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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-25-2004

Reported in : (2004)(95)ECC651

Judge : A T V.K., M Bohra

Appellant : Rachitech Engineers P. Ltd.

Respondent : Cce

Judgement :

1. In this appeal filed by Rachitech Engineer P. Ltd., the issues involved are whether the goods exported to Nepal under bond are exempted goods and whether the extended period of limitation for demanding duty under Section 11A(1) of the Central Excise Act is invocable.

2. Shri Suresh Agarwal, learned advocate, submitted that the appellants manufactured parts of crane and claimed SSI exemption under Notification No. 9/2000-CE dated 1.3.2000; that during the financial year 1999-2000 they had cleared some goods for export to Nepal under bond without payment of duty; that the value of those clearances was not added in the aggregate value of clearances for home consumption in terms of Clause 3 of the notification for the purpose of determining the aggregate value of goods cleared for home consumption; that during the subsequent financial year 2000-2001, they cleared the excisable goods at the concessional rate of duty under Notification No. 9/2000 as their total value of clearances of excisable goods for home consumption had remained below Rs. 3

crores during the preceding financial year 1999-2000; that a show cause notice dated 18.6.2002 was issued to them for demanding duty and imposing penalty on the ground that clearances for export to Nepal will also be included in the clearance for some consumption and their aggregate value of the excisable goods cleared during the financial year 1999-2000 thus exceeded Rs. 3 crores making them ineligible for SSI exemption in 2000-2001. The learned Advocate submitted that the demand is time barred as it has been issued beyond the normal period of one year specified in Section 11A(1) of the Central Excise Act; that the clearance of the goods made to Nepal had been specifically shown by them in RT-12 return filed by them in the month of March, 2000; that thus, the department was fully aware that besides the goods cleared by them for home consumption, they have also cleared the goods under bond to Nepal; that thus, they had not suppressed any material fact from the department. On merits, the learned Advocate contended that as per Clause 3(a) of Notification No.9/2000, the clearances of goods which are exempted from whole of excisable duty under any other notification or on which no excise duty is payable for any other reason are not to be taken into account for the purpose of determining the aggregate value of clearances; that as the goods had been exported by them to Nepal without payment of duty, they are covered by this clause.

3. Countering the arguments, Shri Virag Gupta, learned DR submitted that explanation "G" to the Notification No. 9/2000 makes it very clear that "clearance for home consumption shall also include clearances for export to Bhutan and Nepal" and thus, any export made to Nepal whether under claim of rebate or under bond has to be included while computing the value of clearance for home consumption; that the extended period of limitation is invocable since in their declaration the appellants had declared the value of clearance for home consumption only to be Rs. 2,95,13,718 and thus, they had not declared the correct value of clearance as they have not added the value of clearance of goods to Nepal; that non-inclusion of the said clearances and non-declaration was deliberate and amounts to suppression of facts from the department; that mere filing of RT-12 return does not establish that the fact was known to the department as RT-12 return is not required to be assessed and these are now filed without invoices; that under self-removal procedure, it is for the assessee to declare all the

facts which in the present matter were suppressed.

4. We have considered the submissions of both the sides. It has been contended by the appellants that in the RT-12 return for the month of March 2000 filed by them in the month of April 2000, they clearly indicated the value of clearances for home consumption and value of the goods sent to Nepal under bond separately. This fact has not been disputed by the Revenue. The learned Advocate has also given a photo copy of the said RT-12 return wherein "summary for the year 1999-2000", the appellants have clearly shown the value of clearances separately under the following four heads, (i) for home consumption, (ii) export to Nepal on payment of duty, (iii) export to Nepal under bond, and (iv) export to Dubai under bond. Thus, it cannot be claimed by the department that the appellants have deliberately suppressed the facts of clearance of goods to Nepal. Merely, the fact that they have indicated the value of clearance for home consumption, in the declaration filed by them, without including the value of clearance of the goods to Nepal will not mean that they had deliberately, with intent to evade payment of duty, not shown the same. It has been held by the Supreme Court in the case of CCE v. Chemphar Drugs and Liniments, 1989 (21) ECC 66 (SC) : 1989 (40) ELT 276 that "in order to make the demand for duty sustainable beyond a period of six months and upto a period of 5 years in view of the proviso to Sub-section 11A of the Act, it has to be established that the duty of excise has not been levied or paid or short levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provisions of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the-part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, beyond the period of six months." In view of the fact that the appellants have clearly shown the value of clearances to Nepal in their RT-12 return filed with the department, no mala fide intention to evade payment of duty can be attributed to them.

Accordingly, larger period of limitation for demanding central excise duty cannot be invoked in the facts and circumstances of the present case. We, therefore, set

aside the demand of duty being time barred. As the duty has been held to be hit by time limit, the penalty on the appellants is also set aside without going into the merits of the matter.

5. The appeal is thus allowed with consequential relief, if any, to the appellants.

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