

Cce Vs. Genus Overseas Electronics Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-10-2003

Reported in : (2002)LC153Tri(Delhi)

Judge : Author: C Nair

Appellant : Cce

Respondent : Genus Overseas Electronics Ltd.

Judgement :

1. The issue raised in this reference is as to what constitutes "payment" of Central Excise Duty by an assessee, i.e., whether the deposit of Cheque towards payment of duty in the authorized Bank satisfies the requirement or whether the requirement is satisfied only when the Cheque is cleared and the amount deposited to the Government Account. Provisions of Rule 8, 49 and 173 G of Central Excise Rules 1944 have been referred to in this case.

2. Rule 8 of Central Excise Rules which relates to "manner of payment on duty" requires that duty on goods removed from the factory or warehouse during the first fortnight of the month shall be paid by 20th of that month and the duty on the goods removed from the factory or the warehouse during a month shall be paid by the 5th day of the following month. In the context of this requirement, dispute arose as to whether deposit of Cheque by the dates indicated in the Rule was sufficient or whether the Cheques so deposited should have been cleared and credited to the Government Account. The Adjudicating authority took the view that

only upon clearance of the Cheque it could be held that payment of duty had been made by an assessee. The Commissioner (Appeal) took the contrary view and held that deposit of the Cheque satisfied the requirement. When the matter came up in appeal by the Revenue before a Division Bench of this Tribunal, it was contended that in view of the provisions of Central Government Account (Receipt and payments) Rules, 1983, in particular Rule 20, only upon clearance of the Cheque, the requirement would be met. The Division Bench referred the matter to the Larger Bench since the earlier decision of this Tribunal in the case of Hemnil Metal Processors Pvt. Ltd. v. CCE, Pune reported in 2002 (143) ELT 679 had been rendered without taking into account the provisions of Central Government Account (Receipt and Payments) Rule, 1983.

3. We have heard Shri Rajeev Tandon, Learned SDR and Shri B.L.

Narasimhan, learned Advocate in the matter and perused the records. The submission on behalf of the Government is based on the Provisions of Rule 20 of Central Government Account (Receipt and Payments) Rule, 1983. This Rule reads as under:- "Rule 20: Date of receipt of Government revenues, dues, etc.

Government dues tendered in the form of a cheque or draft which is accepted under the provisions of Rule 19 and is honoured on presentation, shall be deemed to have been paid- (i) where the cheque or draft is tendered to the bank, on the date on which it was cleared and entered in the receipt scroll; (ii) where a cheque or draft is tendered to departmental officer (in cases where such tendering is permissible or required under relevant departmental provisions) on the third working day after its presentation; (iii) if it is sent by post in pursuance of instructions to make payment by post, on the date on which the cover containing it is put into the post; Based on the above Rule, the learned SDR submitted that Government dues tendered in the form of a Cheque or Draft shall be deemed to have been paid on the date on which it was cleared and entered in the receipt Account. As against this learned Counsel for the assessee has pointed out that the requirement under Rule 8 of Central Excise Rules was distinct from the requirement under the Central Government Account (Receipt and Payments) Rules, 1983. He pointed out that Rule 8 of Central Excise Rules related to manner

of payment of Central Excise Duties. The learned Counsel pointed out that this very issue was the subject matter of a decision by the High Court of Andhra Pradesh in the case of Sanghi Polyester Ltd. v. CCE reported in 2001 (134) ELT 344 (AP) and the High Court had held that the date of receipt of Cheque should be treated as the date of payment and not the actual day on which the Cheque is realized. This learned Counsel also referred to the decision of the Apex Court in the case of K. Saraswathy v. P.S.S. somasundaram Chettiar and Commissioner Income Tax, Bombay South v. M/s. OGALE Glass Works Ltd. The learned Counsel submitted that since the order of the Commissioner (Appeals) was passed following these decisions there is no occasion to question the correctness of that decision.

