

Collector of Central Excise Vs. Prasad Films Laboratories

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-03-1987

Reported in : (1987)(12)LC500Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Prasad Films Laboratories

Judgement :

1. A Feature Film under the title 'Adavi Manushulu' had been produced in Telugu by M/s. P.S.R. Pictures. The same was processed in the laboratory of the respondents M/s. Prasad Film Laboratories.

Subsequently, the same film was produced in Hindi under the name Purana Purush, in Tamil under the name Kattu Manithan and in Malayalam under the name Silayugathile Sundarigal. 20, U, 15 and 16 prints were taken of the Hindi, Telugu, Tamil and Malayalam version respectively. The respondents paid duty on 19 of the 55 prints and cleared the remaining without payment of duty availing of benefit of duty exemption under notification No. 275/77, dated 12-8-1977. As the Department was of the view that since the 55 prints came from a common negative the action of the respondents in availing of the exemption for each language was not correct. A show cause notice dated 24-8-1978 was issued mentioning that duty was payable in respect of 43 of the prints, duty exemption being available for 12 only. Differential duty of Rs. 2,07,375/- was demanded thereunder. The respondents replied that separate Censor certificate had been obtained in respect of Hindi, Telugu and Tamil version with an endorsement of the

Hindi version for the Malayalam version and hence the duty exemption claimed by the respondents in clearing the 55 prints was valid and no differential duty can therefore be demanded. On adjudication the Collector of Central Excise, Madras by order dated 13-10-1980 rejected the said defence and confirmed the demand raised under the show cause notice. On appeal therefrom the Central Board of Excise & Customs under order dated 3-1-1981 held that as separate Censor certificate had been produced for each language film a liberal conclusion was called for and accordingly allowed the appeal. Later, the Central Government was of the view that the order of the Central Board was not proper, legal and correct. The Central Government therefore issued notice under Section 36(2) of the Central Excises and Salt Act calling upon the respondents to show cause why the order of the Central Board should not be set aside and that of the Collector restored. The Central Govt. was of the view that there were only minor variations in the length of the feature film in each language and that the said variation was due to the fact that titles in the different languages had been added at the commencement of each language version and therefore the mere fact that a separate censorship certificate had been obtained for each language would not make the film in each language a separate film. The respondents replied supporting the order of the Central Board and opposed the review. The said proceedings, on transfer to this Tribunal on the formation thereof, is the present deemed appeal before us.

2. We have heard Smt. D. Saxena for the Department and Shri Gopal Prasad, Consultant for the respondents.

3. The respondents have filed a paper book in which they have enclosed their written submissions as well as various papers. We may note that of these papers pages 28 to 38 would be in the nature of additional evidence since these were neither before, nor referred to in the order of, the lower authorities. In the absence of any application for reception of additional evidence we had indicated during the hearing that these shall not be considered by us. We may further note that in their written submissions the respondents appear to have proceeded as if the different language versions were in the nature of dubbed films in the usual sense (that is to say) that the submissions appear to proceed as if after the Telugu version was

produced the remaining 3 versions were produced by the films being dubbed in the other 3 languages by the sound-track in the Telugu version being substituted by the sound-track in the respective language in the other 3 versions.

But, as pointed out during the hearing, the facts appear to be otherwise. To appreciate the correct position it will be better to reproduce paragraphs 13 and 14 of the Collector which are as follows : "13. The feature films cleared under Tamil, Hindi and Malayalam versions cannot be termed as dubbed films in the real sense in the conventional method' of dubbing. The conversation in one language has to be translated and re-drafted .in other scripts and for each language, a separate sound track has to be incorporated in the positive. The prints so dubbed in different languages are covered by Censor Board certificates and individual sets are entitled to the exemption on the first 12 prints in each language.

14. In the instant case, all the 55 prints of the feature film have been taken from one master negative. As the story pertains to the pre-historic man of the stone age, no language media has been used.

The entire communication is through various sounds, expressions and gestures. Since the language media has been dispensed with in the feature film, there was no necessity to change, the soundtrack. All the prints taken in four different languages are absolutely identical except for the first few metres where the case has been displayed in the script of the language under which the set falls.

The titles of the feature film although sounding different carry the same meaning."

