without obtaining Central Excise licence and also without observing other Central Excise formalities as required under the law?" 3. Heard Shri D.S. Negi, learned DR on behalf of the Revenue and the assessee was represented by Shri R.M. Mishra, Asstt. Engineer.
4. Assessee Executive Engineer manufactured and cleared R.C.C. pipes without obtaining Central Excise licence without payment of duty and without observing the Central Excise formalities, for which a show cause notice dated 28-11-1984 was issued.

5. Additional Collector who adjudicated the proceedings confirmed demand with reference to show cause notice issued under Section 11A of the Central Excises and Salt Act. Tribunal has observed that show cause notice was issued raising demand even beyond the period of five years.

However, the Additional Collector restricted the demand for the period of 5 years without examining the case whether the appellants have suppressed the facts to invoke larger period. Further it observed that in the show cause notice, there was no specific allegation of suppression of facts as envisaged under Section 11A nor proviso to Section 11A as such was mentioned in the show cause notice to invoke larger period. Accordingly, Tribunal relying upon the decision of the Supreme Court in the case of H.M.M. Ltd. v. C.C.E., New Delhi, reported in 1996 (87) E.L.T. 593 (S.C.) held that in the absence of such averments as envisaged under the proviso to Section 11 A, demand was clearly barred by time.

6. Department wants to refer the matter to the High Court on the ground that words fraud or need not be directly mentioned in the show cause notice relying upon the earlier decisions. Since the Tribunal has relied upon the latest decision of the Supreme Court and time and again the Supreme Court has clearly observed that to invoke larger period suppression of facts are to be clearly brought out in the show cause notice, i.e. such as fraud, collusion, wilful misrepresentation etc.

and in the absence of such averments, the department was not justified in invoking the larger period. Since the issue is no longer res Integra and in view of the decision of the Supreme Court, we do not see that question of law arises to be referred to the High Court as prayed for.

In the view, we have taken, the reference application filed by the Revenue is hereby dismissed.

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