indus Papers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-14-1999

Reported in : (1999)(66)ECC478

Judge : J T J.H.

Appellant : indus Papers

Respondent : Commissioner of Central Excise

Judgement :
1. When the case was called, none was present for the appellants. The records show that on 26.11.98 and on 22.12.98 also when the case was posted, the appellants were not present even though due notice had been sent. This case is taken up for disposal on hearing Shri V.K. Suman, JDR for the revenue.

2. The appellants were making paper. Payment of cess under the Industries (Development & Regulation) Act 1951, on such paper was exempted if the investment in fixed assets in plant & machinery did not exceed Rs. 20 lakhs. The appellants had not claimed exemption from cess in terms of the said notification in their classification lists dated 1.3.88, 1.3.89 and 20.3.90. The machinery was being indicated therein.

The study made by the excise officers revealed that with effect from 29.3.89 the investment in the plant & machinery was in excess of Rs. 20 lakhs. Therefore, they were required to pay cess. For non-payment of cess during the period 29.3.89 to

30.9.90, a show cause notice was issued claiming that the extended period was inviolable because the assessees had suppressed the fact of investment in plant & machinery being higher than that stipulated in the notification exempting such assessees from payment of cess. The Commissioner having confirmed the demand and having imposed the penalty on the assessees, the present appeal has been filed.

3. Before the Commissioner and in the present appeal also contest has been made on the point of limitation. It has been claimed that at all times, the revenue was aware that the cess was not being paid. The classification list was before the department and the RT-12 return had been filed by the assessees regularly. The Commissioner held that the fact that they had mis-declared the value of the plant & machinery as below Rs. 20 lakhs with intent to evade duty and hence the demand could sustain.

4. The assessees have not enclosed a copy of the show cause notice.

However, from the narration made in para 12 of the impugned order the allegation is that the assessees had suppressed the undepreciated price of their investment in plant & machinery and no exemption was claimed from payment of cess in the classification list.

5. I find that these two allegations cannot be leveled at the same time. On the point of knowledge of the department, there are number of judgments. Where, in order to claim benefit of a notification, a wrong declaration has been made, it would amount to suppression in terms of the Tribunal judgment in the case of Corner Stone Brands Ltd. . In another case decided by the Tribunal Raghun and Chemicals , it was held that where the certificate of approved valuer was deliberately concocted to show the wrong value of the plant & machinery, the charge of suppression was sustainable.

Mis-declaration of the installed capacity by assessee also resulted in the extended time limit being attracted. [Venus Paper Mills Ltd.] .

6. But the, facts of this case do not flow from the facts reported in these cases. This was not a case where the value of the plant & machinery had been undeclared to justify the exemption from cess. What the assessee did was not to show in the classification list that cess was required to be paid. They were under the statutory obligation to pay the cess. They had not sought any exemption from such payment. If they had sought exemption and if the exemption was found wrongly to have been taken on mis-declaration of the value of the plant & machinery, then the charge of suppression and resultant demand for extended period could sustain. But in this case, no such declaration was made, no such exemption was claimed and no cess was paid. The assessing authorities were in the knowledge of the requirement of payment of cess. In spite of this, they approved the classification list and also finalised the RT-12 returns, Where the fact is supposed to be in the knowledge of the department, the extended period cannot be invoked. I find that the assessees had placed reliance on the Supreme Court judgment in the case of Padmini products and claimed benefit correctly. The demand confirmed is hit by limitation and cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief.