A.S. Impex Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-01-2000

Reported in : (2001)(74)ECC375

Appellant : A.S. Impex Ltd.

Respondent : Commissioner of Central Excise

Judgement :
1. The issue involved in this appeal, filed by M/s. A.S. Impex Ltd., is whether the exemption from payment of Central Excise duty is available to the Populated Printed Circuit Board (PCB), manufactured and cleared by them under Notification No. 48/94-CE, dated 1-3-1994.

2. Briefly stated the facts are that the Appellants manufacture PCBs for Black and White TVs which were cleared by them without payment of Central Excise duty to their store situated at A-11, Okhla Industrial Area, Phase-I, New Delhi; that such cleared PCBs were stated to be used in the manufacture of Black & White TVs by the Appellants. The Commissioner, under the impugned Order-in-Original No. 52/98 dated 31-8-1998, confirmed the demand of duty amounting to Rs. 3,25,95,890/- and imposed penalty of equal amount under Section 11 AC of the Central Excise Act holding that the Appellants had failed to establish that the impugned PCBs were used in the manner stipulated in the Notification No. 48/94; that they had not been able to co-relate as to which particular PCB had gone to the manufacture of which Black & White T.V.that they were aware that the exemption was available subject to following the procedure under Chapter X of the

Central Excise Rules which was manifest in observance of the procedure in respect of PCBs sent to M/s. Gomti Enterprises; that the non-observance of the required procedure by them is indicative of their intent to evade duty.

3. Shri R. Swaminathan, learned Consultant, submitted that the Appellants manufacture Black & White T.V. sets at A-219, Okhla Industrial Area, Phase-I, since November, 1993; that they are holders of Central Excise Registration and are filing necessary declarations and monthly R.T.-12 Returns; that the Appellants were manufacturing PCBs at C-66/I, Okhla Industrial Area, Phase-II since March, 1994; that they have taken on rent the premises at A-11, Okhla Industrial Area, Phase-I for use as Central Stores since April, 1995 where all the inputs required for T.V. set are received and stocked; that they also started manufacturing the PCBs which were captively consumed in the manufacture of Black and White TVs and accordingly obtained Central Excise Registration for this unit also; that PCBs were exempt wholly from payment of duty provided these are used for the manufacture of Black & White TVs and where such use is elsewhere than in the factory of production, the procedure set out in Chapter X is followed; that the basic requirement for following the Chapter X procedure is that having obtained a licence in Form L-6, the manufacturer has to execute a bond, obtain a CT-2 certificate for obtaining the goods at the nil or concessional rate of duty; that at PCB unit they maintain a stock and despatch register showing the quantity manufactured and despatched under delivery challans to the Central Stores where a stock ledger is maintained; that the inputs from the Central Stores are issued to the T.V. Unit under the cover of Material Issue Note (MIN); that the inputs received are duly recorded in the register maintained by sub-store/floor store. The learned Consultant, further, submitted that the Appellants have declared about availing of exemption under Notification No. 48/94-CE to the jurisdictional Excise Authorities; that the Commissioner ought to have taken into consideration their private records which conclusively prove captive consumption of PCBs by them in the manufacture of TVs; that based on private records, they derived dummy statutory records from which it would be clear that the private records are conclusive proof of substantive compliance with the Chapter X procedure for availing the benefit of exemption under Notification No. 48/94. He also mentioned that it is apparent from the statement dated 4-2-1997 of Shri R.S. Johar that they were under the

