Triveni Engineering Works Ltd. Vs. Commr. of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-29-2000

Reported in : (2001)(129)ELT70TriDel

Appellant : Triveni Engineering Works Ltd.

Respondent : Commr. of C. Ex.

Judgement :

1. This is an appeal filed by the assessee against demand of duty of Rs. 5,03,167.32 and imposition of penalty of Rs. 1,25,000/-.

2. The facts of the case in brief are that the appellants are engaged in the manufacture of Steam Turbines. Steam turbines have thousands of parts. Certain parts of steam turbines are manufactured by the appellants within the factory. These parts are solely and principally used only for steam turbines. The appellants are also purchasing parts from outside which are duty paid parts of steam turbines. These parts are purchased by the appellants by placing order.

3. In respect of the parts of steam turbine which are manufactured and captively consumed, the appellants claimed exemption under Notifica tion No. 217/86 dated 2-4-1986. In respect of those parts which are purchased from outside and on which duty has already been paid by the respective manufacturers of those parts, the appellants are availing the Modvat credit. Classification list have been filed by the appellants describing the goods as - "Steam turbines and other vapour/condensing turbine and parts thereof under Heading 85.06".

4. Revenue alleged that the parts were classifiable under Chapter Heading 84.83. The dispute therefore, that arose is whether the items manu factured by the appellants was classifiable under Chapter Sub-heading 8406.00 or 8483.00. Ld. Commissioner in the impugned order held - "Notwithstanding the question of importance is whether such inputs which were received from another manufacturer were classifiable under Subheading 8483.00 under which the goods were assessed originally or under 8406.00 as has been claimed by the party. I have also answered this question that items mentioned in Annexure B to show cause notice are classifiable under Sub-heading 8483.00".

5. Arguing the case for the appellant Shri R. Swaminathan, ld.Consultant submits that the appellants had filed classification list from time to time with an annexure which indicated the whole host of items manufac tured by the appellants; that the appellants classified these items under Chapter Heading 84.06; that these classification lists have been approved from time to time; that R.T. 12 Return with gate passes were submitted which clearly indicated that the appellants had classified the said goods under Chapter heading 84.06; that all the Gate Passes which the Department now proposing classification under Chapter Heading 84.83 were sent to the Department.

Ld. Consultant submits that there has been no suppression of any information from the Department; that in the above circumstances, the longer period of limitation under proviso to Section 11A(1) cannot be invoked. In support of his contention he cites the case law reported in 1995 (78) E.L.T. 401,1990 (45) E.L.T. 109,1999 (105) E.L.T. 573, 1999 (105) E.L.T. 208 and 1997 (95) E.L.T. 590. Ld. Consultant therefore, submitted that in view of the above case law, the fact is that the entire demand is barred by limitation.

6. It was pleaded that in any case the Tribunal has been consistently holding that where the statutory documents filed by the appellants regularly are the documents relied in the SCN from time to time, longer period of limitation cannot be invoked. In support of this ld.Consultant cited and relied upon the decision of this Tribunal in the case of Kirloskar Oil v. CCE [1993 (65) E.L.T. 371], BHEL v. CCE, Meerut vide Final Order No. E/499/96-V and cases reported in 1999 (106) E.L.T. 501 and (84)

ECR 206.

7. Explaining the position further ld. Consultant submits that in the Annexure with the SCN there were two columns. In one column, differential duty was calculated taking the price at which the appellant had sold the parts as assessable value at the rate by classifying the goods under chapter heading 84.83. He submits that the appellants had calculated duty on the value taken by them and duty even under Chapter Heading 84.06 which they paid was higher than the one on which they had taken credit. He submits that the appellant had paid higher duty which should be adjusted against the demand on the goods manufactured by them whereas in the second column, differential duty has been computed on the bought out items. Ld. Consultant therefore, submitted that since on bought out items duty was paid by the appellants, therefore, they were required to reverse only that amount for which they had taken credit. In regard to differential duty items manufactured by the appellant, ld. Consultant submitted that entire demand of duty is barred by limitation and therefore, the duty cannot be demanded. Ld. Consultant also submitted that this duty should be adjusted against the higher amount of duty paid on bought out items. In view of the above submissions, the appeal may be allowed, he submitted.

8. Ld. DR submits that the appellant had been manufacturing parts of items. He submits that some parts they were manufacturing and some parts they were purchasing from the market. He submits that there was a dispute about classification in regard to the parts manufactured by the appellant. He submits that classification list in which this dispute was resolved by the Department pertained to the period from 13-10-1992; that in respect of this classification list the items were classified under Chapter Heading 84.83. He, therefore, submits that atleast for the period from 13-10-1992 to March '93, the demand should be confirmed, as no limitation shall apply.

9. Ld. DR submits that in so far as the demand on bought out items is concerned, the appellants were selling them at the very high price and therefore, the appellants were liable to pay duty on the enhanced price.

10. In regard to penalty ld. DR submits that looking to the value of the goods as also the duty involved on items, and the fact that their spare parts are classifiable under Chapter Heading 84.83 they continued to pay duty on the spare parts under Chapter Heading 84.06, the penalty was justi fied and was nominal.

11. We have heard the rival submissions. The first issue that arises for determination before us is whether spare parts for turbines were classify able under Chapter Heading 84.83 or 84.06. We note that the appellants have been receiving spare parts manufactured by others were being classified under Chapter Heading 84.83 whereas for the spare parts manufactured by the appellant there was a claim for their classification under chapter heading 84.06. We further note that there was a classification list filed by the appellants which was approved by the Department for period from 13-10-1992 to March '93. There was no appeal filed against this classification approval and thus, the classification list of the items became final since there was no appeal. Therefore, demand of differential duty on parts manufactured by the appellant computed on classifying them under Chapter Heading 84.83 on items for the period from 13-10-1992 to March '93 is sustainable in law. It is not covered by the limitation aspect in-as-much as the classification list was approved w.e.f. 13-10-1992 which has not been appealed against.

12. In so far as the demand on bought out items is concerned, wenote that the appellants had been purchasing the bought out items. They were not manufacturing these items. At the time of clearance higher duty has been paid on the items as against the amount of credit taken on inputs and therefore, no further duty can be collected. In so far as adjustment of higher duty paid on bought out items and its adjustment against higher amount of differential duty demanded is concerned we note that this adjustment is not permissible as two sets are entirely different. In the circumstances; we hold that the demand of differential duty on bought out items is not sustainable in law; the same is, therefore, set aside.

13. In so far as the penalty is concerned, we hold that in spite of the fact that the appellants were told that the goods are classifiable under Chap ter Heading 84.83 they continued to be classified by them under Chapter Heading 84.06 and thus, they evaded duty, therefore, we hold that penalty is imposable. However, looking

to the amount of differential duty that will be finally payable, we reduce the penalty to Rs. 25,000/-.

14. We note that the question of limitation no longer survives in the present case and therefore, the limitation aspect is not being discussed.

15. We further note that since we have held that demand on manu factured items is sustainable for the period 13-10-1992 to March '93 and which has not been calculated separately, we, therefore, direct that the demand on items should be recalculated by the appellants for this period. In pursuance of the above directions, the appeal is disposed of.