Devan Auto Engineers Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-05-2004

Reported in : (2004)(92)ECC681

Judge : P Chacko, A M Moheb

Appellant : Devan Auto Engineers

Respondent : Commissioner of Central Excise

Judgement :

1. M/s Devan Auto Engineers (Appellants in Appeal No. E/649/02) were engaged mainly in job works on raw materials supplied by M/s Tata Engineering and Locomotive Company Ltd. (TELCO, in short). The department found that, during the period April 1995 to September 1997, they had undervalued the goods (manufactured by undertaking job work on raw materials supplied by TELCO) cleared, on payment of duly, to M/s TELCO and consequently there was a short-payment of duty. The department accordingly issued Show Cause Notice dtd.25/09/1998 raising demand of duty of Rs. 6,58,013/- on the appellants. The notice invoked the extended period of limitation under Section 11A of the Central Excise Act on the basis of alleged suppression of facts by the party.

The notice also proposed to confiscate land, building, machinery etc.

under Rule 173Q and also to impose penalty on the appellants under Section 11AC of the Act. The proposals were contested. The original authority which adjudicated the Show Cause Notice passed order dated 21/12/1998 confirming the above demand of duty under Section 11A (with interest under Section 11AB) and imposing on the party a penalty of equal amount under Section 11AC. That authority also imposed a redemption fine of Rs. 1.5 Lakhs in lieu of confiscation. The aggrieved party preferred appeal to the Commissioner (Appeals), who by order dtd.25/01/2000 upheld the demand of duty but set aside the interest redemption fine and penalty. Against the duty demand part of the order of the Commissioner (Appeals), M/s Devan Auto Engineers filed appeal No. E/1140/00, while the Revenue filed appeal No. E/1787/00 against the setting aside of interest, redemption fine and penalty. Appeal No.E/1140/00 was disposed off by this Tribunal as per Order No.C-I/2858-59/WZB/2000 dtd. 24/08/2000, whereby the matter was remanded to the Commissioner (Appeals) for fresh disposal. The Revenue's appeal had not arisen before the Bench at that stage. The operative part of the remand order reads as under:- "Accordingly, we allow the appeal and remand the matter hack to the Commissioner (Appeals), who shall dispose of the appeal before him afresh including specifically the question of limitation according to law." In the remanded proceedings, Commissioner (Appeals) passed order dtd.26/11/2001, whereby the entire demand of duty was upheld. The Commissioner (Appeals), however, did not examine the issues relating to confiscation, redemption fine, penalty etc. Aggrieved by this, the department filed appeal No. E/1094/02. The assessee filed appeal No.E/649/02 against the duty confirmation part of the order dtd.26/11/2001 of the Commissioner (Appeals). The 4^th appeal before us is, again, an appeal filed by the Revenue and the same is appeal No. E/1757/00, which has been filed against another order passed by the Commissioner (Appeals) on 25/01/2000 directing issue of Rule 57E certificate to the assessee. The jurisdictional Superintendent of Central Excise had turned down the assessee's request for issue of Rule 57E certificate in respect of the duty (Rs. 1,50,566/-) paid by them and the party had preferred an appeal against the same, which was allowed as above.

2. We have heard both sides in all the four appeals. Arguing for the assessee in appeal No. E/649/02, the learned Counsel submitted that the finding of the Commissioner (Appeals) that the appellants had wilfully suppressed the differential value of the goods cleared to M/s TELCO during the period of dispute was not

correct. As early as in 1994, the assessee had filed price declaration under Rule 173C. Counsel however admitted that no revised declaration was filed upon enhancement of price by M/s TELCO. This was a mistake only, he claimed. Counsel also contended that, as it was open to M/s TELCO to take modvat credit of the differential duty paid by the assessee, the entire exercise was revenue-neutral and therefore the department could not raise any valid allegation of evasion of duty against the assessee. In this connection, the counsel relied on a few decisions. In any case, counsel asserted, there was no wilful suppression or misdeclaration of facts by the assessee. He, therefore, prayed for vacating the demand raised for the extended period of limitation.

