Loten Electricals Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1998

Reported in : (1998)(105)ELT300TriDel

Appellant : Loten Electricals

Respondent : Collector of Central Excise

Judgement :
The appellants herein started their unit at Baroda sometime in August, 1984 for manufacturing Switch gear falling under Tariff Item 68 of the erstwhile Central Excise Tariff. A partnership deed was executed amongst 4 partners having shares of 20%, 20%, 30% and 30% respectively.

2. Prior to commencement of this Unit at Baroda the same partners were having another Unit with the same firm name at Bombay with equal percentage in profit and loss under a separate partnership deed.

3. It was alleged by the Revenue that the goods manufactured by the Unit at Bombay of the partnership firm at Bombay had exceeded Rs. 40 lakhs in clearances from their factory at that place during the preceding financial year 1983-84. The authorities below feeling that since all the partners in both partnership firms at Bombay and Baroda are the same, manufacturers are having 2 units, one at Bombay and another at Baroda. It was therefore, felt by the authorities below that the clearances of the unit at Baroda during the financial year 1984-85 would not be entitled to the benefits of exemption under Notification

77/83-C.E. because their Unit at Bombay had exceeded the clearances of Rs. 40 lakhs within the preceding financial year 1983-84. A show cause notice was, therefore, issued to the appellants in respect of their Baroda Unit alleging non-levy of the duty to the tune of Rs. 2,38,423.19. Goods found in the premises of the unit at Baroda were also seized. They were asked to show cause as to why the amount of duty aforesaid be not confirmed against them, the seized goods be not confiscated and a penalty be not imposed under Rule 173Q of the Central Excise Rules, 1944. On adjudication the aforesaid amount of duty was confirmed the seized goods were confiscated with an option to the appellants to redeem them on payment of fine of Rs. 20,000/-. A penalty of Rs. 4 lakhs was also imposed. Hence this appeal by the appellants.

3. Ld. Advocate Shri K. Kumar for the appellants has taken several pleas to save the appellants from the duty liability. His first plea is that the goods at Baroda had not been manufactured with the aid of power. They were merely purchasing various components and raw materials from outside and assembling the switch gear without the aid of power.

Therefore, the benefit of Notification 179/77-C.E. has been claimed by the appellants for total exemption from duty on the goods. This plea has not been accepted by the lower authority on the ground that testing of the switch gears is being done by a machine which is operated with power. The machine was found installed in the factory premises at Baroda. Testing being essential to the manufacture of goods, therefore, the benefit of Notification 179/77-C.E. was not extended to the appellants as claimed. Ld. Advocate in rebuttal of said finding has submitted that testing was being done only in respect of such switch gears for which the customers required so; otherwise the testing was not essential for the manufacture of the goods. Both sides have quoted citations in their favour. It is not necessary for us to discuss those citations in this judgment because the question, whether, testing is essential to the manufacture of a commodity depends upon the facts and circumstances of each commodity to be manufactured. In the present case we observe that the goods are electrical components. The testing machine is found installed in the factory premises. It is not, therefore, believable that the appellants were testing only at the option of the customers. The facts and

circumstance of this case do not warrant such a persumption as held by the lower authority. Therefore we rule out the benefit of Notification 179/77-C.E.4. Next plea of the Id. Advocate is that, appellants are entitled to the benefit of exemption under Notification 46/81-C.E. which exempts goods falling under Tariff Heading 68 if they are manufactured in a factory other than a factory defined under clause (m) of Section 2 of the Factories Act. As per the said definition, a factory is one where manufacturing process is carried out with the aid of power, there are 10 or more workers in the proceeding 12 months; and if without the aid of power there are 20 or more workers. It has been brought on record by the appellants by way of a certificate from the Jr. Inspector of Factories that there are less than 20 workers in the factory. In other words there are more than 10 workers. We have already held that the power is being used by the appellants in testing the goods which was essential for the purpose of marketing the goods under consideration.

Therefore, the goods manufactured in the factory of the appellants are the goods manufactured in a factory falling under the provisions of the Factories Act. Hence the appellants cannot be extended the benefit of Notification 46/81-C.E. Finding of the Lower Appellate Authority to that effect is also confirmed.

5. Third plea of the Id. Advocate for the appellants says that they are entitled to the benefit of Notification 77/83-C.E. inasmuch as partnership firm at Baroda is a person different from the partnership at Bombay. The clearance of the two Units cannot be considered as one for the purpose of determining the benefit of the said notification. In support of this submission Id. Advocate has relied upon 3-Member Judgment of this Tribunal in the case of G.D. Industrial Engineers, Faridabad v. Collector of Central Excise, Chandigarh reported in 1983 (14) E.L.T. 1994 (CEGAT). In this connection para 7(c) at page 2000 is reproduced below :- "It makes for no difference for the applicability of the ratio of the aforesaid decisions if, instead of one or two persons happening to be partners in a plurality of firms, all the partners in one firm are identical with those in the other firms, as in this case. A partner in any of the three firms is distinct from each of the three firms and vice-versa each of the three firms is separate and distinct from the other two and also distinct from the individual partners composing them, albeit they are all identical." Ld. Advocate, therefore, submits that the benefit of Notification 77/83-C.E. be

extended to the appellants.

6. Opposing the contention, Id. JDR Shri R.S. Sangia submits that all the partners in respect of the Unit at Bombay are the same as the partners in respect of the Unit at Baroda though the percentage in sharing profit and loss may be different. Name of the firm is also the same and business of manufacturing is the same in respect of the two units in Bombay & Baroda. He, therefore, submits that it will be patently inappropriate to hold that the unit at Baroda belongs to a different manufacturer and the unit at Bombay belongs to another manufacturer. Since the manufacturer is the same, therefore, lower authorities have rightly denied the benefit of the notification by reckoning the clearance of the unit at Bombay for the preceding financial year.

7. We have carefully considered the pleas advanced from both sides on this issue. We are inclined to agree with the Id. Advocate Shri K.Kumar that the Partnership firm having its unit at Baroda is different from the partnership having its unit at Bombay in view of the clear pronounciation of law in G.D. Industrial (supra). Therefore, the appellants are entitled to the benefit of Notification 77/83-C.E. In view of the aforesaid finding the payment of duty, confiscation of goods and imposition of penalty are all set aside. In short, impugned order is set aside and the appeal is allowed with consequential relief to the appellants.