

Asian Foundation Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-01-2000

Reported in : (2000)(71)ECC246

Judge : G Brahmadeva, B T K.K.

Appellant : Asian Foundation

Respondent : Cce

Judgement :

1. Arguing for the appellant Shri L.P. Dhir, Id. advocate submitted that apart from the merits of the case the demand is barred by time under the proviso to Section 11A of the Act. In the Show Cause Notice though there was allegation of suppression but in the absence of specific mention of proviso to Section 11A the demand is not sustainable in the eye of law. Further, the party has taken a specific plea with reference to the Show Cause Notice that demand was barred by time in the absence of suppression and there was no justification to raise the demand by invoking later period. This important plea has not been dealt with in the order.

2. On the other hand, Shri R.S. Sangia, JDR referred to the findings of the Collector in the impugned order particularly para 18 and 23 of the order and relevant portion is as under: In the instant case M/s Afcons have not challenged the excisability of the goods in question under the various headings/sub-headings of the Schedule to the Central Excise Tariff Act, 1985. I therefore, hold that M/s Afcons have manufactured the goods mentioned in the Annexure to the show

cause notice without obtaining a Central Excise licence and without following the prescribed procedures and thereby contravened various provisions of the Central Excises and Salt Act, 1944 and the Rules framed thereunder. The duty demanded in the show cause notice is, therefore, rightly revocable from them.

In so far as the liability of M/s Afcon, M/s Krishna and M/s Kundalia to penalties under Rule 173Q(1) of the Central Excise Rules, 1944 is concerned, I find that none of them have ever intimated to the proper officer of Central Excise of jurisdiction about the manufacture of excisable goods by them nor filed any declaration nor applied for an obtained Central Excise licence as required under the law. They have also failed to follow the procedures prescribed under the Central Excise Rules, 1944 in respect of the excisable goods manufactured by them. They have therefore, contravened various provisions of The Central Excises and Salt Act, 1944 and the Rules framed thereunder with an intention to evade payment of Central Excise duty. I, therefore, hold that they are liable to penalties under Rule 173(1) of the Central Excise Rules, 1944.

3. He submits that as can be seen from the impugned order the Collector has given findings that the appellants manufactured goods without following the prescribed procedure and thereby contravened the various provisions in the Central Excise Act. He said that these findings cover the issue even with reference to the time bar. Accordingly, invoking larger period under Section 11A of the Act was justified.

4. We have carefully considered the matter. As can be seen from the records on 29.3.93 in reply to the Show Cause Notice the party had taken specific plea: While the demand for duty amount Rs. 57,30,152.05 was made for the period August 1987 to March 1988, the Show cause notice under Section 11A of the Act was served on AFCONS only in August 1991.

Under Section 11A, the demand for duty can only be raised for a period of six months prior to the date of service of the show cause notice and this period of "six months" can be extended to "five months" only under circumstances of suppression, misstatement of facts, collusion, fraud or breach of regulations with intent to evade payment of duty. In the instant case, the demand has been sought

to be justified by invoking the extended period of five years on the ground of suppression of facts and clandestine removal of goods, a ground which cannot stand even a moment's scrutiny. That the ground of suppression of facts is ill-conceived would be apparent from the following facts: 5. We are not convinced with the arguments on behalf of the Revenue that the observations/findings given by the Collector covers the point at issue even with reference to time bar. Since the party has taken a specific plea on time bar issue, the adjudicating authority should have met with specific plea in the order and ought to have given findings on the point at issue. Issue with reference to the time. Bar has not been dealt with in the impugned order. In view of this infirmity we are remanding the matter to the concerned Commissioner for re-consideration. Since we are remanding the matter party is at liberty to raise all the connected issues with reference to the excisability including time bar issue during the re-adjudicating proceedings. The Collector may pass an order in accordance with law after taking into consideration of the pleas raised by the party and on providing an opportunity of personal hearing.

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