

Gammon India Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-20-1999

Reported in : (1999)LC426Tri(Mum.)bai

Appellant : Gammon India Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants were engaged in recommissioning of the bridge on the river Mandovi at Panaji, Goa during period 1988 to 1993. On 2-7-90 the local Supdt. of Central Excise called for certain information pertaining to the details of fabrication of certain items viz. trusses, shuttering, pipe lines etc. The appellants vide letter dated 26-7-90, described the goods, supplied the names of the job workers and also gave the cost. Thereafter, supplementary queries were made and replied up to 13-8-91. On 7-8-91, the statement of the area manager of the appellants was recorded. The activity of fabrication and construction thereafter continued. On 5-7-93, however a show cause notice was issued alleging suppression extending the larger period and demanding duty and imposing penalty. Before the Commissioner, the assesseees pleaded that the fabrication did not amount to manufacture of 'goods'; that the fabrication was done by the independent sub-contractors who were manufacturers in terms of the central excise law and therefore, they were not liable to payment of duty; and that the demand made was barred by limitation. The Collector on hearing the appellants, passed the impugned order. He held the goods to be excisable and dutiable goods.

He denied the suggestion that the goods were manufactured by independent manufacturers on the observation that the raw materials were supplied by the appellants. He examined the claim on limitation.

He observed that as soon as the officers came to know about the manufacturing activity, they took necessary steps to bring the manufacturing activity under the central excise control and recovery of duty on the excisable goods. He held that it was the bounden duty of the appellants to declare the facts of manufacture of the excisable goods to the department and their failure to do so resulted in misdeclaration and suppression. He dismissed the submission that the construction of the bridge was within the sight of everybody including the officers of the central excise whose office was situated close by.

On his confirming the demand for Rs. 10,14,696 and imposing the penalty of Rs. 50,000/- the present appeal has been filed.

2. We have heard Shri H.C. Daruwala, Id. Advocate for the appellants and Shri G.B. Yadav for the revenue.

3. Shri Daruwala stated that the enquiry commenced in July, 1990 and was completed in August, 1991. In the absence of any direction from the Excise Department, the assessee believed that their activity did not amount to manufacture and/or that the burden to pay duty was not on them. He states that in view of the knowledge of the department, the show cause notice issued nearly after two years cannot be sustained.

4. We have examined the submissions made. We find that in the judgment in the case of J.S.L. Industries Ltd. v. CCE, Ahmedabad - 1998 (25) RLT 779 the Tribunal had discussed the effect of delay in issuing the show cause notice on the plea of limitation. The Tribunal took cognizance of the earlier judgments in which it was held that the delay between the knowledge of the department and the issue of show cause notice was fatal to the argument that there was suppression. In the case before the Tribunal, the information was sought in August, 1987 which was supplied by the assessee within 4 days. The show cause notice however, was issued in September, 1989. In this situation, although, the period of demand was

within 5 years from the date of show cause notice, the Tribunal held the plea of limitation would sustain. In doing so, among other citations, the Tribunal relied upon the judgment in the case of Mopeds India Ltd. [1991 (56) E.L.T. 241 (Tribunal)] in which the department had knowledge in October, 1975. The show cause notice was issued in January, 1977. The period of delay in the cited case is identical to the period of delay in the facts before us. Accepting the arguments that the fabrication was before the eyes of the general public and also following the ratio in the case of J.S.L. Industries, wherein, identical delay was noticed by the Tribunal, we hold that in the present case, the plea of limitation succeeds. Since we are deciding this issue on limitation, the merits are not considered.

5. On the ground of limitation, we allow this appeal with consequential relief.

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