

integrated Process Automation Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-30-1985

Reported in : (1985)(21)ELT227TriDel

Appellant : integrated Process Automation

Respondent : Collector of Central Excise

Judgement :

1. The appellants manufacture goods falling under Tariff Items No. 45 and No. 68 of the C.E.T. At the relevant time the products falling under Tariff Item 45 were exempt from Central Excise Duty up to a value of Rs. 5 lakhs under Notification No. 240/77, dated 15-7-1977 and goods falling under Tariff Item 68 were exempt from duty provided, inter alia, the value of the goods cleared did not exceed Rs. 30 lakhs per year under Notification No. 176/77, dated 18-6-1977 as amended by Notification No. 246/77. The appellants were under the impression that they need not have the licence of Central Excise until they exceed 80% of the exemption limit of clearance under each of the Tariff Items.

There was a declaration filed by them under Notification No. 111/78 on 31-1-1979. Similar declarations were filed by them on 7-4-1980 and 6-4-1981 also. These declarations, inter alia, gave the value of the goods cleared during the preceding financial year in each case.

2. When they filed the declaration on 7-4-1980 for the year 1980-81 giving the value of clearances, the Range Superintendent endorsed the same that the

appellants should apply for licence, when the clearance values exceed for Rs. 4 lakhs for Tariff Item 45 and Rs. 12 lakhs for Tariff Item 68. They had also to maintain a simple account of production of clearances as directed by the Collector in Trade Notice No. 284/79, dated 31-12-1979.

3. On 22-1-1982 and 1-2-1982 Preventive Officers of the Central Excise visited the appellants factory and scrutinised their records and declarations. The officers concluded that as per Notification No.80/80-Central Excise, the appellants were not entitled to the exemption during the year 1981-82*. A show cause notice was issued to the appellants alleging contravention of Rules 9(1), 52(A), 173(0), 174 and 226 of the Central Excise Rules and the appellants were threatened with a penalty and demand for duty amounting to Rs. 1,12,741.94 for the goods cleared during the years 1980-81 and 1981-88 under Rule 9(2).

4. After due process the Collector held that the appellants were not eligible for exemption Under Notification No. 80/80 as they crossed the exemption limit during the month of January, 1981. He further held that the belt conveyor system cleared by the appellants during the year 1980-81 fell within the scope of Tariff Item No. 45 and not under Item 68 as claimed by the appellants. Similarly, the Collector held that weigh feeders and load cells also fell under the same item. The Collector further held that the firm had "transactions" over Rs 20 lakhs during the year 1980-81, comprising both commodities. Therefore, they were not entitled to the exemption of Notification No. 80/81, dated 19-6-1980. Collector demanded duty on clearances valued at Rs. 3,05,040/- for the year 1981-82 and on the value of Rs. 4,41,042.50 for the year 1980-81. He further imposed a penalty of Rs. 1,000/- on the appellants.

6. In the appeal before us, they submitted that the demand of duty is barred by limitation and should be set aside and that the penalty imposed was not correct in law as they did not contravene any provisions of Central Excise Law. They submitted further that they never removed goods clandestinely and there was, therefore, no question of invoking Rule 9(1) and Rule 9(2) for demand of duty. The normal time-limit for demand viz, 6 months under Section 11(A) should, therefore, apply and not the extended time-limit of five years.

7. In support of their contention that the demand is barred by limitation, the appellants cited the decision reported in 1984(17) E.L T. 499 (Tribunal)-(Basant Pran Electricity Co., Calcutta v. Collector of Central Excise, Calcutta). They also cited the case of Murugan & Company, Pudukottai v. Deputy Collector of Central Excise, Tiruchirappalli and Ors. (1977 E.L.T. J 193) and N.B. Sanjana, Bombay and Ors. v. The Elphinstone Spinning & Weaving Mills Co. Ltd. (1978 E.L.T. J 399).

8. The appellants submitted that the show cause notice was issued on 17-1-1983 covering the period 1-4-1980 to 31-3-1981 and 1-4-1981 to 21-7-1982. Therefore, the entire demand is time-barred according to them. They further submitted that the show cause notice did not record any grounds on the basis of which the extended time-limit under Section 11(A) could be applied to the demand against the appellants. They laid emphasis on three declarations they filed on 31-1-1979, 7-4-1980 and 6-4-1981 mentioning the value of the goods cleared by them in the previous financial year in respect of each of the two items produced by them. They further submitted that the Excise authorities were fully aware of the nature of the goods produced in the facto; y and of the value of clearances thereof and also that they are maintaining some accounts prescribed by the Collector in his Trade Notice- In the absence of any clandestine removal, there was no question of any demand beyond the normal period of limitation.

