Bharat Multifasteners Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-02-1999

Reported in : (1999)(83)LC392Tri(Delhi)

Judge : G B Deva, R T Lajja

Appellant : Bharat Multifasteners

Respondent : Cce

Judgement :

1. These are two appeals filed by M/s Bharat Multifasteners involving a common issue and accordingly both of them are being disposed of by this common order.

2. Arguing for the appellants, Shri R.C. Gupta, advocate, submitted that the main issue to be considered in this case is whether the cost of free supplies to be added to the value of the goods. He submitted that he is not contesting on merits since the issue is settled by the decision of the Supreme Court. However, he submitted that the demand in the present case is barred by limitation as there was no necessity to invoke larger period in the instant case in view of the facts and circumstances. He submitted that the cost of goods supplied free of cost was to be included or not was itself in doubt during that period.

The Tribunal has taken a view in some cases that cost of free supplied goods cannot be included in the assessable value. In view of the bona fide impression that the party did not include the cost of goods supplied free. However, the party has filed RT-12 returns along with the invoices which were duly assessed by the Department.

3. Shri K. Panchatcharan, JDR, appearing for the Revenue while reiterating the findings given by the Collector submitted that since the party has not supplied the copies of the purchase orders along with the invoice, it is a clear case of suppression of facts and since the party intended to suppress the facts, he has not filed the relevant purchase orders.

4. In reply, Shri R.C. Gupta, advocate, submitted that there is a sufficient reference of the purchase order in the invoice. In the instant case, he also submitted that the show cause notice was issued on 15.4.1995 for the period 1991-1992. He also drew our attention to para 4 of the impugned order wherein the Collector has recorded that consequent to the submissions made by the party that they had enclosed purchase orders and the invoices along with the RT-12 returns, I called for the comments of the Deputy Collector, Central Excise, Faridabad and the Range Officer, Faridabad. It has been intimated by them that on scrutiny of RT-12 returns for the month of November 1991 and other relevant records, it has been observed that though the party had made reference of the purchase order no. 2079 in their invoices, but they never submitted the same to the Department. In this context, he submitted that a copy of the comments was supplied to the party.

5. We have carefully considered the submissions made by both sides and perused the records. The only point to be considered in the present case is whether the Department was justified in invoking the larger period. There is some force in the arguments advanced on behalf of the assessee that the issue itself was controversial during that period, whether cost of free supplies to be included or not was not free from doubt during the relevant period. Apart from that, we take note of the fact that the party has filed RT-12 returns along with the invoices and there was sufficient reference in the invoices in respect of the purchase orders. To invoke the larger period, it must be clearly brought on record that the party has suppressed the facts with intention to evade duty. In this context, reliance was placed by him in the case of Padmini Products v. CCE , is also relevant. In the instant case, it is clear that the party was under the impression that no duty was

payable on the goods which were supplied free. In the facts and circumstances of the case, we are of the view that the Department was not justified in invoking the larger period.

Accordingly, the appeal is allowed on the issue of limitation.