

Tata Construction and Projects Vs. Commissioner of C. Ex., Jaipur

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-12-2002

Reported in : (2002)(141)ELT468TriDel

Judge : B T K.K., K Kumar

Appellant : Tata Construction and Projects

Respondent : Commissioner of C. Ex., Jaipur

Judgement :

1. In the show cause notice dated 13-10-95 issued by the Commissioner of Central Excise, Jaipur to M/s. Tata Construction & Projects Ltd. (formerly Tata Davy Limited) (hereinafter called as M/s. TDL) it is alleged that they were awarded two contracts for Zinc Refining Plant and Sinter & Gas cleaning plant by M/s. Hindustan Zinc Ltd. (hereinafter called as M/s. HZL), Udaipur. It is also alleged that M/s.

TDL manufactured/got manufactured on their behalf at Chanderiya site various excisable goods, that from the documents seized from the premises of M/s. HZL at Udaipur and Chanderiya, Dist. Chittorgarh, it was revealed that M/s. TDL manufactured or got manufactured on their behalf various excisable goods which they knew were liable to excise duty. It is alleged that M/s. TDL through suppression of facts and fraudulent manipulation of their documents relating to the contract with an intent to evade duty had contravened the Central Excise Rules and evaded Central Excise duty amounting to Rs. 1,00,97,626.00.

Therefore, M/s. TDL were called upon to show cause why the Central Excise duty of this amount should not be demanded from them under Section 11A of the Central Excise Act, 1944 read with Rule 9(2) of the Central Excise Rules and why a penalty should not be imposed on them under Rule 173Q. M/s. HZL were called upon to show cause in the same notice why a penalty should not be imposed on them under Rule 209A. They were also called upon to show cause why the goods manufactured by M/s. TDL at their site should not be confiscated under Rule 173Q.2. On considering the detailed replies of the noticee parties, the Commissioner of Central Excise, Jaipur-II passed an Order-in-Original dated 22/23-1-98 in which he confirmed a demand of Rs. 1,00,97,626.00 on M/s. TDL and a penalty of Rs. 50 lakhs on them. He further ordered for confiscation of the goods manufactured by them but however gave an option to redeem the same on payment of a fine of Rs. 50,000/-. The proceedings initiated against M/s. HZL were however, ordered to be dropped.

3. M/s. TDL filed an appeal against the above order and the Tribunal vide its Final Order dated 15-7-98 set aside the order of Commissioner and remanded the matter to him with the following observations/directions : "We have perused the records of the case and have considered the submissions made by both the sides. We find that the order does not examine the liability of each of the items in question to Central Excise duty, their correct classification and the rate of duty applicable (Shri Vellapally submits that if the goods are classified, as they should be, under Tariff Item 73, they would be eligible for total exemption and there would be no liability to duty).

We feel that this is a case which is required to be remanded in view of the infirmities pointed out above. Accordingly, we dispose of the appeal itself. The impugned order is set aside and the case is remanded for a fresh decision by the Adjudicating Authority. The stay application also stands disposed of in the above terms".

4. In pursuance of the above order of the Tribunal, the Commissioner of Central Excise, Jaipur has passed Order-in-Original dated 30-3-99 in which he has again confirmed the same amount of duty, penalty and fine on M/s. TDL. This order is

impugned in the present appeal. We have heard Shri J. Vellapally, Sr. Advocate for the appellants and Shri M.P. Singh, JDR for the respondents. On careful consideration of the submissions made by both the sides and perusal of the order impugned before us, we find that this suffers from the same infirmities on account of which the matter was remanded to the Commissioner for reconsideration by the CEGAT. The Commissioner in his order has reproduced the same findings verbatim as arrived at in his earlier order which had been set aside, completely losing sight of the fact that since the findings arrived at earlier were found inadequate and deficient that is why the same were set aside and the matter remanded to him for passing a fresh order. The direction of the Tribunal for examining the liability in respect of each of the items in question to Central Excise duty, their correct classification and the rate of duty have been complied with as follows by the Commissioner in his order : "In view of their own submissions and the Section Notes, these parts are classifiable under the heading in which that particular plant/machine falls. That being so these goods are correctly classifiable as under : S. No. of the items as per Annexure attached with M/s. TDL's letter dated 6-5-91 5. The items at the Sl. Nos. in Annexure-I & II referred to in the above table, are mostly represented by their code Nos. without giving any description and without description it is not possible to know as to what they are and what do they represent. With such scanty information, it is difficult to comprehend as to how and why have they been classified under the Headings 8474.00, 8421.00 and 8419.00 and not under Chapter 73 in the Central Excise Tariff. The Commissioner in his order has also not recorded any reasons as to why none of the items on which the duty has been confirmed, have been considered eligible for the exemption under Notfn. No. 61/90-C.E., dated 20-3-90 as claimed by the appellants.

6. In view of the above findings, therefore, we are of the view that the impugned order is non-speaking and it is passed in clear violation of the direction of the remand order dated 15-7-1998 of the Tribunal.

The impugned order is therefore set aside and the matter is remanded again to the Commissioner for passing a de-novo speaking order as per the direction of the Tribunal and in accordance with law. The appellants shall be afforded a

reasonable opportunity of hearing before taking a final view in the matter.

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