3. The Jt.CDR submitted that the Commissioner (Appeals) had, in his order dtd.26/11/2001 examined only the legality of the demand of duty and had not gone into the remaining issues, even though the Tribunal's remand order had required him to decide on all the issues afresh. In regard to the earlier order dtd.25/01/2000 of the Commissioner (Appeals), the learned Jt.CDR submitted that the appellate authority had wrongly set aside the original authority's order for penalty under Section 11AC, interest under Section 11AB and redemption fine under Rule 173Q. Referring to the order of the Commissioner (Appeals) for issuing Rule 57E certificate to the assessee, he submitted that, under the amended provisions of Rule 57E, it was not permissible for the proper officer to issue such certificate as the differential amount of duty was paid by the party pursuant to a demand raised by the department by alleging suppression of facts, misstatement of facts etc.

against them. In the instant case, according to learned Jt.CDR, the Commissioner (Appeals) had himself, in separate order, held that the assessee had suppressed facts with intent to evade payment of duty and, therefore/the decision of the Commissioner (Appeals) to issue Rule 57E certificate to the assessee was opposed to his own finding against mem.

The counsel for the party submitted that the certificate, applied for, was not in respect of any amount of duty for the extended period of limitation but the same was in respect of an amount of duty paid for the normal period of limitation, in which case suppression etc. were not relevant and consequently there was no bar, under the amended provision of Rule 57E, against issue of the above certificate. It was also submitted by the counsel that the amount of duty relating to the period since 28/09/1996 was only Rs. 3,04,319/- and therefore the maximum penalty that could be imposed under Section 11AC was Rs. 3,04,319/- as the said section came into force on 28/09/1996 only and that too without retrospective effect.

4. We have carefully considered the submissions. Against the order dtd.25/01/2000 of the Commissioner (Appeals), two appeals were filed, one by the assessee and the other by the department. It so happened that the assessee's appeal only (E/1140/00) was disposed off by this Tribunal. The department's appeal (E/1787/00) is now before us. We have already noted that, by order dtd.24/08/2000, this Tribunal had remanded the case to the lower appellate authority for fresh decision on all issues. The Commissioner (Appeals) appeal's to have thought that the remand was restricted to the question of limitation. He decided afresh on that issue and confirmed the demand of duty against M/s Devan Auto Engineers. He did not examine any other issue. Clearly this was not what was contemplated under the remand order. We must therefore set aside the order dtd.26/11/2001 of the Commissioner (Appeals) and remand the matter once again to him for a decision on all the issues in terms of our earlier remand order dtd.24/08/2000. Accordingly, the Revenue's appeal No. E/1094/02 will stand allowed by way of remand. We note that, consequent to the present order of remand, the Commissioner (Appeals) shall have to examine the question whether a penalty under Section 11AC is liable to be imposed on the assessee as also the question whether interest under Section 11AB is liable to be charged on the amount of duty. Under both these provisions of law, suppression of fact, alleged in the Show Cause Notice, is a relevant consideration. It is also relevant to any demand of duty for the extended period of limitation under the proviso to Sub-section (1) of Section 11A. It would follow that a decision on the question whether the party had suppressed facts with intent to evade duty is going to be the common thread of the findings to be recorded by the Commissioner (Appeals) on the issues relating to duty, interest, penalty etc. It is again noticed that the question whether Rule 57E certificate should be granted to the assessee will also have to be examined with reference to the allegation as to suppression of facts. Therefore, we are of the view that the assessee's appeal No. E/649/02 and the revenue's

appeal No. E/1757/00 should also be allowed by way of remand. The remaining appeal (E/1787/00) filed by the revenue is infructuous in view of our decision in their subsequent appeal No. E/1094/02.

5. In the result, appeal No. E/1787/00 is dismissed and the remaining appeals are allowed by way of remand. The Commissioner (Appeals) is directed to decide afresh on all the issues involved in the case and pass a speaking order thereon in accordance with law. Needless to say, the assessee shall be given a reasonable opportunity of being heard.