

Indian Farmers Fertiliser Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-2000

Reported in : (2001)(74)ECC365

Appellant : Indian Farmers Fertiliser

Respondent : C.C.E.

Judgement :

1. The appellants are a cooperative society, engaged in the manufacture of fertilisers falling under Chapter 31 of the Schedule to the Central Excise Tariff Act. The dispute involved in the present appeal relates to their unit manufacturing urea fertiliser at Aonla, Bareilly. For the manufacture of urea, the reactants are Ammonia and Carbon dioxide. The ammonia required in the urea plant is generated by a plant which uses natural gas, steam and air as raw-materials. The steam required for the purpose is produced in a boiler by firing furnace oil (fuel). During the period from September 1993 to December 1994, the appellants had procured a total quantity of 38,292.720 KL of furnace oil at nil rate of duty "for the manufacture of urea" by claiming exemption under Notification No. 75/84 dated 1-3-1984 as amended. The Department issued show-cause notice [which was received by the appellants on 30-6-1998] alleging that total exemption from payment of duty on the furnace oil was available only when it was used as feed stock in the manufacture of urea in terms of Sl. No. 4 of the Table annexed to Notification No.75/84 ibid and that the appellants were liable to discharge Central Excise duty on the furnace oil in terms of Sl. No. 5 of the said Table as the

commodity was used for generation of steam and not as feed stock in the manufacture of urea. The SCN also alleged contravention of provisions of the Central Excise Act and Rules as also suppression of facts, for invoking the extended period of limitation to demand duty to the tune of Rs. 28,71,954/- on the aforesaid quantity of furnace oil procured during the period September 1993 to December 1994. The SCN sought to recover from the appellants the said amount of duty under Rule 196 of the Central Excise Rules and Section 11A of the Central Excise Act, and also proposed to impose penalty on them under Rules 173Q and 210 of the Central Excise Rules and under Section 11AC of the Central Excise Act. The appellants contested the SCN by submitting that they had clearly stated in their application for L6 Licence that the furnace oil was required for steam generation; that the licence was granted to them by the Department after proper scrutiny of their claim; that there was no reference in the licence to Notification No. 75/84; that CT 2 certificates were granted to them from time to time which authorised them to obtain furnace oil at nil rate of duty (for periods including the period of dispute) for the manufacture of fertilisers; that for the periods subsequent to the period of dispute similar SCNs had been issued to them raising demands of duty on similar grounds; that since such demands were confined to the normal period of six months prescribed under Section 11A of the Act, they paid the entire amount even before adjudication of the SCNs; that the said SCNs were adjudicated by imposing a nominal penalty of Rs. 1,000/- on them under Rule 210 of the Central Excise Rules ; that all such proceedings showed that there was no mis-statement of facts by them at any stage and there was no malafide on their part and that the extended period of limitation was not invocable against them for raising a demand of duty on them for the period September 1993 to December 1994. The appellants pleaded for dropping the demand on the ground of limitation. The dispute was adjudicated by the jurisdictional Commissioner of Central Excise who, by the order impugned in the present appeal, confirmed the demand of duty of Rs. 28,71,954/- under Rule 196 of the Central Excise Rules read with the proviso to Section 11A(1) of the Central Excise Act. The adjudicating authority also imposed penalties of Rs. 28,71,954/- and Rs. one lakh under Section 11AC of the Act and Rule 173Q of the Central Excise Rules respectively.

2. We have heard both sides and carefully examined the records of the case.

3. Ld. Consultant, Shri Lachman Dev challenged the demand of duty confirmed by the Commissioner, on the ground of limitation. He further submitted that the earlier proceedings covering periods subsequent to the period of dispute showed that the Department was aware of all the relevant facts and that there could be no valid charge of mis-statement of facts or contravention of law against them for invoking the extended period of limitation for raising a demand of duty for the period from September 1993 to December 1994. He pleaded that the demand was hopelessly barred by limitation. He further contended that the imposition of penalty on the appellants under Section 11 AC of the Central Excise Act was not sustainable in law inasmuch as the demand of duty itself related to a period prior to the date on which this provision of law came into force. Ld. Consultant, therefore, prayed for setting aside the impugned order and allowing the appeal.

4. Ld. JDR Shri Sanjeev Srivastav submitted that the appellants' case attracted the provisions of Rule 196 of the Central Excise Rules, that the demand of duty was rightly raised against the party under the said rule and that there could be no valid plea of time bar inasmuch as there was no time limit prescribed under Rule 196. He, therefore, prayed for rejecting the appeal.

5. In his rejoinder, Ld. Consultant submitted that the demand raised against the appellants under the SCN in question was, virtually, one of Central Excise duty short-levied, in which case Rule 196 would not be attracted. On this ground also, he pleaded for setting aside the impugned order whereby the demand of duty raised under Rule 196 was confirmed by Ld. Commissioner. Ld. Consultant, in this connection, relied on the decision of the Tribunal in the case of Arti Paints and Chemicals Industries, Bombay v. Collector of Central Excise, Bombay 1984 (15) E.L.T. 206 (T).