9. The appellants further submitted that the value of Tariff Item 68 goods "spares" (added in Invoice No. 50, dated 31-1-1981) at Rs. 26,000/-should be deducted as also Rs. 11,465/- which was the amount of discount given by them but disallowed. A further deduction is the Invoice No. 48, dated 30 1-1981 already included in the simple account under Tariff Item 68 but not taken into account. These demands taken together which should be legitimately allowed to them would bring the total clearances well under Rs. 5 lakhs. Therefore, their duty liability would be nil.

10. The learned S.D.R. opposed the arguments of the appellants and submitted that the annexure to the show cause notice clearly shows the details of the value of goods cleared by the appellants without payment of duty. In spite of the fact that the production figures exceeded the limits laid down under Notification No. 80/80,

he also pointed out that the mis-declaration in value in respect of products fall under Item 45 of the Central Excise Tariff and inclusion of the same in the figures pertaining under Item 68 of the Tariff with a view to availing of the exemption amounted to suppression of facts and therefore, the proviso to Section 11 (A) regarding the extended time-limit for issue of demand notice was correctly invoked in this case. The learned SDR also cited an order of Bench 'B'--Order No. 60/84-B, dated 6-1-1984 1984(16) E.L.T. 156 (Collector of Central Excise, Guntur v. Hindustan Shipyard) and argued that where a penalty under 173Q is threatened and Rule 9(2) is invoked, extended period of limitation is available to the Department for raising the demand.

11. We examined the arguments of both sides. We shall first examine the question of limitation. There is no doubt that the show cause notice was issued on 17-1-1983 covering the period 1-4-1980 to 21-7-1982 to which period the demand pertains. The question arises as to whether as argued by the learned Departmental Representative for the Respondent, the mere mention of Rule 173(Q) and Rule 9(2) in the Show Cause Notice would amount to a justification for the enlargement of the period of demand from the normal limit of six months from the date of show cause notice to five years therefrom. As enlargement of limitation period from six months to five years is a drastic step, the reasons for doing so should, in fairness, be clearly spelt out in the Show Cause Notice and the allegations are required to be stated fully and unambiguously to establish the legality of invoking the extended time-limit and to enable the licensee to properly defend himself. We do not see that such reasons are recorded in the Show Cause Notice. The Revenue's argument is that mere mention of Rules 9(2) and 173Q of the Central Excise Rules amounts to giving proper notice. The case law cited by the learned representative (Order No. 60/84-B, dated 6-1-1984, CEGAT) 1984 (16) E.L.T. 156; The Collector of Central Excise, Guntur v. M/s. Hindustan Shipyard which was examined by us is based on different facts as compared to the present one. In that case it was held (in para 27) that M/s. Hindustan Shipyard had not even disclosed the fact of manufacture of these goods to the Excise authorities and therefore, the question of their removal with the knowledge of the Excise authorities could not have arisen. In the present case, as submitted by the appellants, they maintained some accounts, they made annual declarations giving

the figures of production and it appears that Central Excise officers often visited the factory. Therefore, we cannot hold that the Central Excise authorities were not aware of the production and removal of goods by the appellants. The Case Law cited by the appellants, especially the judgment in N.B. Sanjana and Ors. v. The Elphin-stone Spinning and Weaving Mills Co. Ltd. (1978 E.L.T. J 399) and ratio of the judgment in Murugan and Company, Pudukottai v. Deputy Collector of Central 'Excise, Tiruchirappalli and Ors. (1977 E.L.T. J 193) support the plea of the appellants in the background of these facts and circumstances.

12. The misclassification on certain items under Item No. 68 instead of 45 (weigh feeders, load cell and belt conveyor system) is obviously not deliberate and not so serious mis-declaration as to warrant invoking the proviso to Section 11(A) and the clearances by the factory under both Tariff Items 45 and 68 cannot be deemed as clandestine as it appears that these were with the knowledge of the Central Excise Department. Besides, the show cause notice does not make an allegation of clandestine removal. The Collector's order not only does not contain any finding that the goods were removed clandestinely, but hardly deals with the pertinent issue of legality of invoking the extended time-limit, on which the appellants had dwelt at length in their reply to the show cause notice.

13. The show cause notice not having invoked the proviso to Section 11A with material on the basis of which the extended time-limit was to be applied, the normal period of limitation under this Section, viz., six months should apply in this case and not the extended period." Neither did the circumstances warrant such enlargement of limitation nor was such enlargement correct in the absence of allegations in the show cause notice.

14. The appellants gave an apparently plausible explanation about Invoice No. 50 and Invoice No. 48. However, this explanation is not being considered in depth inasmuch as we have decided in favour of the party on the basis of limitation.

15. As a result we hold that the demand against appellants should be limited to a period of six months only. This would have the effect of allowing the appeal inasmuch as the show cause notice was issued well beyond six months from the relevant period for which duty is demanded.

The appeal is allowed in these terms.

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