Mico Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Apr-04-2002

Reported in : (2002)(82)ECC97

Judge : G B Deva

Appellant : Mico

Respondent : Commissioner of Central Excise

Advocate for Pet/Ap. : Shri. Rajesh Chandra Kumar

Judgement :

1. Shri Rajesh Chandra Kumar appearing for the appellants submitted that he was instructed by the appellants to challenge only the question of time bar issue. In this context he referred to the reply given by the party to the Show Cause Notice. Particularly he drew my attention to the relevant portion of the reply which is as under: At the outset, the demand has been made for a period of five and half years which is not supported by any of the provision of Central Excise Rules or Act. The Show Cause Notice deserves to be set aside mainly on this ground. However, we wish to inform you that the entire demand is hit by time bar in as much as there is no willful suppression as alleged in the Show Cause Notice. To invoke extended period under Section 11(A), something positive other than mere inaction or failure on the part of the manufacturer or deliberate withholding of information is required to be established. Where the department had full knowl-edge about the facts and the manufacturer's action or inaction is based on their belief that they were

required or not required to carry out such action or inaction, the period beyond 6 months cannot be made applicable. The said legal principles has been laid down by Apex Court in the case of Collector of Central Excise, Hyderabad v. Chemphar Drugs and Liniments . Further, in the case of Collector v. Modicat extended period of 5 years is not invocable by the department on the plea that assessee was aware of the mistake, hence his failure to bring the mistake to the notice of department amounts to suppression of facts. In our case, right from the beginning we were sending Aluminiuiti ingots for conversion and the processed material was received back by us in the ratio of 1 : 1. The same practice was inadvertently continued till July '90. Further, realizing the mistake the procedure was changed in July '90 and we started getting the aluminium castings with additional material like Copper, Silicon etc. In this connection, we wish to bring to your kind notice that, what was actually received back from job workers was posted in our 57 F2 register which was periodically verified by Range Officers, Internal Audit Group and CERA Party. The department cannot disown such knowledge on the plea that the input and processed goods ratio was not declared to the department.

2. He said that the issue of time bar has been taken up by the party before the adjudicating authority also and the same was not properly appreciated as can be seen from the impugned Order. The adjudicating authority rejected the time bar issue on the ground that Shri Elango, Asst. Manager (Excise & Customs) of the Appellant Company has admitted that the entry made is wrong and that the quantity received back should be more to the extent of material added by the job worker. He said that in view of the agreement between the party and the Job worker, the party was to receive 1 : 1 ratio. This was the practice for 14 to 15 years and this ratio was also known to the department. He said that in the instant case, the quantity sent for job work has been indicated as 9,520 Kg and the quantity received back is also shown as 9,520 Kg.

3. Shri Narasimha Murthy arguing for the Revenue submitted that the job worker has added some portion of alloy in conversion and accordingly party was to receive more than the quantity what he has sent for job work. In the instant case, the statement given by the job workers clearly indicated that they have added alloy and they have sent more quantity than what they have received on conversion. In

view of this, the adjudicating authority was right in arriving at the conclusion that addition was not disclosed to the Department and accordingly it a clear case of suppression of facts. He justified the action of the department on the plea of time bar and accordingly he said that show-cause notice was issued within the time. He also said that the period relates to February 90 to July 90 and the Show-cause notice was issued on 2.3.95.

4. I have carefully considered the submissions made by both sides. On perusal of the records, I find that the Commissioner has determined the duty based upon the statements given by the job workers. As can be seen from the records nothing has been indicated whether the adjudicating authority has taken note of the statutory records maintained by the Job workers in arriving at the conclusion that what they have sent back is more than what they have received. It is true that they might have added some portion of alloy in converting the material in question. To what extent they have added and what is the loss is not clear, from the records. In view of this position I have to give the benefit of doubt to the assessee and considering the facts and circumstances and in view of the case law referred to by the appellant's counsel, I accept the plea of the counsel that demand is barred by time. Accordingly appeal is allowed with consequential relief, if any.