4. Thus as observed by the Collector the main feature film had remained the same in visual as well as audio content in all the 4 versions. The difference in length in respect of Hindi, Tamil and Malayalam versions compared to the length in the original Telugu version is accounted for by the fact that in the other 3 versions introductory passage appears to have been included by the substance, of the film being displayed in the script of the particular language, this portion being absent in the original Telugu version. It is with reference to this factual background that the contentions of the respondents have to be appreciated.

5. Before the lower authorities as well as in the reply to the review notice the respondents have taken the following contentions as supporting their views that the film in each language version was distinct and therefore there were 4 separate feature films and not merely one (We may note in this connection that the respondents themselves appear to have treated the Hindi and Malayalam versions as conforming to one picture since they had paid duty on all the 6 prints of Malayalam version, though their present claim is that Malayalam version was also a separate film and hence no duty was payable on all the 6 prints thereof) :- (d) Separate fee for censorship has been paid in respect of each picture; (e) Separate serial number for the number of copies given for each version of the picture; (g) The length of the picture itself vary from one language to another except that the length of Hindi and Malayalam versions remain the same; ' (h) The length of the Hindi and Malayalam version of the picture is 3727.09, Tamil version is 3412.24 and Telugu version is 3683.05; and 6. Both sides stated that there is no judgment of any High Court or the Supreme Court or of this Tribunal on the disputed issue. Before us, Smt. Saxena re-iterated the contentions put forward in the review notice that each language version was not a separate film since all were prints from a single master negative, without any variation in the visual or audio contents, except for the additional portion at the commencement in the Hindi, Tamil and Malayalam version, such additional portions being merely factual in content. On the other hand, Shri Gopal Prasad contended that the very fact that a separate censor certificate had been issued for each of the four language versions would suffice to establish that each language version was a separate film. It is in this connection that he relied upon the fact that whenever duty exemption was being granted in respect of films as under Notification No. 49/74, dated 1-3-1974, Notification No. 78/79, dated 1-3-1979, Notification No. 17/81 dated 16-2-1981 and Notification No. 210/76 dated 17-7-1976, the stipulation in each of the notifications was; on the certification by the film censors as a condition precedent for claiming the exemption. He, therefore, contended that the fact of separate certification by the Board of Film Censors would establish the separate identity of each language version and hence each of the four versions in the present case would be a separate film for the purpose of Notification No. 275/77. But it may be noted that all the notifications noted earlier dealt with claims for exemption on the basis that

the film concerned could be classified as a documentary film or a news reel or a predominantly educational film or to be used only for archival study or reference purposes or meant for entertainment of children.

Since the eligibility for exemption therefore thus depended on the classification of the film into any of the abovesaid categories, the notifications themselves naturally referred to certificates by the Central Board of Film Censors to that effect. In the present instance there is no dispute that the original Telugu version as well as the subsequent versions in the other languages were all feature films only.

Therefore, the mere fact that each of them had been issued with a separate censor certificate would appear to be of no relevance for concluding that each of them was accepted to be a separate film by the Censor Board also. In any event the notification in question (No.275/77) makes no reference to any such certification by the Censor Board as proof of acceptability thereof as separate films each.

7. Shri Gopal Prasad contends that the difference in length would itself establish that each language version was a separate film. But this contention would overlook the fact that so far as the main picture is concerned, the visual or the audio portion was exactly the same in all the versions for the reasons stated in the order of the Collector in the paragraphs extracted earlier. The difference in length was solely due to the fact that introductory pieces were attached in the Tamil, Malayalam and Hindi versions, displayed in the script of the respective language. This difference in length is also of a small percentage only compared to the length of the film itself.

8. As earlier mentioned the written submissions proceeded as if each language version was a separate dubbed version and as if the sound track in each version was different from the original Telugu version.

But such a claim is evidently unfounded as can be gathered from the order of the Collector. It is to be noted that neither in the appeal to the Collector nor in the reply to the review notice had it been urged by the respondents that the version in each language is a separate dubbed version with a distinct sound track, the visual

portion being common in all the versions.

9. In view of the above circumstances we are of the view that the order of the Collector was the correct order in the circumstances of this case and that the order of the Central Board which set aside the order of the Collector was incorrect. Accordingly, we allow this appeal, set aside the order of the Central Board and restore the order of the Collector.

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