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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-05-1999

Reported in : (1999)(63)ECC861

Judge : S Peeran, A T V.K.

Appellant : Zenith Control and Systems (P)

Respondent : Commissioner of Central Excise

Judgement :

1. This appeal arises from Order-in-Original No. 31/91 dated 25.06.1991 passed by the Collector of Central Excise, Bangalore, confirming the duty demand of Rs. 1,20,163.89 under the proviso to Section 11A of Central Excise and Salt Act, extending the demands beyond six months and also further confirming the demand of Rs. 76,126,36 under the same proviso to Section 11A of the Central Excise and Salt Act. for being the Modvat credit utilised for payment of duty on computer parts. The penalty of Rs. 25,000/- has also been imposed under Rule 173Q(1) of the Central Excise Rules.

2. The appellants are manufacturers of computerised attendance recording system, computerised data acquisition and process control system and computer peripherals all classifiable under Chapter heading 84.71 of the Central Excise Act. They had filed classification list for these items and were clearing the same on payment of duty. During the course of scrutiny of R.T. 12 returns, the Range Officer, Jayamahar Range, noticed that the appellant was clearing excisable goods

such as Badge racks, Coded Badge, Badge reader. Junction boxes, Badge reader stand. Badges, S-10 card, software, uncoded badges, electronic time punch clock; Driver interface etc. under Gate Pass is by declaring them to be products classifiable under heading 84.71 on payment of effective rate of duty of 5% Adv. But they were found to be parts falling under heading 84.73 and chargeable to duty at 10% Adv. On enquiry, the appellants had admitted vide letter dated 6.6.89 that the above said items are parts of computers falling under chapter heading 84.73 of the Central Excise Tariff Act, 1985. It was alleged that from the classification list filed, these parts falling under heading 84.73 had not been declared for the years 1987-88 and 1988-99, hence differential duty amount for these periods were worked out and show-cause notice was issued.

3. The appellants main contention was that there was no ground for invocation of larger period and the demands were time barred. It is their contention that they had declared the details of the goods and RT 12s had been assessed time and again and the details of the parts had been reflected in these returns, which had been scrutinised by the Range Officers and the Commissioner did not accept their plea and hence held that there was suppression, mis-statement in the matter and hence revised the classification for these parts under Chapter heading 84.73 of Central Excise Tariff Act and confirmed the duty besides imposing penalty. The learned advocate while arguing the matter, submitted that this issue of time bar was argued at the prima facie stage and there was a difference of opinion between the two Members, which was placed before the President, who after a detailed consideration of the case law and facts, gave an opinion that there was no suppression in the matter and hence the demands were time barred and on the ground waiver was granted. He submits that the interim stay order itself is exhaustive and in the nature of final order and hence the same arguments and findings could be adopted for the purpose of disposing of this appeal. He also referred to case-laws and also to the facts available on records to the plea that there was no suppression in the matter.

5. On a careful consideration of the submissions on both sides, we notice that the appellants in this matter had declared and given all the details in the classification list and complete description was also given in R.T. 12 returns, which had been

scrutinised and accepted by the department from time to time. The Gate Passes pertaining to the parts were also scrutinised and therefore, it is clear that the department had full knowledge about the clearances of the parts under-heading 84.71. It is also seen that Superintendent vide his communication dated 02.05.1989 required the party to file a revised classification list. These circumstances indicate the knowledge of the department with reference to the goods manufactured and cleared by the appellants. It is a well settled law that bona fide mis-leading or mis-apprehension of correct heading of classification would not be accounted for alleging suppression. From the records of the case, it is clear that the party had declared about the nature of the goods manufactured and cleared by them and the department had full knowledge of it, in view of the details found in the gate passes and R.T. 12 returns, which were checked and approved from time to time. It has been well settled in large number of judgments of Hon'ble Supreme Court that in order to invoke the proviso to Section 11A, the department has to show that the appellants had an intention to evade the payment of duty and such an intention is to be proved through the appellants willfull statements of suppression of facts or contravention of any of the provisions of the act or of the rule. The appellants in this case had been paying duty on the parts on the ground that the same is classifiable under sub-heading 84.71 and it was for the department at the time of approval of classification list, who should have called for better particulars and should have held that the item is classifiable under heading 84.73 and that the Chapter Note V of Chapter Heading 84 is not applicable to the facts of the present case as understood by the party. Such an exercise has not been done. The department has only woken up at the belated stage and such a view taken by the department cannot be attributed to the party on the ground that they have mis-represented, suppressed the facts and hence larger period is invokable. It is also seen that the Tribunal at the time of hearing the stay, passed a detailed stay order vide No. 250/94 dated 29.01.1992 on this aspect. By a Majority Order, the Tribunal who expressed the view that there was no suppression in the matter and in this regard, the Bench noted the judgment of Tribunal rendered in the case of Filtronics Ltd. v. CCE as and that of CCE v. expressed by the Majority, in the present matter at the time of hearing the stay, the stay order is required to be confirmed and there is no need to take a different view than already expressed

at the time of passing the stay order.

6. In that view of the matter, it is held that the demands are barred by time and as such penalty imposed is not sustainable.

7. The appellant succeeds in this appeal and hence the appeal is allowed.

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