

Jayesh Refrigerations Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-03-1998

Reported in : (1998)LC271Tri(Delhi)

Appellant : Jayesh Refrigerations

Respondent : Collector of Central Excise

Judgement :

1. This appeal is directed against order dated 26-9-1991 passed by the Additional Collector, Central Excise, Rajkot confirming the demand of Rs. 1,08,000/- and imposing penalty of Rs. 25,000/- on the appellant, proprietor of M/s. Jayesh Refrigerations.

2. Appellant's father trades in parts of air-conditioners and appellant assembles air-conditioners in the same premises. By Notification No.64/83-C.E., there was exemption available for clearances of air-conditioners up to the aggregate value of Rs. 2.5 lacs in a financial year provided the value of clearances in the preceding year did not exceed Rs. 2.5 lacs. The dispute in this appeal relates to 1986-87. Appellant had not paid Central Excise duty on the clearances during the year. On 30-9-1986, Central Excise officers visited the premises, seized some records and recorded statements of the appellant and his father. Even, according to the Department, as on that date, the value of clearances during the period was well below Rs. 2.5 lacs. If subsequent clearances during the year are taken into consideration, according to the Department, the total value of clearances during the year would be Rs. 2,73,150/-. Appellant was not following Central Excise

procedure and not filing monthly returns on the ground that the value of clearances was below Rs. 2.5 lacs. In 1989, the officers concerned recorded statements of persons connected with buyers of air-conditioners from the appellant. On 30-9-1990 show cause notice was issued referring to the above facts and irregularities and stating that the benefit of'. Notification 64/83 would not be available and proposing demand of Central/Excise duty on the total value of clearances, namely, Rs. 2,73,150/- and also proposing imposition of penalty. Alleging suppression of material facts the larger period of limitation under the proviso to Section 11A(1) of the Central Excise Act, 1944 was invoked.

3. Appellant resisted the notice on merits as well as on the ground of limitation and contending also that, in any event, the benefit of Notification 64/83 cannot be taken away even if the value of clearances during the current year exceeded Rs. 2.5 lacs. Additional Collector overruled these contentions, confirmed the demand and imposed penalty.

4. On merits, the appellant advanced arguments only in regard to Serial Numbers 2 and 6 in the Annexure 'B' to the show cause notice. Annexure 'B' is a statement prepared by the Superintendent showing in all 27 air-conditioners as having been manufactured and cleared by the appellant in 1986-87, relevant dates, assembling charges received, tonnage, value of parts, total value and the progressive value. Twenty seven air-conditioners are shown to have been sold to 12 different parties. The progressive total value arrived at is Rs. 2,73,150/-.

According to the appellant, Serial Numbers 2 and 6 should not have been included in the list and if they are excluded, the total value of clearances would be below Rs. 2.5 lacs. Serial Number 2 did not relate to Air-conditioner assembled and manufactured by the appellant. Serial No. 2 related to sale of second-hand air-conditioner to M/s. Girnar Cement Ltd. and this air-conditioner had been purchased by the appellant as part of his trading activity. Serial No. 6 also related to charges for repair of one air-conditioner belonging to Havmor Restaurant. According to the Department, Serial Number 2 related to new air-conditioner assembled and sold by the appellant. Serial No. 6 related to two air-conditioners said to have been assembled and sold by the appellant to the customer in June,

1986. According to the appellant, Bills for these two air-conditioners show that the transactions were in 1988 and 1989 and not 1986.

5. We will deal with Serial No. 2 first. There is no dispute that the relevant bill was for Rs. 6,500/-. The bill apparently covered assembling charges only. Appellant points out that the statement of the buyer was not recorded and the buyer gave an affidavit stating that the transaction related to purchase of an old air-conditioner. In the absence of any reference to an old air-conditioner in the bill, the Additional Collector did not accept this explanation. We are in agreement with the view taken by the Additional Collector in this behalf. There is no independent evidence adduced by the appellant to show that he had any trading activity apart from the activity of assembling and sale of new air-conditioner. The bill also did not make any reference to old or second-hand air-conditioner. In this circumstance, the view taken by the Additional Collector was justified.

6. The partner of M/s. Havmor Restaurant in his statement stated that he got assembled two air-conditioners in 1986, that all the parts required were purchased in open market and handed over to the appellant for assembling and the cost of these air-conditioners at that time was Rs. 9,000/- per unit inclusive of assembling charges and the cost of parts. He also stated that even at that time both the units were in operational condition and one of them bears the nameplate of the appellant. He undertook to produce the Bills for the air-conditioners.

