

Oriental Containers Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-29-1998

Reported in : (1998)(79)LC667Tri(Mum.)bai

Judge : U Bhat, S T K.

Appellant : Oriental Containers

Respondent : Cce

Judgement :

1. This appeal is directed against Order-in-Original dated 28.2.1991 passed by the Commissioner of Central Excise, Bombay confirming the demands proposed in five show cause notices in respect of the period from 22.3.1984 to 31.3.1987 as indicated therein.

2. Appellant, engaged in the manufacture of aluminium collapsible tubes, was filing price lists claiming deduction of 10% of the price as sales tax payable to the State Government. It appears, no orders were passed on the price lists and the appellant was clearing the goods on payment of duty appropriate to the assessable value proposed in the price lists. Subsequent investigation having shown that the appellant availed the benefit of exemption from payment of sales tax, five show cause notices were issued for different periods stating that sales tax not payable to the State Govt. was not deductible in determining assessable value and alleging deliberate and wilful misdeclaration of assessable value and claiming deduction on account of sales tax even though the appellant was not required to

pay sales tax as per State Govt.'s exemption notification. Appellant resisted the notice on merits as well as on the ground of limitation. On merits it was contended that sales tax would be deductible in determining the assessable value even if it was only payable but not paid and the exemption of any industry in a region from payment of sales tax would not render sales tax not payable. In regard to limitation, except denial no other specific contention was raised. The Assistant Collector passed an order confirming the demands but without specifically deciding the contention regarding limitation. In appeal, the Collector (Appeals) set aside the order and remanded the case for fresh adjudication after deciding the controversies on merits as well as on limitation. By that time officers junior to the Collector had no longer jurisdiction to adjudicate proceedings governed by the proviso to Section 11A of the C.E. Act, 1944 and accordingly the file was transferred to the Collector of Central Excise, who after giving the appellant opportunity of personal hearing passed the impugned order, overruling the contentions raised by the appellant and confirming the demands proposed. This order is now challenged.

3. Learned Counsel for the appellant stated that the appellant is not pressing the contention on merits but is seeking relief in respect of show cause notice dated 10.12.1985 only on the ground of limitation.

4. Show cause notice dated 10.12.1985 proposed demand in respect of the period 22.3.1984 to 30.11.1985. If the period of limitation prescribed in the main provision of Section 11A of the Act is to be applicable, a part of the demand would be barred by time. If, on the other hand, period of limitation under the proviso to Section 11A(1) of the Act is applicable, the entire demand would be within time.

5. It is contended that the show cause notice did not refer either to Section 11A(1) of the Act or specifically invoke the proviso and therefore the notice cannot be treated as one under the proviso to Section 11A(1) of the Act. The notice refers to Section 11A of the Act and does not refer specifically either to the main provision of Section 11A(1) or to the proviso thereto. The notice states that the grounds are referred to in Annexure 'B'. Annexure 'B' specifically states that the appellant was not required to pay sales tax to the Government of Maharashtra and did not

recover sales tax from the customers but claimed deduction on account of sales tax at 10% and thus deliberately and wilfully mis-declared and claimed from the Department deduction on account of sales tax at 10% even though the appellant was not required to pay sales tax as per Govt. of Maharashtra's order dated 5.7.1980.

The annexure also refers to the amount of duty evaded. A reading of the notice and the annexure together would clearly indicate the intention of the Department to invoke the proviso to Section 11A(1) even though it was not specifically referred. We find no defect in the notice.

6. Learned Counsel referred to the Certificate of Entitlement issued by Sales Tax Officer and also contended that the invoices produced along with monthly R.T. 12 Returns will clearly show that appellant enjoyed the benefit of sales tax exemption. Unfortunately, copies of invoices have not been produced before us. Condition (c) of the Certificate of Entitlement states that sales of goods manufactured by the appellant shall be free from whole of tax if the appellant incorporates a declaration as indicated therein the sales bill or cash memorandum. The declaration required to be incorporated in the sales bill is as follows: This sale is exempt from tax under the provisions of entry No. 136 of the Schedule appended to the Government Notification, Finance Department, No. STA-1068(iii)-G-1 dated 28.12.1959, and the buyer purchasing these goods and any subsequent buyer purchasing these goods shall....

It is thus contended that since it is admitted that the appellant had enjoyed the benefit of sales tax exemption, the sales bill or invoices issued by the appellant would have contained this declaration and the Department would be aware of the correct state-of-affairs from the invoices produced along with the monthly R.T. 12 Returns.

7. Learned Counsel for the appellant showed a copy of the Certificate of Entitlement. The appellant should have produced the same before the lower authority; so also the appellant should have informed the lower authority that the verification of invoices will show that the appellant had declared the availing of sales tax exemption benefit and thus there was no suppression or mis-declaration.

In the circumstances, we are of opinion that the matter requires verification. We therefore propose to remand the case. On remand, it is open to the appellant to produce all relevant documents before the adjudicating authority.

8. For the reasons indicated above, we set aside the impugned order and remand the case to the jurisdictional adjudicating authority for decision afresh in accordance with law and the observations in this order and after giving the appellant opportunity of producing relevant evidence and of personal hearing.

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