4. A perusal of the aforesaid decision of the Andhra Pradesh High Court in the case of Sanghi Polyester shows that, that decision was rendered with specific reference to Rule 173 G of the Central Excise Rules. The present reference is also in regard to the same Rules. After taking note of its earlier decisions rendered in the context of Provisions of Income Tax Act, the Hon'ble High Court held that date of receipt of the Cheque should be treated as date of payment of duty and not the date of realization of the amount. Apex Court has approved the view that date of payment would be the date of receipt of the Cheque in of K.Saraswathy v. P.S.S. Somasundaram Chettlar and Commissioner Income Tax, Bombay South v. M/s. OGALE Glass Works Ltd. It is also noticed that Central Excise Manual has clarified that "if any of the Cheques sent by the assessee are dishonoured, the Commissioners shall take appropriate penal action as prescribed under the Rules." Further it is also noticed that with regard to payment of service tax the following clarifications have been issued.

6 Payment by cheque - Delay in encashment beyond due date - No interest/penalty chargeable, - (i) The Rule 7 of the Central Government Account (Receipts and Payments) Rules, 1983 inter alia provides that Government dues including taxes can be credited by the taxpayers directly into any branch of an authorised Bank. As per Rule 79 of the Treasury Rules of the Central Government, such payments/credits can be made by cheques also. Accordingly, a large number of tax payers including the Service tax assesseees discharge their tax liabilities by

depositing a cheque for the required amount in the authorized Banks.

(ii) As per Rule 6(1) of the Service Tax Rules, 1994 read with Section 68(1) of the Finance Act, 1994, an assessee is required to pay Service Tax on monthly/quarterly basis by 25th of the succeeding month. In the event of failure to pay tax by the due date, the assessee is liable to pay interest as well as penalty in terms of Section 75 and 76, *ibid*, respectively.

(iii) It is observed that in many cases, the assesseees pay the tax due by cheque on the last date or very close to such date. In such cases, many a times, the cheque is encashed and credited to the Government's account after the due date. Hitherto, in such cases also, the department has been levying interest and penalty. This practice has developed presumably because the Rule 79(1)(a) of the Treasury Rules *inter alia* states that "....., until the cheque is cleared, the Government cannot admit that payment has been received;" (iv) A number of representations have been received in this Directorate stating that recovery of interest and imposition of penalty in the cases where cheques have been deposited before due date and the amount is credited to the Government account in due course, but after the due date, is no fair since the assessee has no control over the time taken by the Bankers of the Government in clearing the cheque.

(vi) It is observed that the identical issue had arisen in case of payment of Inland Air Travel Tax (IATT) by Sahara Airlines Ltd. The concerned authorities had imposed penalty and ordered recovery of the interest from the party since the cheques deposited by them towards payment of IATT were credited to the Government after the due date. The matter has now been decided in second appeal by the Government of India [Sahara Airlines Ltd. v. Commr. of Customs (Appeals) -2000(117) E.L.T. 802 (GOI) = (2000) 110 TAXMAN 378 (GOI)]. The Government has held that a harmonious reading of the provisions of Rule 7 of the Central Government Account (Receipts and Payment) Rules and Rules 79 & 80 of the Treasury Rules, makes it clear that the Government dues can be presented in the form of cheque into the authorized Bank. And if the cheque is not dishonored later, the payment shall be deemed to have been made on the date when the cheque was handed over to the Government's bankers.

Accordingly, the Government set aside the imposition of penalty/interest etc. in the said case.

(vii) The ratio of above cited decision of the Government would apply mutatis mutandis to the payment of service tax also.

Therefore, it is clarified that in the cases where the service tax amount has been deposited by an assessee in the authorized Bank, by cheque, before the due date and such cheque is not dishonored later, the Department need not initiate proceedings for recovery of interest/penalty etc. However, if the cheque is not honored in due course or the clearance is abnormally delayed for any lapse on the part of the assesseees, the Department would be free to take penal action etc., as deemed fit 1.

[Based on Directorate of Service Tax, Mumbai, F. No. V/DGST/30-Misc- 46/2000, dated 23-8-2000 with suitable modification for amendments effected from 16-72001.] 5. It is clear from the aforesaid clarifications of the Government as well as judgments of the Apex Court and the Hon'ble Andhra Pradesh High Court that the deposit of a Cheque, which is not dishonoured, satisfies the requirement for "payment" of duty. The reference is answered accordingly. Further, we confirm the impugned order of the Commissioner (Appeals), which is in conformity with the above view.

7. In the light of our above findings, the appeal of the revenue fails and stands dismissed.

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