

The Executive Engineer, Vs. Commissioner, Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-24-2003

Reported in : (2003)(162)ELT569Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : The Executive Engineer,

Respondent : Commissioner, Central Excise

Judgement :

1. These two appeals namely Appeal Nos. E/3792/2001 & E/3270/2002 have been filed by the Irrigation Department, State of Maharashtra and the Department. This two appeals have been filed by both parties against an Order-in-Original No. 25/CEX/2001 dated 5.10.2001 passed by the Commissioner of Central Excise, Pune-I in and by which he has confirmed the duty to be paid by the Irrigation Department Gate Manufacturing Division A, Gate Manufacturing Division B, Sluice Gates Manufacturing Division, Hoist Design and Manufacturing Division, Mechanical Works Engineering, Workshop division Pune. The order also imposed a penalty of Rs. 50 lacs on the assessee. Appeal No. 3792/01 has been filed against the said order only by the assessee and Appeal No. 3270/02 has been filed by the department for enhancement of penalty.

2. On 26.4.01 a show cause notice was issued to the assessee appellant (appellant in Appeal No. 3792/01) alleged non-payment of duty on various items that has been manufactured and cleared during the period between April, 1996 to

June, 2000. It also proposed to recover under the provisions of Section 11A of Central Excise Act sum of Rs. 54,36,500/- that, it was claimed, had been received by the appellant as sums representing excise duty, but had not been credited to the Government of India. The notice alleged, as a basis for invoking the extending period of limitation contained in the proviso of under Sub-section (1) to Section 11A of the Act for suppression of production and clearance of the goods with intend to evade duty. In reply, the appellant contended that if the goods had been supplied to any department of the Government of Maharashtra benefit of the exemption contained in Notification No. 74/93 would be available. From 1996 onwards, various statutory corporations had been created which were to perform functions relating to irrigation projects etc. which had also been functioned by the Government of Maharashtra and there was a lack of clarity as to whether the benefit of exemption would be available to the goods supplied to such corporations. The Commissioner being the adjudicating authority did not accept these contentions. He found that the duty was payable and the appellant was liable to penalty. He refrained from ordering confiscation proposed in the notice on the ground that the appellant was a department of the State Government.

3. The learned counsel Mr.s Kalyanaraman for the assessee raised the contention that the exemption contained in the notification would be applicable to goods supplied by the assessee to such statutory corporations as Maharashtra Kirshna Valley Corporation. Tapi Valley Corporation, Godawari Development Corporation and Irrigation Department of Kokan Region. She claims that these corporations were set up under Acts passed by the legislature of Maharashtra. Following are the Acts: 2. Maharashtra Tapi Irrigation Development Corporation under Act IV of 1997 and 1998.

It may be no doubt true, that these corporations were set up in order to undertake works, which had earlier been undertaken by the State Government. This is what she claims. She further urged before us that exemption notification specifically states that these corporations were extended arms of the Government of Maharashtra and under take the activities which would have been ordinarily under taken by the State Government. She further states that the corporations are fully controlled by the State of Maharashtra and there is no external control except that

of State of Maharashtra. It is therefore stated by her as is confirmed in her written submission that the goods sold by the mechanical organisation of the State of Maharashtra to these corporations cannot be construed to be sale to private parties. Her note further emphasises the fact that the goods were manufacture by the State Government are intended for use and in act used by the State Government through the aforesaid corporations. Therefore it is emphasised that this could be only construed as used by the department of the Government of Maharashtra and therefore the corporation ought to be able to avail the exemption under Notification No. 74/93. As far as the department is concern there has been failure on the part of the adjudicating authority in not fixing the amount of penalty but at the lesser amount.

4. We have considered the rival submissions in the show cause notice dated 26.4.01 annexure to the same states in paragraph 3 and 4 as follows: "3. As per Notification no. 74/93 dtd. 28.2.93, specified goods are exempted from whole of central excise duty provided "such goods are manufactured by a factory belonging to a State Government and such goods are intended for use by any department of that Government".

4. During the course of investigations, it was observed that the clearances were made to various Corporations i.e. Krishna Valley Corporations, Tapi Valley Corporations etc. It was further observed the Govt. of Maharashtra created Maharashtra Krishna Valley Corporation of w.e.f. 1/4/96 vide Maharashtra Act No. XV of 1996 and some Irrigation projects of Govt. of Maharashtra have been transferred to the Corporation. Further, for other regions, Corporations like Tapi Valley Corporation, vidharbha Valley Corporation, Godawari Development Corporation etc. have been created by the State Govt. of Maharashtra. As mentioned above, notification No. 74/93 exempts goods manufactured by a factory owned by a State Govt. and intended for use any department of that Government."

5. In the statement it was specifically stated that the goods were manufactured by the Irrigation Department so in terms of Notification No. 74/93 the goods are manufactured by the factory belonging to State Government. But when we look into the actual words in the notification, it states that the goods should not only manufactured by the factory belonging to the State Government but also such

goods are intended to use by any department of that government.

6. In the case before us such goods have been sold to the various river valley corporation created by Acts passed by the Legislature of Maharashtra. The Notification in question exempts goods supplied to this department, which is, intended for use by the department of that government. The statutory corporation is a separate legal entity and such corporations established under these Acts shall be bodies corporate have perpetual succession and a common seal with power to contract, acquire whole and dispose of property both moveable and immovable and to do all things and to perform such formalities contained in the above Acts these corporation have been created. It is not possible for us to accept the argument that the department of the State Government should be equalised with that of the statutory corporations created by various Acts of the Legislature of Maharashtra.

7. If the argument of the learned counsel on behalf of the State Government before us what is the necessity for creation of such corporation, the act specifically states that these corporations are a separate body corporate having perpetual succession has right to hold property and properties owned by the irrigation department have been transferred to the various statutory corporations. If the argument of the learned counsel is accepted then can a decree holder holding a decree against the State Government attached the property belonging to such corporation? Obviously the answer should be in the negative. The property of the corporation is different from that of the State Government.

8. Even after the passing of these acts the Superintendent of Central Excise had given registration to the factory owned by the State Government in the name of Irrigation Department. When the Central Excise department issued registration certificate on 22 August 1999 the irrigation department knows its liability to pay the duty. in fact it was claimed that the Irrigation Department has paid Rs. 3.69 crores out of the sum confirmed and demanded Rs. 5,47,86,946/- prior to the passing of the impugned order. And a sum of Rs. 28 lacs had been paid after the passing of the order. The intention to evade duty, as claimed by the department is incommensurate with the payment of duty of substantial amount that is of 80% of

the sum demanded. We are therefore of the view under the peculiar circumstances there cannot be application of the larger period of limitation in this case.

9. Here the show cause notice is dated 26.4.2001. The period in dispute is 1.4.1996 to 30.6.2000 as per paragraph 7 of the annexure to the show cause notice. We have held in previous paragraph that longer period of limitation i.e. proviso to Section 11(A) of the Central Excise Act is not applicable. Hence in the peculiar circumstances of the case, the demand under the show cause notice cannot be sustained. hence appeal filed by the assessee, Irrigation Department of the State of Maharashtra, is allowed with consequential benefit according to law. The appeal filed by the department cannot succeed and hence dismissed.

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