

M/S. Treasure Tech Electronics Vs. C.C.E, Delhi - I

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-31-2001

Appellant : M/S. Treasure Tech Electronics

Respondent : C.C.E, Delhi - I

Judgement :

1. The appellants manufacture PCBs falling under Sub-heading 8534.00.

They were converted into 100% EOU vide Department of Electronics, EHTP Secretariat letter dt. 16.12.97. They were accordingly permitted to manufacture the goods under bond and were also permitted to make advance DTA sales upto Rs. 50 lakhs from August, 1998. For the period from August, 1998 and part of November, 1999, they cleared goods to the DTA and paid duty as per Notfn. No.2/95-CE dt. 4.1.95. The Classification List filed by them however did not indicate that they would be availing exemption under this notification for the DTA clearances. On assessment of the Rt 12 returns filed by them for this period, it was pointed out to them that their clearances in the DTA had substantially exceeded the permissible limit of Rs. 50 lakhs accorded to them. Consequently, they got their EHTP unit debonded under EOU to zero duty EPCG Scheme by the Director, Software Technology Park of India vide his letter dt. 26.11.99 and their export obligation was increased by an amount of Rs.13.22 crores.

2. They were issued a show cause notice dt. 9.5.2000 by the Commissioner of Central Excise, Delhi-I alleging that benefit of exemption under Notfn. No. 2/95-CE dt. 4.1.95 as amended is not available to the goods sold in India to the appellants

as the same is available only on the condition that the unit should have achieved some minimum value addition or net foreign exchange earning as a percentage of export and since in their case there was only a negative value addition or net foreign exchange earning as a percentage of Export. It is further alleged in this notice that the party did not observe the conditions of the notification and furnished wrong details in their classification declaration. Hence, they were called upon to show cause why Central Excise duty of Rs.1,11,57,271/- should not be demanded from them under the proviso to Section 11A(1) of the Central Excise Act, 1944 and why penalty should not be imposed on them under Section 11AC read with Rule 173Q of the Central Excise Rules, 1944. Further, the interest under Section 11AB has also been demanded in this notice.

3. On consideration of the reply of the party, the Commissioner of Central Excise, Delhi-I vide his Order dt. 21.1.2001 confirmed the above amount of duty on the appellants apart from imposing a penalty of an equivalent amount. He also held that the appellants were liable to pay interest on this amount.

4. The party has filed an appeal and a Stay Petition against the above order of the Commissioner. Their Stay Petition is under consideration.

We have heard Shri V. Lakshmikumaran, Advocate for the appellants and Shri Prabhat Kumar, SDR for the Revenue. The Id. Counsel for the appellants does not dispute that his clients are not eligible to avail exemption under Notfn. No. 2/95-CE, for their DTA sales but he would like to assert that they have already paid the Central Excise duty equivalent to the 50% of the duties of customs leviable on these goods if imported into India in terms of the provisions of the notification and since the duty of excise on these goods (it is stated that the excise duty applicable to the goods is only 16%) under Section 3 of the Act, in any case be less than the amount already paid, no further duty is liable to be paid. In this regard, the Id. Advocate for the appellants relied on the decision of the Hon'ble Supreme Court in *SIV Industries Ltd. vs. CCE - 2000 (117) ELT 281 (S.C)*, and the decision of the Tribunal in *Kuntal Granites (P) Ltd. vs. CCE - 2001 (43) RLT 829 (T-Bom.)*. Shri Prabhat Kumar, SDR appearing for the Revenue on the other hand would like to contend that the differential excise duty liable to be realised from the appellants is

equivalent to the 100% of each of the duties of customs leviable on such goods, if imported into India minus the duty already paid.

5. We have considered the submissions made by both the sides. It is observed that the appellants have not filed the copies of the Annexures to the show cause notice in their Paper Book. Therefore, we are not able to know on what basis the differential duty amount demanded from the appellants has been worked out. The duty amount, as such, is not in challenge before us. We however, do know a simple logic, that if any assessee is held to be not eligible for exemption under a particular notification which he thencetofore had been availing he will definitely be liable to pay some amount of differential duty. He cannot be held arguing that the duty already paid in terms of the provisions of the exemption notification is more than the liability accruing without its benefit. Such contention does not stand to reason. The decision of the Tribunal in Kuntal Granites (P) Ltd. (supra) has to be weighed in the light of this logic. We have also carefully perused the judgement of the Hon'ble Supreme Court in the case of SIV Industries cited before us and prima facie the ratio of this decision does not appear to us to be applicable to the facts of the present case. Therefore, in our view, the appellants have not made out a prima facie case in their favour.

There is no plea of time bar of demand before us. It is contended that the appellants have suffered a loss of more than Rs.6 crores as per their balance sheet as on 31.3.2001. It is however observed that their turn over for this period is more than Rs.8 crores and they have incurred an expenditure of Rupees over Rs. 14 crores. Based on these facts, we are of the view that no undue hardship will be caused to the appellants and the interest of the revenue will also be adequately safe guarded, if they are asked to make a pre-deposit of Rs. 30 lakhs (Rs. thirty lakhs) as part of the duty confirmed on them within two months from the date of receipt of this order and we direct them accordingly.

On making such deposit, the deposit of the balance of the amount of duty and penalty shall stand waived and its recovery stayed till the disposal of the appeal.

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