Commissioner of Central Excise Vs. Rapid Controls P. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-07-2000

Reported in : (2000)(122)ELT586TriDel

Appellant : Commissioner of Central Excise

Respondent : Rapid Controls P. Ltd.

Judgement :

1. These are two applications praying for waiver of following amount of Central Excise Duty confirmed and penalties imposed by the Commissioner of Central Excise under the impugned Order:(1) M/s. Rapid Controls P. Ltd. - Rs. 1,07,39,940.40/- Duty Rs. 1,07,39,940.00/- Penalty(2) Shri Santokh Singh, - Rs. 2,00,000.00/- Penalty Managing Director 2. Shri V. Lakshmikumaran, ld. Advocate, submitted that the applicants manufacture Industrial Control Valves such as Solenoid Valves, Ball Valve etc; that the valves manufactured by them find applications in water lines in industrial installation; that the applicants classified the impugned products under sub-heading 8481.80 of the Schedule to the Central Excise Tariff Act whereas the Commissioner has classified them as Expansion Valves and Solenoid Valves for refrigerating and Air-Conditioning appliances and machinery under sub-heading 8481.10, holding that the valves manufactured by the applicants are various types of Pressure Reducing Valves and thermostatically controlled valves; that the impugned products are used in water distribution pipe line system in Air-Conditioning and Refrigeration Plants and as such the valves are used in the Air-Conditioning and Refrigerating Plants.

The Ld. Advocate further submitted that for the purpose of classifying the Expansion Valves under sub-heading 8481.10, suitability of the Valves to control the flow of the refereigrant in the cooling coil to maintain the desired pressure and temprature is the only criteria; that soleniod operated valves are also used in large air-conditioning systems to start or stop the flow of referigerant; that on the other hand the impugned goods are used in the water lines in large air-conditioning plants as well as in normal water lines in industrial or commercial establishments; that the goods manufactured by them does not answer the description of the goods of sub-heading 8481.10 or 8481.20, that they automatically get classified under the residuary sub-heading 8481.80 in accordance with Note 2(a) of Section XVI. He, further, submitted that the Commissioner has erroneously reached the conclusion, based upon the definition of the Expansion Valves and Solenoid Valves that pressures reducing valves are Expansion Valves.

The Ld. Advocate mentioned that there are pressure relief valves, pressure reducing valves and purge valves which are not to be termed as Expansion Valves either automatic or thermostatic. He also referred to the Board's Circular No. 6/86, dated 25.09.1986 according to which solenoid Valves are not to be classified under sub-heading 84.15, 84.18 or 84.19 of the Central Excise Tariff Act. He also referred to the certificates received from various customers, according to which these are used in Air Drying Plants, Air Handling Unit, Fire Fighting system, Water softening Plants etc. The Ld. Counsel specifically referred to the letter dated 12-10-1999 from M/s. Voltas Ltd. in which it was mentioned that the valves procured from them were used in water distribution pipe line in Air-Conditioning and Refrigeration plants.

Finally the Ld. Advocate mentioned that in the impugned Order the Commissioner has not confirmed the demands for the period from September, 1994 to April, 1995 following the judgment of the Supreme Court in the case of CCE, Baroda v. Cotspitn Ltd., 1999 (113) E.L.T.350 (S.C.); that if the benefit of the decision has been given to them for past period, there cannot be suppression of facts on their part; that the Applicants have filed declaration under Rule 173 B of Central Excise Rules, RT 12 returns and invoices under Rule 52 A and in view of Puspham Pharmaceutical Company v. CCE, Bombay, 1995 (78) E.L.T. 401 (S.C.) Proviso to

Section 11 A of the Central Excise Act cannot be invoked; that provisions of Section 11AC and 11AB of the Central Excise Act would be applicable only in a case where the short levy is on account of fraud, collusion, etc., after the introduction of these provisions w.e.f. 28.08.1996. He also claimed financial hardship by saying that they are not in a position to deposit the huge amount of duty and penalty as total funds at their disposal are only Rs. 22.74 lakhs with deployment of Rs. 23.61 lakhs in fixed assets; that the liquidity position of the applicants does not leave any scope for making any pre-deposit.

3. Opposing the applications Shri R.K. Sharma, ld. SDR, reiterated the findings of the Commissioner as contained in the impugned Order and further submitted that as per Note 5 to Section XVI, the expression 'machine' means any machine, machinery, plant, equipments, apparatus or appliances; that as per this machine includes plant and therefore any goods used in the air-conditioning and refrigerating system will have to be classified accordingly; that as the goods supplied by the Applicants have been used in installation of air-conditioning system, the impugned goods are classifiable under subheading 8481.10. He also submitted that Commissioner has also given reasoning for invoking extended period of limitation as there has been intentional suppression of facts by the Applicants; that they had wilfully and knowingly mis-declared their products.

4. We have considered the submissions of both the sides. We are of the opinion that the Applicants have made OUT a strong prima-facie case on merit as well as on limitation in as much as it has not been shown by the Revenue that the impugned valves are being used in the refrigerating and air-conditioning appliances and machinery and in view of the fact that Commissioner himself has given his findings that the ratio of the Supreme Court decision in Cotspun case squarely applies for the clearances during September 1944 to April, 1995. Accordingly we waive the requirements of pre-deposit unconditionally and stay the recovery of duty and penalties during the pendency of the Appeals.