

Modern Insulators Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-30-2003

Reported in : (2004)(112)LC789Tri(Delhi)

Judge : A T V.K., P Bajaj

Appellant : Modern Insulators

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s. Modern Insulators, the issue involved is whether the Central Excise duty and interest are demandable from them.

2. Shri B.L. Narsimhan, learned Advocate, submitted that the appellants manufacture electrical insulators; that they receive purchase orders for the projects being implemented by West Bengal State Electricity Board, being financed by Japan Bank for International Cooperation, for the supply of electrical insulators; that the respective buyers submitted the certificates, duly signed by the Head of Project Implementing Authority, Principal Secretary of the respective State Govt. and certified by the concerned Range Superintendent to the effect that the goods are exempt from payment of duty under Notification No.108/95-CE; that accordingly they had cleared the goods without payment of duty under Notification No. 108/95-CE; that subsequently, the Commissioner has confirmed the demand of duty for the period from March, 2001 to December, 2001 and demanded interest on the ground that the benefit of Notification No. 108/95 was not available since

the Japan Bank for International Cooperation is not an international organisation approved by the Govt. of India. He, further, submitted that they had cleared the goods without payment of duty only after obtaining the necessary certificates from the project authority and the permission of the jurisdictional Deputy Commissioner to clear the goods; that the permission granted by the Deputy Commissioner has attained finality, which has not been challenged under Section 35E of the Central Excise Act; that further, Rule of fairness as well as the principle of promissory estoppel requires that the appellants cannot be punished for the incorrect certificates/permission issued by the other higher authority of the Govt. itself; that they have been permitted in writing to clear all the goods without payment of duty and the Department cannot take the plea that the duty is payable by them.

3. Learned Advocate also submitted that the interest cannot be demanded from the appellants under Section 11AB of the Central Excise Act for the duty payable before the date on which the Finance Bill 2001 received the assent of the President i.e. 11.5.2001.

4. Countering the arguments, Shri U. Raja Ram, learned D.R., reiterated the findings as contained in the impugned order passed by the Commissioner.

5. We have considered the submissions of both the sides. Under Section 3 of the Central Excise Act, the duty of excise is levied and collected on excisable goods which are produced or manufactured in India as and at the rates set forth in the Schedule to the Central Excise Tariff Act; that Section 5A of the Act empowers the Central Government to exempt payment of duty by Notification in the Official Gazette. The Central Government, in exercise of the said power under Section 5A, has exempted the payment of duty of excisable goods under Notification No.108/95-CE dated 28.8.1995 subject to the conditions that the goods are supplied to United Nations or to an international organisation for their official use or supplied to the projects financed by the said United Nations or an international organisation approved by the Govt.

of India. The goods have been removed by the appellants on the basis of certificates given by the project authorities and the jurisdictional Excise Authority under the belief that Japan Bank for International Cooperation has been notified as

an international organisation, which was not the case. As the said Japan Bank for International Cooperation has not been notified as an international organisation, the benefit of exemption from payment of duty under Notification No. 108/95-CE is not available to the excisable goods manufactured and removed by the appellants. It is a settled law that the Principle of Estopples does not apply to fiscal statute. The duty as leviable under the Central Excise Act is to be paid unless and until it is exempted by Notifications issued under Section 5A. Accordingly, they are liable to pay duty. We observed that the Commissioner himself has held in the impugned order that the extended period of limitation for demanding the duty will not be invocable in the present matter and, therefore, he has himself dropped the demand of duty for the period from November 2000 to Feb., 2001. We also observe that in view of the facts and circumstances of the matter, the Commissioner has restrained himself from imposing any penalty on the appellants. We, therefore, uphold the demand of duty as confirmed by the Commissioner.

6. Coming to the question of interest, we agree with the learned Advocate that the interest cannot be demanded from the appellants under Section 11AB of the Act for the period prior to 11.5.2001, the date on which the substituted Section 11AB of the Act came into force.

Sub-section (2) of Section 11AB clearly provides that the provisions of Sub-section (1), under which interest is demanded on delayed payment of duty, is not applicable to the case where the duty is payable or ought to have been paid before the date on which Finance Bill, 2001 receives the assent of the President. The Finance Bill, 2001 has received the assent of the President on 11.5.2001. Accordingly, we hold that no interest is demandable from the appellants under the provisions of Section 11AB of the Act before 11.5.2001. They are liable to pay interest in respect of duty which became payable from 11.5.2001 onwards. The appeal is disposed of in these terms.