

S.T. Forgings Vs. Commissioner of Central Excise,

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-21-2002

Reported in : (2002)(82)ECC313

Judge : K Usha, B T K.K.

Appellant : S.T. Forgings

Respondent : Commissioner of Central Excise,

Judgement :

1. The appellants have three factories viz., at (a) 407-A, Barwala, Delhi, (b) at 87/1, VIII, Barwala, Delhi and (c) at 470-A, Railway Station Road, Azadpur, Delhi. Their factory premises at sl. (a) were visited by the Officers of the Central Excise Commissioner-ate, Delhi-I on 5-12-97 and it was found that they were manufacturing for-gings for valves of L.P.G. gas stove. On stock taking of the goods in their factory premises, it was found that they were having components of valves for LPG gas stoves and semi-finished forgings of valves and stock for forging flash. Since the party did not possess any Central Excise Registration, these goods were seized and handed over to Shri Naresh Kumar Dabas, brother of the proprietor of the party for safe custody. Their factory premises at sl. (b) above were also visited on the same day and it was found that they were engaged in the manufacture of brass rods by casting and drawing of cast rods. Some finished and semi-finished brass rods were also seized and handed over to Shri Naresh Kumar Dabas. The Central Excise authorities took out some computer print outs on 12-1-98 from the computer of Shri Suresh Kumar Dabas, Proprietor

at the factory premises at Azadpur, Delhi. These computer print outs contained the particulars of the LPG gas stove valves and forgings manufactured and despatched by the party to different buyers during the year 1996-97 and 1997-98. Based on these details, the appellants were issued a show cause notice dt. 15-3-99 by the Addl. Commissioner of Central Excise, Delhi-I, in which, it was alleged that during the year 1996-97, they had cleared the excisable goods viz., forging sets and valves totally amounting to Rs. 1,26,81,339/-. Similarly, during the year 1997-98, they had cleared these excisable goods amounting to Rs. 73,90,983/-. It was averred in the show cause notice that after allowing them the exemption of Rs. 30 lakhs under Notification No. 1 /93-C.E., dated 28-2-93, for each of these years they were liable to pay a duty amounting to Rs. 11,27,200/- for the clearances effected by them during the year 1996-97 and a duty of Rs. 1,79,549/- for the year 1997-98. It was alleged in the show cause notice that the excisable goods of value of Rs. 1,26,81,339/- were cleared by them in 1996-97 without the cover of any invoice, without accounting for in the statutory records and without paying any central excise duty. Similarly, during the year 1997-98, they had cleared the goods valued at Rs. 73,90,983/- without payment of any duty. They were therefore called upon to show cause why the central excise duty amounting to Rs. 13,06,749/- (out of this, an amount of Rs. 13 lakhs had already been deposited by the party on 5-3-98), should not be demanded and confirmed on them under Rule 9(2) of Central Excise Rules, 1944 read with the proviso to Section 11A of Central Excise Act, 1944 for both of these years. They are further called upon to show cause why a penalty should not be imposed on them under Section 11AC and under Rules 9(2), 173Q or 226. Shri Suresh Kumar Dabas, Proprietor of the firms was called upon to show cause why a penalty should not be imposed on him under Rule 173Q.2. On considering the reply of the party, the Addl. Commissioner of Central Excise, Delhi-I vide his Order dated 31-12-99 confirmed the Central Excise duty of Rs. 13,06,749/- on the appellants and ordered for the adjustment of Rs. 13 lakhs already paid by the party against this confirmed demand. The Addl. Commissioner further imposed a penalty of an equal amount on the party under Section 11AC read with Rule 173Q. The other no-ticee - Shri Suresh Kumar Dabas is not subject to any penalty.

3. The party filed an appeal. The Commissioner (Appeals), New Delhi in Order dated 29-12-2000 observed that the forging sets were cleared by the appellants to the independent buyers @ Rs. 12.50 per set; that the value of Rs. 17/- per set as indicated in the challans sent to the job workers, cannot be taken as the assessable value for the purpose of Section 4(l)(a) and directed that the value of the forging sets should be taken as Rs. 12.50 per set for the purpose of calculating the assessable value of the goods. The Commissioner (Appeals) also directed that the value to be realised should be taken as cum-duty price as held by the CEGAT in a number of decisions and the demand of duty should be reworked out. The Commissioner (Appeals) further observed that the mandatory penalty of Rs. 13,06,749/- imposed on the appellants under Section 11 AC by the original authority would also merit to be requantified taking into account the reduced amount of duty liable to be recovered from the appellants as a result of her direction for reworking out the duty amount. She accordingly directed that the penalty imposed on the appellants should also be revised.