It is contended for the appellant that this witness committed a mistake inasmuch as two air-conditioners covered by the Bills were assembled and sold to him only in December, 1988 and January, 1989 and not in April, 1986 as stated by the witness. The statement at page 51 of the Paper Book shows the dates as 5-6-1986 and 12-6-1986. The partner of the buyer was cross-examined by the appellant on 31-7-1991. He stated that he became a partner in April, 1979 and the Restaurant was air-conditioned even at that time. He was showed Bill No. 12, dated 5-6-1986 and asked whether it was not for repair; he answered by looking at the bill that it was for repair. The record refers to BUI No. 12, dated 5-6-1986. If it was true that the bill bore a date in 1988 or 1989 and not 1986, appellant certainly could have pursued the matter. In the course of cross-examination not a single

question was put to the witness in regard to the date. Appellant has a grievance that this aspect had not been considered by the lower authority. We have heard the appellant at great length on this aspect, perused the records and statements and evidence and propose to arrive at a conclusion. In the circumstances referred to above, particularly in the absence of any cross-examination of the partner of the buyer and the specific reference in the deposition of the witness with regard to the date as 5-6-1986, the case set up by the appellant that the bill relate to 1988 or 1989 and not 1986 cannot be accepted. It is clear that the Bill does not refer to the amount covered therein as charges for repair. If the bill contained such recital the appellant would have relied on it. The witness merely "felt" that the bill was for repair which cannot stand scrutiny in the light of evidence, circumstance and earlier statements. In this view we are satisfied that the Additional Collector was justified in coming to the conclusion that these two air-conditioners were assembled and cleared in June, 1986. The above discussion will show that the value of air-conditioners in Serial Nos.

2 and 6 was rightly included in the total value of clearances for the year and the value exceeded Rs. 2.5 lacs.

7. Notification 64/83 makes it clear that the eligibility depended on the value of clearances of the preceding year not exceeding Rs. 2.5 lacs. The Department has no case that the value of clearances exceeded the limit in the preceding year. The circumstance that the value of clearances for the current year exceeded Rs. 2.5 lacs cannot deprive the appellant of the benefit of notification. The only consequence would be that the appellant should have paid duty on the value exceeding Rs. 2.5 lacs. Therefore, to this extent, the demand could not have been confirmed.

8. It is contended that the proviso to Section 11 A(1) of the Act could not have been invoked since there was no suppression of material facts.

The facts and circumstances referred to earlier would clearly make out that there was deliberate suppression of facts with intent to evade duty. It is next contended that all the facts were available to the officers on 30-9-1986 when they came to the factory and seized records and inaction for the next four years before issuing the

show cause notice should be taken into consideration to deny the Department the benefit of larger period of limitation. The appellant had merely submitted a declaration as he claims and was not maintaining any Central Excise records. Monthly returns were not being filed. According to the appellant returns were not filed under the bona fide belief that the value of clearances would be below Rs. 2.5 lacs. We have already considered the explanation-offered by the appellant in regard to Serial Nos. 2 and 6 of the Annexure to the show cause notice. Explanations offered are false. This is a clear pointer to the deliberate suppression of material facts and culpable intention of the appellant.

On 30-9-1986 when records were seized, the value of clearances for the current year was well below Rs. 2.5 lacs. There was no material before the officers on the basis of which they could have then come to the conclusion that the value of clearances for the year could exceed Rs. 2.5 lacs. Offices were more concerned with the activities conducted in the name of the father and his son in the same premises. In the course of such investigation, statements of some of the buyers were recorded in various months of 1989. Material to show the higher value of clearances became available only in 1989 and subsequently. In these circumstances, we are unable to agree that there was culpable inaction on the part of the officers in not initiating action by issuing a show cause notice for a long period. The facts and circumstances clearly justify invocation of the proviso to Section 11A(1) of the Act.

9. Confirmation of the entire demand is erroneous since demand could not have been made on the entire value of clearances and should have been made only on the value in excess of Rs. 2.5 lacs. The rate of duty at the relevant time was specific, that is, Rs. 4,000/- per unit.

Excess is related to the value of three air-conditioners, as conceded by the appellant; the duty payable would be only Rs. 12,000/-. We therefore modify the impugned order by reducing the amount of duty to Rs. 12,000/- and reducing the amount of penalty to Rs. 3,000/-.