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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-08-2000

Reported in : (2000)(71)ECC113

Appellant : Fusebase Eltoro Ltd.

Respondent : Collector of Central Excise

Judgement :

1. In this appeal filed by M/s. Fusebase Eltoro Ltd., the matter relates to the demand of central excise duty as a consequence of classification of video projector as described in exemption Notification No. 160/86-C.E., dated 1-3-1986, and its non-eligibility for the benefit of exemption under Notification No. 68/86-C.E., dated 10-2-1986.

2. Both the sides have agreed that on merits the matter is covered by the Supreme Court decision in the appellants' own case in Collector of Central Excise v Fusebase Eltoro Ltd., 1993 (67) E.L.T. 30 (S.C.). The Supreme Court has affirmed the view that the projection television sets manufactured by M/s. Fusebase Eltoro Ltd. was not the same as the Broadcast Television Receiver Sets, and was Video Projector for the purpose of exemption under Notification No. 160/86-C.E., dated 1-3-1986.

3. Shri D. Sharma, consultant, submitted on 15-5-2000 when the matter was posted for hearing, that the appellants have no arguments on merits of the case in view of the judgment of the Apex Court. On limitation, he, however, argued that

while the show cause notice dated 14-12-1987 was issued within the normal period of limitation, the second show cause notice dated 24-10-1988 was issued invoking the extended period of limitation. It was his plea that in the facts and circumstances of the case, there was no justification for invoking the extended period of limitation. He also submitted that the penalty imposed was excessive and in any case the appellants were eligible for the benefit of recalculation of the duty liability after treating their prices as cum-duty prices, in terms of the Larger Bench decision of the Tribunal in the case of Srichakra Tyres Ltd. v CCE, Madras, 1999 (108) E.L.T.361 (T). In reply, Shri Satnam Singh, SDR, submitted that the matter already stands settled by the Supreme Court in the appellants' own case as reported in 1993 (67) E.L.T. 30 (S.C.) - CCE v. Fusebase E.LT.oro Ltd. The misdeclaration of the nature of the goods had already been established by the Supreme Court decision itself.

5. The classification of the goods in question, Video Projector, has already been finally settled by the Apex Court in the case of CCE v Fusebase Eltoro Ltd., 1993 (67) E.L.T. 30 (S.C.). The Hon'ble Supreme Court had agreed with the view of the Asstt. Collector of Central Excise and Collector of Central Excise (Appeals) that the projection television sets manufactured by M/s. Fusebase Eltoro Ltd. were not the same as Broadcast Television Receiver Sets for the purpose of exemption under Notification No. 68/86-C.E., dated 10-2-1986.

6. As regards limitation, it is an admitted position that the classification list effective from 19-3-1987 was approved on 30-4-1987 by the Asstt. Collector of Central Excise. The assessee had cleared the goods in question with the description hot line projections (T.V. set with screen), which was found to be mis-leading. It was alleged in the show cause notice dated 14-12-1987 for the period June, 1987 to October, 1987 that the assessee had suppressed the facts by giving incorrect description to the video projectors. This show cause notice was issued within the normal period of limitation.

The second show cause notice dated 24-10-1988 was issued by the Addl.

Collector of Central Excise for the period March, 1987 to May, 1987, and it was alleged that the assessee had deliberatedly/wilfully misdeclared their product in their classification list dated 19-3-1987 with intent to avail incorrect concession/exemption which was only applicable to broadcast television sets and not to video projector.

Extended period of limitation was invoked for wilful misdeclaration and concealment of facts with intent to evade payment of central excise duty.

7. The appellants had submitted that originally their classification list had been approved extending the benefit of Notification No.68/86-C.E. The appellants had submitted an additional classification list effective from 19-3-1987. Although this classification list was approved on 30-4-1987, during the course of visit of Preventive Officers of Central Excise, Ghaziabad, on 30-10-1987 it was found that the approval had been obtained by the appellants on the basis of wrong and misleading declaration. Their product was in fact 'Video Projector' and not 'Broadcast Projection Colour T.V. Set' as declared. Thus, it was not a case of change in the approved classification list, but approval obtained on misdescription of the product. On noticing the misdeclaration, show cause notices were issued on 15-12-1987 and 24-10-1988 after the information regarding clearances and valuation were available.

We, therefore, consider that the extended period of limitation has been correctly invoked in these cases.

8. It is also seen from page 3 of the order-in-original that the assessee had admitted their duty liability after extending the benefit of recalculation of demand under Section 4(4)(d)(ii) of the Central Excises Act, 1944, which they were prepared to pay.

9. As regards the valuation, the matter is discussed at page 5 of the order-in-original. The valuation is based on the assessees invoices, and discount has been allowed from the amounts realised. The duty liability has been calculated from the assessable value after deducting the actual duty paid. As regards the demand of Rs. 3,93,250/- and Rs. 1,07,250/-, demand of Rs. 3,28,962.50 and of Rs. 1,05,587.50 was confirmed.

We do not find any infirmity in the view taken by the adjudicating authority in this regard.

10. With regard to the benefit of recalculation of the duty liability, after treating the prices as cum-duty prices, the adjudicating authority had observed as under - "The party cannot claim deduction of duty that has not been paid.

Under no circumstances, the lowering of assessable value on account of non-payment of Central Excise Duty is permissible." We find that the Larger Bench of the Tribunal in the case of Srichakra Tyres Ltd. v CCE, Madras, 1999 (108) E.L.T. 361 (T), had held that the duty demanded and abated subsequent to the sale of goods was to be paid from cum-duty price actually received. If the facts are similar to the one dealt with in the above Larger Bench decision, then the benefit of that decision will be available to the appellants.

11. Thus, while on merits and on limitation and valuation, we do not find any merit in this appeal, with regard to the plea of re-calculation of the assessable value in terms of the Larger Bench decision of the Tribunal in Srichakra Tyres Ltd., supra, we direct that the matter be re-examined by the adjudicating authority and appropriate relief, if otherwise admissible, on facts and law, be given.

But for the above, the appeal is otherwise rejected. Ordered accordingly.