Star Indl. and Textile Vs. Cce

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SooperKanoon Citation : sooperkanoon.com/12870

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-13-1998

Reported in : (1998)(76)LC464Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Star Indl. and Textile

Respondent : Cce

Judgement :

1. Appellant, engaged in the manufacture of parts of textile machinery, was filing price lists and clearing goods on approved prices. In respect of the period 1.3.1975 to 3.1.1976 show cause notice dated 23.12.1976 was issued stating that the appellant could not correlate the gate passes issued during this period with the sales invoices issued during the period. Finalisation of assessment of Central Excise Duty was proposed to be finalised as indicated in the annexure to the show cause notice. In determining the duty, value of bought out items was also included. Appellant resisted the notice on merits as well as on limitation. However, the Additional Collector overruled the contentions and confirmed the demand. Hence, the present appeal.

2. The show cause notice and the annexure are bereft of all necessary details. According to the notice, the short levy related to textile machinery and parts thereof falling under TI 68. In the reply to the show cause notice, it was stated that appellant was engaged in supplying parts of textile machinery, particularly different

types of frames, that depending on the type and model of frames different parts with different sizes are required to be supplied to the customers, that appellant was not manufacturing all the parts and the frames but only a few parts and appellant was purchasing certain parts from a sister concern and from the market and these bought out parts were dully packed separately but along with the parts manufactured by the appellant. Orders are being received for supply of specific number of frames and thereafter some parts are manufactured and some parts are purchased and both delivered to the buyers. The Additional Collector got over this difficult]/ by stating in the order that the appellant, using manufactured parts and purchased bought out parts was assembling final products such as ring frame, etc. and the assessable value of bought out items should be included since they are subjected to further processes or asse7nbling. There was no such averment in the show cause notice. However, when the appellant raised this question in the reply to the show cause notice, the Additional Collector should have examined the matter. Instead of doing so, he merely stated that the appellant was assembling frames in the factory using manufactured parts and assembled parts. There is no such evidence before us. The matter requires reconsideration.

3. The appellant contends that the show cause notice was partly barred by time. The annexure to the show cause notice would suggest that the notice was issued in connection with the finalisation of the monthly returns. Rule IDA came into force with effect from 9.8.1977. Till then the period of limitation was to be computed under Rule 10 of the Rules.

In these circumstances, the question of bar of limitation requires fresh consideration.

4. For the reasons aforesaid, we set aside the impugned order and remand the case to the jurisdictional adjudicating authority for decision afresh after giving an opportunity of hearing to the appellant. The appeal is allowed.