

Precision Equipment Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-17-1997

Reported in : (1999)(112)ELT998Tri(Mum.)bai

Appellant : Precision Equipment

Respondent : Commissioner of Central Excise

Judgement :

1. The assessee was a manufacturer of rolls for rolling mills, which were classifiable at the relevant period in 1986 under Heading 84.55 of the tariff at 12% ad valorem. It filed a classification list effective from 12th March, 1986 classifying the goods indicating the rate of duty payable at 15%. However during the period from 25th March, 1986 to 31st March, 1986 it cleared ten consignments of these goods at 12%. On these facts becoming known to the Department, notice was issued proposing recovery of duty and imposition of penalty. The Collector, after considering the contention raised before him by the assessee, confirmed the demand and imposed a penalty of Rs. 25,000/-. Hence this appeal.

2. Advocate for the appellant says that the appellant was misled by reading newspaper reports about changes in the tariff into believing that the rate of duty has been reduced to 12% and therefore paid the duty. He says that it was never the intention of the assessee to pay duty lower than the rate and although on limitation he has a strong case with regard to the demand, the appellant does not wish to challenge liability to duty in order to establish its bona fide. He therefore says that the appeal is limited to the penalty imposed. He contends that the

extended period will not apply because the appellant in the RT 12 return filed on 4th January, 1986 had indicated the rate of duty paid at 12%. It had also enclosed the duplicate gate pass which showed the duty paid at 12%. Therefore, he says the extended period will not apply.

3. The Departmental Representative points that the Collector had found that the appellant was in the habit of mis-stating facts. He says that by making endorsements on the gate passes, the appellant tried to mislead the Department to think that the clearances were in pursuance of a classification list No. 1/86 which was not in existence.

4. On consideration of the facts, we are unable to agree that there existed circumstances to justify application of the extended period of five years as contained in the proviso to Section 11A. We are not persuaded by the contention that on reading newspaper reports about the amendment of the Notification 175/86 the assessee could have come to the conclusion that the rate of duty payable in its goods was reduced.

Notification 175/86 related to grant of exemption to small scale units and did not apply to the product manufactured by the appellant. The appellant had not claimed the notification in the classification list filed by it. At the same time, we do not see how the classification list would mislead the Department into thinking that the correct rate of duty was 12%. The endorsement in the classification list is "PL 1/86, dated 21st March, 1986". The letters "PL" both to the assessee and the Department in the common parlance would refer to "price list" and they would not be understood as referring to a classification list which is referred to as "CL". Reference to Notification 175/86 was again irrelevant, as we have already discussed. These remarks however confusing as they appear (and they do to some extent) could not, in our opinion, have mislead the Department thinking that the appellant rightly paid duty at 12%. On the contrary, the gate passes clearly indicated that the duty had been paid at 12%, and these gate passes were submitted to the Department in the next month alongwith the RT 12 returns. A simple reference to the Tariff would have enabled the Department to know that the duty had incorrectly been paid. The fact that the Superintendent, while finalising

the RT 12 return in March 1987, has endorsed on the remarks of the RT 12 return proves that the data in the gate passes and RT 12 return was supplied to show the correct position that the duty payable is 12% and not 15%. By this time, it was too late to issue a notice for recovery of duty without invoking the extended period. The Collector held that thinking that the reference to the extended period was made with a view to overcoming this difficulty. Whatever be the reasons, the fact remains that the assessee had brought to the notice of the Department the fact that it paid duty at 12% and had not made any statement which could amount to defraud, wilful mis-statement or suppressed information. The factors cited by the Collector do not support the contention that the appellant had not paid duty on account of these factors, contained in the proviso to Section 11 A.6. Appeal therefore succeeds on the question of limination is allowed.

The penalty imposed upon the appellant is set aside.

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