

Argus Laboratories Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-07-1999

Reported in : (2000)(88)LC877Tri(Mum.)bai

Judge : J Balasundaram, S T G.R.

Appellant : Argus Laboratories

Respondent : Cce

Judgement :

1. In the impugned order, the Collector confirmed the demand of Rs. 9,23,144.63 and imposed a penalty of Rs. 2 lac on the appellants and confiscated the plant, building, machinery, etc. Being aggrieved by this order, the appellants have filed the captioned appeal.

2. The facts of the case briefly stated are that the appellants are engaged in the manufacture of Alprovit Syrup 200 ml. and Alprovit Drops 15 ml. They filed application for a licence on 4.3.1987 and filed classification on 6.3.1987 under Rule 173B. On verification of the said classification list, it was noticed that the details regarding clearance of excisable goods during the financial year or evidence regarding registration of their factory with the Directorate of Industries of the State or Development Commissioner as SSI unit were not submitted. The details were called for from the assesseees. On receipt of the details, it was noticed that the value of clearance of excisable goods during the period 1.11.1986 to 3.3.1987 had exceeded Rs. 7.5 lac. The assesseees had filed a declaration under

Rule 174 on 21.11.1986 declaring that they would apply for licence if the value of the goods manufactured by them and cleared during the financial year exceeded exemption limit. Scrutiny of their documents revealed that the value of clearance of excisable goods during the period 1.11.1986 to 3.3.1987 amounted to Rs. 23,10,928.20 and Rs. 6,73,215.12 for the period 4.3.1987 to 31.3.1987 and the value of excisable goods cleared during the period 1.4.1987 to 31.7.1987 amounted to Rs. 50,91,838.50.

The statements of Mrs. Gauri Pai and Mrs. Neelam Puri, Partners of the appellant firm and Shri Trilok Singh, Chief Executive of the appellant company and Shri Naresh P. Patel, Authorised Signatory were recorded.

The department noted that in respect of excisable goods valued at Rs. 23,10,928.20 cleared during the period 1.11.1986 to 3.3.1987, the appellants failed to obtain Central Excise licence, to file proper CL, to prepare the GP-1 as transport document, to maintain proper records and accounts, to determine and to pay central excise duty and in respect of excisable goods valued at Rs. 57,65,053.62 cleared during the (period) from 4.3.1987 to 31.7.1987, the appellants failed to determine proper amount and to pay central excise duty leviable on the goods, therefore a SCN was issued to the appellants asking them to explain as to why the duty of Rs. 9,23,144.63 should not be demanded and why a penalty should not be imposed on them. The appellants in reply to the SCN submitted that on 6.3.1987 a CL was filed claiming SSI exemption from November, 1986 to March, 1987 indicating that they had cleared the goods worth Rs. 22,01,947.80; that as soon as they crossed Rs. 7.5 lakh limit, duty was paid at the effective rate; that they did not know that they were not entitled to SSI exemption under Notification No. 175/86; that they did not suppress anything from the department; that even in the CL which was filed on 6.3.1987 the value of clearance of excisable goods was shown Rs. 22,01,948.80 during the period from November, 1986 to February, 1987. It was, therefore claimed by the appellants that the SCN was totally barred by limitation in view of the fact that the information was supplied to the department. The Collector held that the appellants applied for a licence only on 4.3.1987; that though the assessee in the CL dt. 6.3.1987 had declared their, turnover for the period November, 1986 to February, 1987 as Rs.

22,01,947.80 they failed to comply with the requirements, as envisaged under Notification No. 175/86 which clearly leads to an inference that the assessee wilfully suppressed the facts of their turnover. The Collector also observed that this view was further confirmed by the fact that the assessee had cleared excisable goods valued at Rs. 23,10,928.00 worked out on the basis of delivery challans for the period 1.11.1986 to 3.3.1987 which has not been disputed in their submissions. The Collector also observed that this clearly indicated that the appellants did have intention to suppress the facts and hence he confirmed the demand, confiscated the land, building, machinery, etc. and also imposed a penalty as indicated above.

3. Shri G. Shiv Das, Id. Advocate submits that the appellants were undertaking the job work for M/s. Cachet Pharmaceuticals who supplied them the raw materials, packing materials, etc.; that the appellants undertook the process of manufacture and returned finished goods to M/s. Cachet Pharmaceuticals; that the appellants were paid job charges.

4. Ld. Counsel submits that the appellants started manufacturing the goods from November, 1986. They filed a declaration claiming the benefit of Notification No. 175/86 in the bona fide belief that during the preceding financial year the aggregate value of clearance was less than Rs. 1.5 crore; that they were entitled to exemption under the said notification; that in the declaration they declared that the estimated value of the goods cleared in the said financial year would be Rs. 2 lac. Ld. Counsel submits that since the aggregate value of the clearance till March, 1987 was to extent Rs. 30 lac, the appellants applied for L-4 licence on 4.3.1987 and submitted a CL; that in this CL, the appellants have indicated during the period November, 1986 to February, 1987 the aggregate value of clearance was Rs. 23,01,947.80.

He submits that thus on 16.3.1986, the appellants have indicated to the department their intention to avail the Notification No. 175/86 as also their turnover. He submits that in between the proceedings were initiated denying the benefit of Notification No. 175/86. He submits that the proceedings have been initiated under SCN dt. 28.10.1991 wherein the duty amounting to Rs. 9,23,144.63

on the clearance effected during the period 1.11.1986 to 31.7.1987 has been demanded; that the demand for duty has been made invoking proviso to Section 11A(1); that the demand has been made on the ground that the appellants were not registered as SSI unit and the aggregate value of clearance during the year 1986-87 and had exceeded the exemption limit prescribed in the notification. He submits that the intimation of their availing exemption under Notification No. 175/86 and their turnover during the period from November, 1986 to February, 1987 exceeding the exemption limit was given on 6.3.1987. He, therefore submits that there cannot be any suppression of facts after March, 1987. Consequently he submits that the demand of Rs. 50,91,838.50 for the period March, 1987 to July, 1987 is barred by limitation.