6. We have carefully examined the rival submissions. It is not in dispute that the appellants had procured furnace oil at nil rate of duty 'for the manufacture of fertiliser' in their Aonla unit on the strength of CT 2 certificate issued by the Department under Chapter X procedure during the period in question. On verification of copies of the said certificate available on record, we find that they do not contain any reference to Notification No. 75/84 dated 1-3-1984. It is also not

disputed that, in their application for L6 licence, the appellants had clearly stated their requirement of furnace oil 'for steam generation' and that, in such application, they had not made any reference to Notification No. 75/84 ibid. It is not denied by the appellants that the furnace oil procured by them during the aforesaid period was being used as fuel for generation of steam and not as feed stock. It would appear from these facts that the appellants' case attracted Sl. No. 5 of the Table annexed to Notification No. 75/84 as claimed by the Department and not Sl. No. 4 of the said Table as indicated impliedly in the CT 2 certificate issued by the Department.

In this connection, it is pertinent to note that the CT 2 certificates authorised the appellants to procure furnace oil at nil rate of duty for the manufacture of fertiliser, which was obviously a purpose covered by Sl. No. 4 of the Table annexed to the Notification. It is thus evident that the Department was at fault in granting permission to the party to procure furnace oil at nil rate of duty for the purpose of using the commodity (as feed stock) for the manufacture of fertiliser.

7. The issue which arises for our consideration is whether the appellants' case attracted Rule 196 or not. We find that this issue requires to be examined with reference to the aforesaid Notification inasmuch as, apparently, the appellants had refrained from paying Central Excise duty on the furnace oil procured during the period in question, by claiming the benefit of Sl. No. 4 of the Table to the Notification which, according to them, was granted to them by the Department by way of the CT 2 certificates, whereas the Department, in the SCN in question, insisted that duty should be paid [@ Rs. 75/- per KL] in terms of Sl. No. 5 of the said Table. The entries against Sl.

Nos. 4 and 5 of the Table annexed to the Notification are as follows :4.

Furnace Oil Nil Intended for use as feed stock in the manufacture of fertilisers.5.

Furnace Oil Rs.75 per Intended for use otherwise than as K.L at 15C feed stock in the manufacture of fertilisers.

We find that the appellants took the benefit of nil rate of duty in terms of Sl. No. 4 above, but the Department demanded payment of duty @ Rs. 75/- per KL in terms of Sl. No. 5 above. The demand of duty in question, amounting to Rs. 28,71,954/-, as raised in the SCN and confirmed by the adjudicating authority, is in fact the differential duty of Central Excise in terms of Sl. Nos. 4 and 5 above. In other words, the appellants' case is a case of short-payment of duty simpliciter as far as the appellants are concerned. On the part of the Department, it will be a case of short-levy of duty simpliciter. In other words, it is a case covered by Section 11A of the Central Excise Act for the purpose of demand of differential amount of duty.

8. In the instant case, the demand was raised under Rule 196 of the Central Excise Rules and the same was confirmed also under the same provision of law. This was not warranted by the facts and circumstances of the case. A demand of duty can be raised under Rule 196 only in any of the following situations :- (a) If any excisable goods obtained under Rule 192 are not duly accounted for as having been used for the purpose and in the manner stated in the application submitted under the said Rule; (b) If any such excisable goods are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during transport from the place of procurement to the applicants' premises or during handling or storage in the premises approved under the said Rule.

The Revenue has no case under (b) above. Their case appears to be with reference to (a) above. We have already noted that the appellants [in their application filed under Rule 192] had clearly declared the purpose of procurement of furnace oil as for generation of steam. This declaration was accepted by the Department. Nevertheless, Department issued CT 2 certificate authorising the appellants to procure furnace oil at nil rate of duty for the purpose of manufacture of fertiliser.

It is evident from these facts that the appellants' case did not attract the requirement of Clause (a) above for the purpose of demand of duty by the Department under Rule 196. Therefore, Rule 196 was wrongly invoked by the Department for demanding duty of Central Excise.

The impugned order of the Commissioner confirming such demand of duty cannot be sustained in law. The case law cited by Id. Consultant appears to be apposite to the facts of the present case. The facts of Arti Paints and Chemicals Industries (supra) are similar to the facts of the present case. The Tribunal in that case held that any duty of excise short-levied could not be recovered under Rule 196 and that any such recovery could be made only from the manufacturer and not from L6 licence-holder. We are inclined to follow the view taken in Arti Paints and Chemicals Industries (supra). We hold that the demand of duty raised by the Department and confirmed by the adjudicating authority under Rule 196 of the Central Excise Rules is not sustainable in law.

Even if the Department had raised the same demand under Section 11A of the Central Excise Act, the same would have been hit by limitation in view of the facts and circumstances of the case.

9. We also note that a penalty of equal amount has been imposed on the appellants under Section 11AC of the Act and another penalty of Rs. 1 lakh has also been imposed on them under Rule 173Q of the Central Excise Rules by the adjudicating authority. None of these penalties can be sustained, when the demand of duty itself is unsustainable. Even otherwise, the provisions of Section 11 AC is applicable only to a case where the provisions of Section 11A is invoked by the Department for demanding Central Excise duty not-levied, not-paid, short-levied, short-paid etc. In the instant case, duty was neither demanded nor confirmed under Section 11A of the Act. Therefore, there was no warrant for invoking Section 11 AC. This apart, Section 11 AC cannot be pressed into service against an assessee on whom a demand of duty is raised for a period prior to the date on which Section 11 AC came into force. In the present case, the demand of duty was for a period in 1994, long before Section 11 AC came into force. Moreover, no reason whatsoever appears to have been stated by the adjudicating authority for imposing penalty under Section 11 AC or under Rule 173.

10. In view of the above findings, we set aside the impugned order and allow this appeal with consequential benefits, if any, to the appellants.