

Triveni Engineers Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-1999

Reported in : (2000)(67)ECC562

Appellant : Triveni Engineers Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant entered into a contract with M/s. Motilal Padampat Udyog Limited, West Champaran, Bihar for the supply of Turbo Alternator Set (TAS). The TAS was to be installed in the premises of the buyer.

For this purpose, they manufactured, at their Bangalore Factory, steam turbines and transported the same to the work site. Other items like alternators, ACB Panels, Inventors etc. were purchased from the market and sent to the site for assembly. The work was completed and the TAS commissioned in October, 1994. A show cause notice was issued by the Commissioner of Central Excise, Patna on 5-2-1997 demanding duty of Central Excise on the TAS and under the order impugned in this appeal, duty demanded in the show cause notice (over Rs. 20 Lakhs) has been confirmed. Various penalties, demand for interest on the duty demanded and confiscation of the TAS in question have also been ordered under the said order.

2. The appellants have challenged the order on time bar, jurisdiction and on merits. As the proceedings can be sustained only if they have been initiated within

the time limit provided under law, we are taking up the question of time bar for consideration first.

3. The appellants' submission on this count is that extended period of 5 years for issuing the show cause notice was not available to the Deptt. in the instant case, as conditions precedent to invoking the Proviso to the Section 11A of the Central Excise Act did not exist in the present case. They have submitted that the full facts about the appellants, operations were known to the Central Excise authorities and there was no suppression of facts or misstatement of facts with intent to evade duty was involved. The Commissioner (Appeals), Bangalore had passed an order dated 28-11-1990 in respect of the appellants' unit at Bangalore holding that the assembly and erection of TAS at various site did not bring into existence excisable goods, since TAS comes into existence as immovable property and not as goods. Similar orders were passed in respect of the appellants factory at Naini by the Additional Commissioner, Central Excise, Meerut and Collector of Central Excise (Appeals), New Delhi. Thus the Departmental authorities as well as the appellants were under the bona fide impression, after detailed examination of the issues in quasi-judicial proceedings, that no manufacture, attracting levy of duty was involved. In these circumstances the charge of suppression of facts or misstatement is not attracted. The adjudicating authority has held that Proviso to Section 11A(1) was involved as the appellant had not taken out Central Excise Registration. This finding is not correct as the appellant did not take out licence only because of the previous order of the Commissioner, Central Excise that no duty was payable and not because of any intention to suppress the facts or to clandestinely manufacture the TAS. The appellants have submitted that the show cause notice has been issued by the Department only on account of the decision of the CEGAT in the case of Triveni Engineering Works Ltd. v. Commissioner of Central Excise, Allahabad reported in 1996 (88) E.L.T. 238 holding that assembly of TAS is manufacture and attracts levy of Central Excise duty. The Departmental authorities and the assessee both were under the impression that there is no duty involved in the assembly of TAS until the legal position became clear from the CEGAT order. They have submitted that the subsequent clarification of the legal position as in this case by a judicial pronouncement is not a case involving suppression of facts or mis-statement of facts by the assessee. It is only a case of

common misunderstanding of law between the assessee and the Revenue authorities.

4. The appellants have also submitted that the Departmental authorities were aware of the proposed installation of the TAS as the M.P. Udyog Ltd. had informed the Superintendent of Central Excise, Range 2, Bettiah vide letter dated 1-4-1993 about their proposal to instal Turbo Alternator set in their factory. However, no clarification was supplied to them by the Central Excise Authorities that the activity is liable to duty.

5. The appellant have also submitted that the entire duty paid on the components would have been available as Modvat Credit for paying duty on the TAS. In such a situation, there could be no intention to evade payment of duty as has been held by the Tribunal in the case of SAIL v.C.C.E.Patson Transformers v.C.C.E.6. It has been submitted on behalf of the Revenue that as no licence had been taken by the appellant the activity of manufacture of TAS remained unknown to the Central Excise authorities of local jurisdiction. The orders of the Bangalore Commissioner (Appeal) etc.

were not relevant as assessees are required to obtain licence from the jurisdictional authorities in respect of each place of manufacture. The letter of M.P. Udyog to Supdt., Bettiah is also not relevant as that letter was addressed by the appellants buyer and not by the appellant.

Information furnished by a third party would not absolve the appellants of their responsibility under law.

7. We have perused the records of the case and have considered the rival submissions. The Commissioner of Central Excise, Bangalore had passed an order in the appellants' own case in 1990 that assembly of TAS does not attract Central Excise Duty. Similar view had been taken by the Commissioner of Central Excise (Appeals), Delhi also. These orders had become final as they had not been reversed in appeal. In such a situation, the appellant had no reason to believe that the carrying duty of the same activity in the jurisdiction of the Commissioner of Central Excise, Patna would be treated as liable to Central Excise Duty, as the law

of Excise is the same all over India.

Further the appellants' buyer had informed the local Central Excise Authorities about the proposed assembly of TAS and it fetched no response from the Central Excise Authorities. In these circumstances it is clear that the appellant was not avoiding taking out a Central Excise Licence from the Patna jurisdiction with an intention to suppress the facts of manufacture from the Revenue authorities and to evade payment of duty. It can only be that, the appellant was under the impression that the matter remained concluded under the orders of the Bangalore and Delhi Commissioners and there was no duty liability. And therefore, no requirement to take Central Excise Licence. The fact that appellant could have taken Modvat Credit on inputs also supports this view. In these facts and circumstances, we accept the appellants' contention that this was not a case involving suppression of facts attracting the extended period for the purpose of issue of a show cause notice. The demand is accordingly, held to be raised beyond the permissible time limit and is, for that reason quashed. Once the demand of duty is set aside, penalties and confiscation also become illegal.

They are also set aside. We do not feel it necessary to go into the other issues raised by the appellant, as the appeal is allowed on time bar. In the result, the appeal is allowed with consequential relief, if any.

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