4. This appeal is against the impugned order of the Commissioner (Appeals). We have heard Shri J.P. Kaushik, Advocate for the appellants and Shri MM. Dubey, JDR for the respondents. The Id. Counsel for the appellants very fairly submitted that he is not questioning the facts as mentioned in the show cause notice and those taken into consideration for the demand of duty and imposition of penalty on them in the Order-in-Original. He however states that as per the Table annexed to the show cause notice, a total value of Rs. 1,26,81,339/- is computed for the demand of duty of Rs. 11,27,200/- in respect of goods cleared by them during the year 1996-97. The Id. Counsel submits that out of this, an amount of Rs. 1,07,64,723/- relates to the value of the forging sets manufactured and cleared by them to their five job workers - the details of which are given in Annexure-XIA to the show cause notice. The Id. Counsel contends that the goods cleared by the small scale manufacturers (entitled to the exemption under Notfn. No.1/93-C.E., dated 28-2-93) to their job workers are exempted from payment of duty under Notfn. No. 84/94-C.E., dated 11-4-94 at the material time. It is therefore contended that if the amount of Rs. 1,07,64,723/- is abated from the total amount of Rs. 1,26,81,339/- taken into consideration for the year 1996-97, their clearance value for this year will be reduced to Rs. 19,16,616/- and this amount is much less than

Rs. 30 lakhs entitled to complete exemption under Notfn. No.1/93-C.E. - the relief of which the departmental authorities have already agreed to allow to them. Accordingly, it is contended that for the year 1996-97, they would not be liable to pay any duty. For the year 1997-98, however, the Id. Counsel does not dispute their duty liability of Rs. 1,79,549/- as confirmed in the Order-in-Original. The Id. Counsel for the appellants also pleads that in terms of the amended provisions of Section 11AC brought into force with effect from 12-5-2000; a mandatory penalty equal to the duty is to be reduced to 25% of the duty, if the duty is paid within 30 days from the date of communication of the order determining such duty and these provisions are applicable even to the cases in which the order determining the duty relates to the notices issued prior to the date of this amendment and the duty is paid prior to the date of the communication of the order. It is argued that in the present case, the appellants paid an amount of Rs. 13 lakhs as duty on 5-3-98 which is prior even to the date of show cause notice i.e., 15-3-99. Therefore, the penalty amount liable to be imposed on them is only 25% of the duty amount to be reworked out and confirmed on them as directed in the remand order of the Commissioner (Appeals) and on allowing them the benefit of exemption under Notfn. No. 84/94-C.E., dated 11-4-94.

5. Shri MM. Dubey, JDR for the respondents/Re venue however argues that the grounds now being advanced by the Id. Counsel for the appellants for claiming the exemption under Notfn. No. 84/94-C.E. and for the relief on penalty amount under amended provisions of Section 11AC were never raised either before the original authority or before Commissioner (Appeals). He therefore opposes the consideration of these grounds. In any case, the Id. JDR contends that Notfn. No. 84/94-C.E. is a conditional notification in terms of which the exemption to the specified goods is permissible to the manufacturers entitled to the benefit of the Notfn. No. 1/93-C.E. subject to certain conditions which the appellants never complied with and therefore, there is no question of allowing the relief under this notification. We have considered these submission. The conditions subject to which the relief, under Notfn. No. 84/94-C.E. is available are that the suppliers of the raw materials or semi-finished goods gives an undertaking to the proper officer of the supplier - "(a) that the specified goods on return shall be used in the factory of the said supplier in or in relation to the manufacture of specified goods which

are exempted from the whole or part of the duty of excise leviable thereon under the aforesaid notification; and (b) that in the event of his failure to do so, he undertakes to pay excise duty, if any, payable on such goods, but for the exemption contained in this notification".

Admittedly, in this case, the appellants during the year 1996-97 supplied the semi-finished goods viz., forging sets of the value of Rs. 1,07,64,723/- to their five job workers. This amount is taken into consideration while computing the total turnover value of Rs. 1,26,81,339/- in respect of which the duty is demanded from the appellants after allowing them an exemption of Rs. 30 lakhs under Exemption Notfn. No. 1/93-C.E., dt. 28-2-93. The Id. Counsel for the appellants in support of his contention for availing the concession under Notfn. No. 84/94-C.E. is relying on the following decisions : (a) Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner - 1991 (55) E.L.T. 437 (S.C.), Facit Asia Limited v. Collector of Central Excise, Coimbatore - 1994 (3) RLT 325 (CEGAT-SRB) and (c) Bombay Silk Mills Ltd. v. Commissioner of Customs, Mumbai - 1997 (93) E.L.T. 735 (T) = 1997 (20) RLT 996 (CEGAT-WZB).

6. In the above decisions, it is argued - that it is held that the substantive right for exemption cannot be denied on the grounds of not following the procedural requirements. In the present appeals, the appellants are raising only two contentions viz., they should be given the benefit of exemption Notfn. No. 84/94-C.E., dated 11-4-94 in respect of the goods cleared to their job workers and the penalty imposed on them should be regulated by the amended provisions of Section 11AC of the Central Excise Act, 1944 brought into force with effect from 12-5-2000. These contentions were not raised by the appellants either before the original authority or before the lower appellate authority. We therefore consider it just and proper that these submissions are considered by the original authority and his findings recorded. The matter is already remanded to the original authority by the Commissioner (Appeals). We therefore direct him to consider these submissions also in addition to the directions already given by Commissioner (Appeals) in her remand order and record his findings on affording a reasonable opportunity of hearing to the appellants.

7. The appeal is thus allowed by way of remand in the above terms. The miscellaneous petition filed by the appellants is also disposed of in the same terms.

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