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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-09-1998

Reported in : (1999)(82)LC607Tri(Delhi)

Judge : G B Deva, a T V.K.

Appellant : Bharatia Industries

Respondent : Cce

Judgement :

1. The issue involved in this appeal is whether the duty can be demanded for the extended period under the proviso to Section 11A(1) of the Central Excise Act.
2. In brief the facts of the case are that M/s. Bhartia Industries manufacture Motor vehicle parts viz. lever set gear shift control assembly for M/s. Maruti Udyog Ltd. As they were not including the cost of the components/parts received free from M/s. Maruti Udyog Ltd. in the assessable value of the motor vehicle parts manufactured and removed by them, a show cause notice dated 6.6.1991 was issued to the appellants for demanding differential central excise duty amounting to Rs. 13,77,680.13 for the period from 1986-87 to 1989-90. The Collector confirmed the demand of duty for Rs. 11,69,239.70 and imposed a penalty of Rs. 25,000/-under the impugned order.
3. Shri Pradeep Jain, Ld. Advocate, submitted that the Appellants had not wilfully suppressed the fact of non-inclusion of value of components supplied to them free

by Maruti Udyog Ltd.; that they did so under the bona fide belief that value of such components was not includible in the assessable value of the final product; that the Andhra Pradesh High Court in the case of Mysore Structural Ltd. v. Assistant Collector has held that the value of inserts supplied free by the Railways was not includable in the assessable value of sleepers because inserts never became the property of the petitioner; that it was only in Ujagar Prints case 1998 (38) ELT 35 (SC) : 1988 (19) ECR 578 (SC): ECR C 1281 (SC) the concept of intrinsic value of goods forming the basis of assessment of duty emerged; that the Supreme Court had also admitted on 14.1.1991 Civil Appeal No. 5969/90 filed by M/s. Taxmaco Ltd. against Tribunal's decision reported in 1991 (52) ELT A-75; that all this shows that the issue involved remained fluid and not finally settled; that prior to the decisions of the Appellate Tribunal and , even the authorities felt that the value of the components supplied free was not ineluctable. He finally relied upon the decision in the case of Newton Engg. & Const. Co. Pvt. Ltd. v. CCE, Vadodara That job workers need pay duty only on the value of the job work without including the cost of the materials provided by the Customers was the approach taken in some judgments at that time though ultimately it was settled by the Supreme Court in Ujagar Prints case that the value of the material supplied by the customers was also includible. In view of the existence of contrary decisions in the past, the plea that the appellant was under a bona fide belief that job charges alone constituted the assessable value is plausible. We are inclined to give the benefit of doubt to the appellants and hold that the notice issued in this case was barred by limitation. On this basis the appeal succeeds and the impugned order is set aside.

3A. Countering the arguments, Shri.M. Ali, Ld. SDR. submitted that the issue regarding inclusion of cost of free supplied raw material in the assessable value was considered by the Supreme Court in Empire Industry's case that the appellants should have declared the fact of receiving component parts free from M/s. Maruti Udyog Ltd. to the department; that even after the decision in Ujagar Prints case, they did not bring the fact to the notice of the department and as such suppressed the facts from the department.

4. We have considered the submissions of both the sides. The demand for Central Excise duty may be made for a period of five years provided that the duty was not

levied or short levied by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of Central Excise Act or Rules with intent to evade payment of duty. It has been held by the Supreme Court in the case of Pushpam Pharmaceuticals Company v. CCE , the word suppression "has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty." The Apex Court also held that the manufacturer could not be held guilty of suppression when the law itself was not certain. The Id. Advocate has relied upon the decision in the case of Newton Engg. & Const. Co. Pvt. Ltd. wherein the Tribunal held the notice issued to be barred by limitation when the appellant was under a bona fide belief that job charges alone constituted assessable value in view of the existence of contrary decision-in past. This issue was finally settled by the Apex Court in Iljagnr Prints case 1989 (39) ELT 493 (SC): 1989 (21) ECR 1 (SC) : ECR C 1347 SC. As the demand pertains to the period from 1986-87 to 1989-90 and in view of the conflicting decision at the relevant time, their plea that they were under the bona fide belief that job charges alone constituted the assessable value appears to be correct and it cannot be said in the facts and circumstances of the case that there was any suppression with an intent to evade the payment of duty. Accordingly the order is set aside and the appeal is allowed.

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