impression that Procedure of Chapter X is to be followed only in cases where the PCBs are cleared to outside manufacturers; that the substantive benefit of exemption cannot be denied for mere procedural non-compliance. He relied upon the decision in the case of Mahindra & Mahindra Ltd. v. CCE, Aurangabad, 1999 (31) RLT 257 (CEGAT) wherein the benefit of Notification No. 58/86-C.E. was allowed though the condition of following Chapter X procedure was not observed; that appeal filed by the Department has been dismissed by the Supreme Court on 30-7-1999 in view of the judgment in Thermax Private Ltd. v. Collector of Customs, 1992 (61) E.L.T. 352 (SC). Reliance was also placed upon the decision of the Larger Bench in the case of Breach Candy Hospital & Research Centre v. CCE, Bombay, 2000 (118) E.L.T. 271; that the demand is barred by limitation as the question of wilful and intentional suppression of facts cannot arise at all as the PCBs were exempted under Notification No. 48/94; that accordingly provisions of Section 11AC of the Central Excise Act cannot be brought into play because provisions being penal in nature cannot be invoked for the past period and secondly since the proviso to Section 11A(1) of the Act is not applicable. Penalty under Section 11 AC and interest under Section 11AB cannot be demanded.

4. Countering the arguments, Shri M.P. Singh, learned D.R., submitted that the benefit of the exemption from payment of duty is available subject to the following procedure set out in Chapter X; that the benefit of notification was available only on satisfying the condition stipulated in the Notification which has not been complied with and as such exemption is not available to the Appellants under Notification No. 48/94. He relied upon the decision in the case of CCE, Bombay v.Electronic & Engg. Co., 1997 (90) E.L.T. 434 (T) wherein it was held that the person wishing to obtain the remission of duty is required to follow Chapter X Procedure and if conditions are violated, he is liable to pay duty. He also relied upon the decision in the case of Kirloskar Brothers Ltd. v. CCE, Pune, 1997 (94) E.L.T. 176 (T) in which case the Appellants did not follow the procedure set out in Chapter X and claimed refund of duty after the clearance of the goods. The Appellate Tribunal held that "It is seen that with regard to the conditional exemption notification of the nature, as in the proceeding before us, the procedural requirements are as essential prerequisite and no refund could be sanctioned in the absence of the required compliance of the exemption notification." 5. We have

considered the submissions of both the sides. Notification No. 48/94-C.E., dated 1-3-1994 exempts PCB from payment of Central Excise duty subject to the following conditions : - (i) the said goods are used for the manufacture of broadcast television receiver sets (mono chrome) other than video monitors, video projectors and projection television sets within the factory of production; or (ii) where such use is elsewhere than in the factory of production, the procedure set out in Chapter X of Central Excise Rules, 1944 shall be followed.

6. It is not in dispute that the Appellants had not followed the procedure set out in Chapter X of Central Excise Rules while clearing the PCBs from their unit to the Central Stores at A-11, Okhla Industrial Area, Phase-I. It is their contention that benefit of notification is available to them without following the procedure of Chapter X. The Revenue on the other hand has contended that once the condition specified in the notification is not complied with, the benefit of the notification cannot be extended to the assessee. We find substantial force in this submission. The notification is issued by the Central Government in exercise of power vested in it under Section 5A of the Central Excise Act. This Section empowers the Central Government to exempt the excisable goods generally either absolutely or subject to conditions as may be specified in the notification. In the present case PCBs are exempted from the whole of duty if these are used in the manufacture of Black & White TVs and if such use is outside the factory of production, then the procedure set out in Chapter X of the Rules has to be followed. As the Appellants have not followed the said procedure, the condition subject to which exemption can be availed of has not been complied with and accordingly the Appellants are not eligible to the benefit of the notification. If the contention of the Appellant is accepted there will be no need to fulfill the conditions specified in the notification and one can enjoy the benefit conferred by the notification without taking the trouble to satisfy the conditions stipulated therein. In Kirloskar Brothers' case, supra, the Tribunal outlined the steps one has to take in following the procedure set out in Chapter X as under: - "We find that the exemption notification was conditional and the exemption was available only when the goods were required to be used in connection with Oil Exploration activity by ONGC or Oil India Ltd. As the exemption was conditional, the procedure under Chapter X was required to be followed. Under Chapter 10 Procedure, the applicant, who wanted to avail of the

benefit of exemption notification had to file application in Form AL-6 to the jurisdictional Central Excise authorities and had to obtain L-6 licence. Thereafter on the request of the applicant, CT-2 certificate had to be issued by the concerned Central Excise Range.

