

Develope Pump Industries Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-04-1987

Reported in : (1987)(12)LC449Tri(Delhi)

Appellant : Develope Pump Industries Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The revision application filed before the Government of India, on transfer to the Tribunal is being treated as an appeal.

2. The appellants are manufacturers of Chromium Plating Sanitary Bath Room Fittings. The value of the goods cleared by them during the years 1 976-77 and 1 977-78 is as under :-1976-77 ...

Rs. 31,69,332.181977-78 ...

Rs. 30,42,612.281978-79 ...

Rs. 24,84,527.63 The appellants were holding L-4 Licence under Tariff Item 68 and were working under the exemption limit of Rs. 15,00,000/- under Notification 89/79-CE, dated 1.3.1979. After 18.6.1977 to 12.4.1979, they did not obtain any Central Excise Licence. Since the appellants had cleared goods from 18.6.1977 to 31.3.1979 without obtaining Central Excise Licence and without payment of Central Excise duty, they were called upon to show cause as to why the Central Excise Duty of Rs. 1,94,053/- should not be demanded from them. In their reply to

the show cause notice, the appellants inter alia contended after excluding export's value of Rs. 7,87,686.18 and Rs. 1,36,599.50 during the years 1976-77 and 1977-78 respectively, their total clearances during any of the 3 years did not exceed the limit of Rs. 30,00,000/- prescribed under Notification 176/77, dated 18.6.1977. Other contentions were also raised which are not relevant at this stage. The Collector held that the plea raised by the appellants was not established and as the appellants did not have a licence, the demand for duty was justified.

He also imposed a penalty of Rs. 1,00,000/-.

3. The appellants filed an appeal before the Central Board of Excise & Customs challenging the decision. Before the Board the appellants conceded that they were liable to pay duty on all their clearances during the period 18.6.1977 to the end of Financial Year 1978-79. They pleaded that in their ignorance of the new criterion they continued to avail the exemption which was admissible to them prior to 18.6.1977.

The Board confirmed the demand for duty as the clearances exceeded Rs. 30,00,000/-, during the Financial Years 1976-77 and 1977-78. The penalty was, however, reduced to Rs. 10,000/-.

4. Shri A.K.S. Bedi, learned Advocate submitted that the element of duty payable should have been deducted while computing the value of the clearances. According to him, the term "value" under Section 4(4)(d) will not include of duty of excise payable on such goods. If the duty payable is reduced, then the value of clearances would not have exceeded the exemption limit. There would have been no violation attracting the penalty either. Shri Bedi argued that the word used was "payable" and not "actually paid". Even though the appellants have not paid the excise duty. It was urged that the duty payable should be reduced in computing the value of the clearances. There was no intention to evade payment of duty and the imposition of penalty was justified.

5. Shri H.L. Verma argued that the appellants have not paid the excise duty and in 1979 (4) E.L.T. (J464) (Bata Shoe Co. Pvt. Limited v. Collector of Central Excise, Calcutta and Ors.), the Calcutta High Court "Under Rule 8 of the Central Excise

Rules, exemption is granted in respect of exciseable goods from the whole or any part of duty leviable on such goods. That means that the goods should be both "exciseable goods" and be "leviable" with the duty. Therefore, the "value" for purposes of exemption from duty is the real actual value after the duty has been paid and calculated and not the deemed value of Section 4 of the Act" for the purposes of duty".

It is not the cum-duty price and the party cannot be given the relief without duty had not been paid.

(a) whether the quantum of excise duty even though not paid should be continued in order to compute the value of the clearances for the purposes of the exemption; and 7. The only argument advanced on behalf of the appellants is that the excise duty should be excluded. In 1986 (23) E.L.T. 48 (Karnataka) (Mangalore Chemicals and Fertilizers Ltd. v. Assistant Collector of Central Excise Mangalore and Ors.), the Karnataka High Court has examined the scope of the excise duty to be excluded. The High Court has also adverted to the scope of the explanation added to Section 4(4)(d)(ii) of the Central Excises and Salt Act. The ratio of this decision is found at paragraph 29 as follows :- "In other words, only the duty as reduced and actually paid on the manufactured goods should be excluded in determining the assessable value of such manufactured goods".

In 1984 E.C.R. 1475 the Tribunal in the case of (Mark Elektriks, Pune v. Collector of Customs and Central Excise, Bombay) following the earlier Ruling of the Tribunal in the case of Union Carbide of India v.C.C.E. Hyderabad (1983 (12) ELT 548 (CEGAT)] held that in view of the amendment of 1982 only the effective duty actually paid by the appellants after taking into account the exemption available under notification was the deductible from their cum-duty price to arrive at the assessable value of their goods. In 1985 (22) ELT 615 (Tribunal) (Modi Vanaspati Mfg. Co. v. Collector of Customs and Central Excise, Meerut), the Tribunal has considered the import of the term "payable".

In paragraph 27 it is observed that :- "The term "payable" is brought in only for the purpose of indicating that where there are duties under more than one Act, the amount of duty payable shall be the total of the effective duty under each such Act.

The term "payable" has no relevance to the question how the expression "effective duty of excise" under any particular Act is to be interpreted." This finding of the Tribunal with which we agree indicates that there is no forced in the contention that an assessee would be entitled to the exclusion of the excise duty even though it was not actually paid.

8. In view of the above ruling, we have no hesitation in holding that the appellants will not be entitled to the exclusion of the excise duty which admittedly was not paid by them. If this ground is rejected, there is no other alternative than to conclude that the value of the clearances have exceeded the limits fixed under the Notification.

9. On the question of penalty the appellants have not obtained the Central Excise Licence and have claimed the benefit of the exemption even though they were not entitled to it. Having regard to all the circumstances, the Board has substantially reduced the penalty. In the circumstances, we are of the opinion that there is no justification for a further reduction.

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