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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-02-1987

Reported in : (1987)(12)LC62Tri(Delhi)

Appellant : Himadri Electrical (Pvt.) Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The appellants M/s. Himadri Electrical (Pvt.) Ltd. are manufacturers of electric fans. They obtain from the market duty paid electric stampings and laminations (falling under TI 28-A GET) which they use in the manufacture of rotors and stators (falling under TI 30 GET) which rotors and stators are used as component parts in the manufacture of electric fans and regulators falling under TI-33 GET. When such rotors and stators are captively consumed in the manufacture of electric fans as aforesaid the whole of the duty payable on such rotors and stators are exempt under notification No. 28/69-CE., dated 1-3-1969. Under notification No. 95/79-CE., dated 1-3-1979 the duty paid on the electric stampings and laminations is entitled to be set off on the duty payable on the rotors and stators. The appellants did not want to avail of the exemption under notification No. 28/69-CE and were willing to pay duty on the rotors and stators. The Assistant Collector Central Excise Calcutta VII Division, under letter dated 12-12-79, allowed the appellants proforma credit of duty paid on the electric stampings and laminations and again proforma credit of duty paid on the rotors and stators used as inputs in the manufacture of electric fans and regulators. This naturally resulted in extra

accounting work. In this connection a Trade Notice dated 21-7-1980 was issued by the Calcutta Collectorate. Pursuant thereto the appellants applied to the Assistant Collector who under letter dated 12-12-1979 modified his earlier permission and permitted the appellants to avail of the proforma credit of duty paid on the stampings and laminations (to be used as inputs in the manufacture of rotors and stators which are fully exempted intermediate product for the manufacture of electric fans) subject to observance of the procedure under Rule 56A of Central Excise Rules. It was made clear that the said permission was granted provided the intermediate product is consumed within the factory in the manufacture of the notified finished products (electric fans), and that no proforma credit will be allowed if the fully exempted intermediate product is removed as such from the factory.

2. Accordingly the appellant had been utilising the proforma credit in respect of duty paid on stampings and laminations for payment of duty on the final manufactured product (electric fans and regulators).

Subsequently, under letter dated 3-6-1982, the Assistant Collector purported to cancel the said permission, observing the "the said permission was not in accordance with the Central Excise Law as is, and was, in force at the relevant time". Thereupon the appellants approached the Assistant Collector for revival of earlier procedure.

But the Assistant Collector issued notice dated 25-6-1982 directing the appellants to show cause why they should not be disallowed to utilise the unutilised credit in the PLA and why an amount of Rs. 2,50,284.22 Paise (basic excise duty) and Rs. 12,515.12 Paise (special excise duty) equivalent to the amount utilised by way of proforma credit for payment of duty on electric fans (out of duty paid on stampings and laminations during the period December, 1980 to May, 1982) should not be recovered from the appellants and why penalty should not be imposed on them. The appellants replied resisting the claim. The Collector of Central Excise, after adjudication, passed order dated 15.9.82. Thereunder he held that in the absence of rnalafides no penalty was required to be imposed. But he further held that duty was liable to be paid by the appellants on the electric fans and regulators but

restricted the period to six months prior to the date of show cause notice. He further held that the Company would be entitled to retain the proforma credit already utilised for the payment of duty on the electric fans and regulators during the period of the said demand and that they would be further entitled to the balance lying unutilised and that the amount to their credit in the said manner may be utilised by them as and when the law so permits. It is against the said order that the present appeal has been filed.