It is on the strength of such CT-2 certificate that the goods will move from the originating factory under the relevant exemption. The copies of the CT-2 certificate had to be filed with the relevant monthly returns. It is further provided under Chapter X Procedure that in case the goods are not satisfactorily accounted for then the duty will be chargeable." 7. In the present appeal the impugned goods were cleared to Central Store and not directly for the manufacture of T.V. sets. The decision in Mahindra & Mahindra Ltd. was delivered on the basis of Supreme Court's judgment in Thermax Pvt. Ltd. and also the Appellants therein showed the movement of goods from factory to factory. In the appeal before us the goods did not move from factory to factory and the Commissioner had given a specific finding in the impugned Order that the show cause notice did allege that they had expressed their inability to co-relate the particular PCB with the T.V. In Thermax Pvt.

Ltd. also the parties "agreed that the Chillers imported by the assessee are used in a factory." Secondly in the said case the assessee's claim for concession was rejected, as observed by the Supreme Court, not on the grounds that the procedure specified in Chapter X was not fulfilled but on the broader ground that the procedure of Chapter X is designed to facilitate clearances only for the purpose of central excise duty and that the said procedure cannot be fulfilled at all in the case of an importer. The Supreme Court held that it would not be correct to deny it to a supplier of goods on the ground that he is an importer and not a manufacturer. The Supreme Court also held that the entitlement, however, will depend on whether the purchaser is the holder of an L-6 licence (or CT-2 certificate) or not.

In the present matter no evidence has been brought on record to show that the recipient units were the holder of L-6 licence. The learned Consultant's reliance upon the Larger Bench decision in Breach Candy Hospital case, supra, is misplaced as in that case facts are completely different. There was substantive compliance by the Appellants with the conditions of the notification; there was only delay in intimating the department that the air-conditioners were actually used in the hospital. This condition was held to be not substantive and mandatory.

We thus hold that the Appellants were not eligible for the benefit of Notification No. 48/94-C.E. in respect of PCBs which were cleared to their Central store room at A-11, Okhla Industrial Area, Phase-I.8. The extended period of limitation is also applicable as the fact of clearing the goods without observing procedure of Chapter X was not in the knowledge of the Department. The declaration filed by them in 1994 (Page 53 of Appeal Papers) simply claimed exemption under Notification No, 48/94-C.E. without indicating any other details. The name of their other factory at A-219, Okhla Industrial Area I was mentioned as per serial No. 3 of the Declaration Form which reads "Names and Address of other Factories/manufacturers (Producing such goods) in whom the manufacturer claiming the exemption has proprietary interest." It was not mentioned in the declaration form that the PCBs manufactured by them were being sent to their factory at A-219 Okhla Industrial Area-I without payment of duty and/or without following the procedure set out in Chapter X. Similarly such a fact cannot be ascertained from RT-12 Return, filed by them. This fact of clearing PCBs without following Chapter X Procedure was known only to the Appellants which was not disclosed to the Department by them. Further, there was no reason to believe that Chapter X Procedure is to be followed only when goods are cleared to another manufacturer of T. V. sets in view of the clear and specific language used in the notification. We, however, agree with the learned Consultant that provisions of Sections 11AB and 11 AC will not be applicable in respect of the clearances effected before these Sections came into force as held by the Tribunal in the case of Athivinaygar Wires P. Ltd. v. CCE, Coimbatore, 1999 (106) E.L.T. 529 (T). In view of this the penalty imposed upon and interest demanded from the Appellants is set aside and the matter is remanded to the Commissioner for considering the imposition of penalty and demanding interest in respect of the clearances of goods after Sections 11AB and 11 AC came into force.