5. Ld. Counsel submits that insofar as the period prior to March, 1987 is concerned, the appellants had given complete information regarding availing of exemption under Notification No. 175/86. He submits that the complete intimation was furnished on 6.3.1987 and the SCN has been issued in 1991 and there was an undue delay in the issue of the SCN, therefore longer period for demand cannot be invoked and hence the demand is time barred. In support of his contention, he cites the decisions of this Tribunal in the case of Crescent Castings India 1998 (27) RLT 867 in the case of Atlas Copco India Limited Final Order No.233-234/97-A dt. 7.2.1997 and in the case of Debikay Electronics Final Order No. 3554/96-A dt. 5.11.1996. He, therefore prays that in view of the above submissions and the case law cited and relied upon, the impugned order may be set aside and the appeal may be allowed.

6. Shri K. Panchat Charan, Id. JDR submits that the assessee had filed a declaration on 21.11.1986 declaring that the aggregate value of clearance during the financial year, 1986-87 would be Rs. 2 lac; that in the CL filed on 6.3.1987, the assessee had declared that the aggregate value of clearance during the period from November, 1986 to February, 1987 was Rs. 22,01,947.80; that the assessee was informed that the benefit of exemption under Notification No. 175/86 was not available to him in spite of this he availed the benefit, thus, there was intentional evasion of duty. He submits that this fact is further supported by the figure given by them inasmuch as the clearance according to the challans during November,

1986 to 3.3.1987 was Rs. 23,10,928 as against Rs. 22,01,947.80 as declared by them; that the appellants were not entitled to the benefit of Notification No. 175/86 inasmuch as the value of clearance during the year, 1986-87 had exceeded Rs. 7.5 lac and the appellants were not registered as SSI unit with the Directorate of Industries of the State or the Development Commissioner. He submits that the longer period has correctly been invoked, in view of the fact that no declaration was filed the moment the assessee crossed the exemption limit specified in the notification which the assessee claimed to be applicable to him. Ld. JDR submits that every aspect has been properly dealt with and commented upon by the adjudicating authority and, therefore prays that the appeal may be rejected.

7. Heard the submissions of both sides. Perused the evidence on records as also the case law cited by both sides. On careful consideration of the evidence placed before us, we find that the entire issue can be divided into 2 issues i.e. (i) the demand of duty during the period 1.11.1986 to 3.3.1987 and the demand of duty during the period 4.3.1987 to 31.7.1987. The above division has become necessary inasmuch as the first pertains to demand of duty on the goods which were cleared without payment of duty on the claim that the exemption under Notification No. 175/86 was available to the assessees. The demand for the second period is for differential duty inasmuch as the benefit of Notification No. 175/86 is concerned, and duty in part was paid during this period.

8. The first issue to be decided before actually considering the demand is whether the appellants were entitled to the benefit of exemption under Notification No. 175/86. The admitted position is that the appellants were not registered as SSI unit either with the Directorate of Industries or the Development Commissioner. It is also admitted that the aggregate value of clearance during the current year i.e. 1986-87 exceeded Rs. 7.5 lac and the factory was not manufacturing anything during the year 1985-86. Since the aggregate value of clearance during the year 1986-87 exceeded Rs. 7.5 lac the assessee's unit was not eligible to exemption benefit under Notification No. 175/86. Having held so, now the question of demand comes in. The admitted position in regard to the disclosure of the facts is that a declaration was filed on 21.11.1986 wherein the benefit of Notification No. 175/86 was claimed and it was declared with estimated value of clearance during the

financial year, 1986-87 would be Rs. 2 lac. Nothing further was disclosed. The contention of the appellants is that they had bona fide belief that they were entitled to this benefit. However, no evidence has been placed on record to show as to how this bona fide belief was acquired. The language of the notification was clear, the requirements of the notification were not fulfilled and therefore during the material period i.e. from 1.11.1986 to 3.3.1987, there was suppression of facts and mis-statement which lead (to) evasion of duty, therefore demand of duty during November, 1986 to 3.3.1987 is not hit by limitation and is, therefore sustainable in law.

9. Insofar as the demand for the period from 4.3.1987 to 31.7.1987 is concerned, we find that the SCN was issued on 28.10.1991 that is the entire demand is beyond the period of six months. We have therefore to examine whether there was suppression or mis-statement in regard to this demand. We find that the application for licence was submitted on 4.3.1987. We also find that classification list declaring the aggregate value of clearance was filed on 6.3.1987. Thus two determining factors, application for licence was submitted, classification list was filed and aggregate value of clearance during the material part of financial year, 1986-87 was furnished, we hold that there was no suppression or mis-statement after the application for licence and filing the classification list. Thus, the demand for the period from 4.3.1987 to 31.7.1987 is hit by limitation and is therefore not sustainable in law.

10. Insofar as the confiscation of the plant, building, machinery, etc.

is concerned, we hold that confiscation is not sustainable in law.

11. Insofar as imposition of penalty is concerned, we have already held that the demand of duty for the period 1.11.1986 to 3.3.1987 is sustainable in law, the major part of the demand is held to be time barred. Having regard to this aspect, we reduce the penalty from Rs. 2 lac to Rs. 50,000/-.

12. But for the above modification, the impugned order is upheld and the appeal is disposed of in the above terms.