3. We have heard Shri R.M. Das, Consultant for the appellants and Shri H.L. Verma for the department.

4. There is no dispute as to the facts. Broadly stated, the appellants had earlier been paying duty on the rotors and stators (though in the normal circumstances no duty need have been paid thereon as they were being captively consumed in the manufacture of electric fans and regulators) and were, in payment of such duty, taking credit for the duty paid on the stampings and laminations and were then claiming credit in respect of duty paid on rotors and stators in payment of duty on the fans and regulators. This was for the reason that unless they were willing to pay duty on the rotors and stators they would not be entitled to take credit of the duty paid on the stampings and laminations. But (evidently following a Trade Notice dated 21.7.1980 of the Calcutta Collectorate) the appellants had sent letter dated 12.11.1980 seeking for permission to take credit of the duty paid on the stampings and laminations in payment of duty on electric fans and regulators and this had been permitted by the Assistant Collector under letter dated 3.12.1980. But subsequently the Assistant Collector under letter dated 3.6.1982 had withdrawn this permission on the ground that the said permission was not available in law. After the withdrawal of the said permission the appellants appear to have reverted back to the earlier procedure. The question at issue is with reference to the utilisation of the credit of duty paid on stampings and laminations for payment of duty on the electric fans and regulators during the period when the permission granted under letter dated 3.12.1980 was in force.

The main contention of Shri Das is that since such utilisation had been under specific permission granted by the department it was not open to the department

to demand duty on the fans and regulators (without reference to the utilisation of the credit of the duty paid on stampings and laminations) during the period when the permission granted by the Assistant Collector was in force. We may note that the Collector, under his impugned order, while upholding the right of the department to demand duty had restricted it to the period of six months prior to the date of show cause notice and at the same time had permitted the appellants to utilise later, if permissible, the amount that would be credited back in the PLA with reference to the duty paid out of such credit on fans and regulators during the said period of six months.

5. The contention of Shri Das appears to us to be of considerable force. In order to entitle themselves to avail of the proforma credit the appellants had voluntarily agreed to pay duty on the stators and rotors and again on the fans and regulators though they would not have been liable to pay duty on the stators and rotors in view of notification No. 28/69. It was only as a consequence of a Trade Notice issued by the Collector that they approached the Assistant Collector and obtained specific orders from him under letter dated 3.12.1980 that they could take credit of the duty paid on the stampings and laminations and avail of the said credit to pay the duty on the fans and, regulators. Thus the payment of duty out of the said credit had been, throughout the relevant period, under specific permission granted by the Department. In view of all the above circumstances we are satisfied that if, subsequently, the department itself withdraws the said permission, on the ground that the permission had not been properly granted, the denial of the benefit of the said arrangement could be effective only from the date of such withdrawal of the permission and not retrospectively. It is not as if the appellants had withheld any facts from the department and had obtained an order to their benefit by misleading the department. It was on a consideration of all the relevant facts, and following the Trade Notice issued by the Collector himself, that the permission sought for had been granted and benefit thereof was then availed by the appellants.

6. In the case of M/s. Inarco Ltd. (1984 ECR 2164) this Tribunal had held as follows : "However, we find justification in the plea made alternatively that in any case in view of the previous stand consistently conveyed to the party, the demand for recovery of duty retrospectively could be sustained. We, therefore, considering

peculiar circumstances of this case, consider it to be a fit case to hold that the demand of duty for the period preceding the date of the Show Cause Notice was in no case justified".

7. It had been again held in the case of the Steel Authority of India (1985 vol. 22 ELT 487), following the decision in the case of Inarco Ltd., as follows : "That was also a case of a long-standing practice having been allowed to continue by the Department by means of orders issued and approvals recorded both from the period prior to introduction of TI-68 -as well as subsequent dates; till the issuance of show cause notice in 1980. We feel inclined to adopt a similar view on the peculiar facts of this case, and hold that the demand for additional duty in this case under TI-68 can be held enforceable only with effect from the date of issue of the first show cause notice i.e.

28.4.1980".

8. We feel that in the present instance also, following the same principles, we should hold that the relief granted under letter dated 3.12.1980 cannot be allowed to be withdrawn for the period prior to the cancellation of the said permission on 3.6.1982. Accordingly we hold that the demand made in the subsequent notice dated 25.6.1982 should not have been confirmed by the Collector even for the limited period of six months prior to the date of the notice. Accordingly we allow this appeal and set aside the order of the Collector with consequential relief.

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