Perfect Mechanical Industries Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-05-2004

Judge : A T V.K., P Chacko

Appellant : Perfect Mechanical Industries

Respondent : Cce

Judgement :

1. The appellants, during the relevant period, were engaged in the activity of manufacturing bodies on duty-paid chassis (supplied by customers) of motor vehicles. They classified different types of motor vehicles under different headings viz. 87.02, 87.04, 87.05 and 87.16 of the CETA Schedule and cleared them without payment of duty, claiming the benefit of exemption under Notification No. 5/98-CE (as amended).

The ferrous and non-ferrous waste and scrap which arose in the course of the above activity were also cleared without payment of duty, for which the benefit of exemption under Notification No. 89/95-CE dated 18.5.95 was claimed. The department issued six show-cause notices for different periods comprised in November 1996 to November 2001, out of which only four show-cause notices are relevant to the present case.

Each of the four show-cause notices contested the classification claim of the party and proposed to classify all the motor vehicles under Heading 87.07. Each notice alleged that the benefit of exemption under Notification No. 5/98 was not available to the motor vehicles falling under Heading 87.07 and that the goods had been deliberately misclassified with intent to evade payment of duty. The notice accordingly raised a demand of duty on the party for the relevant period. Each notice also demanded duty on the waste and scrap, alleging that the benefit of Notification No. 89/95-CE was not admissible to the waste and scrap as the material was cleared from a factory in which dutiable goods were also manufactured alongwith exempted goods. The extended period of limitation under Section 11A of the Central Excise Act was invoked on the basis of alleged suppression of facts by the assessee, for demanding duty for the period beyond the normal period of limitation. The notice also proposed to impose penalties on the assessee under Section 11AC of the Act and Rule 173Q of the Central Excise Rules, 1944. The demands of duty and the proposal for penalties were contested. The adjudicating authority vacated the demand of duty on the motor vehicles but confirmed the demand of duty on the scrap. It also imposed penalties on the party as shown below:

No. Date of SCN Period of Dispute Duty on scrap Penalty

25.11.1999 April to Sept.'99 Rs. 26,413 Rs. 26,413 under Section 11 AC2.

16.2.2000 October to Dec.

Rs. 31,134 Rs 10,000 under Rule 173Q4.

22.5.2001 July to Sept.2000 Rs. 45,442 -Do-

The present appeals are against the above demands of duty on scrap and the above penalties.

2. Heard both sides. Ld. Counsel for the appellants submitted that the benefit of exemption under Notification No. 89/95 had been wrongly denied in respect of the scrap, which had arisen in the course of manufacture of goods which were exempted from payment of duty. Counsel pointed out that goods of Heading 87.02 and 87.04 were exempt from duty in terms of Notification No. 5/98-CE and the

change of classification of the goods to Heading 87.07 did not alter the position in effect as the duty on goods falling under Heading 87.07 had been waived by Central Government by Notification No. 27/2002-CE (NT) dated 23.7.2002 issued under Section 11C of the Central Excise Act. As regards goods of Heading 87.05, it was submitted that the appellants had stopped manufacturing the goods and had surrendered the registration certificate relating to the goods as early as in November 1998. Counsel also submitted that the appellants as SSI unit were also entitled to the benefit of Notification No. 8/99-CE dated 28.2.99 effective from 1.4.99 in respect of scrap as the value of clearances of dutiable goods was less than Rs. 3 crores. Counsel also contended that the extended period of limitation had been wrongly invoked by the department for demanding duty on the scrap. If duty had to be paid on the scrap, the benefit of Modvat credit on inputs would be available and, therefore, it was not justifiable to impose any penalty, whether under Section 11AC or under Rule 173Q. The DR reiterated the findings of the adjudicating authority.

3. The first question to be considered in this case is whether the benefit of exemption under Notification No. 89/95-CE dated 18.5.95 was available to the scrap cleared by the appellants during the relevant period. The notification exempted waste and scrap arising in the course of manufacture of exempted goods from the whole of the duty of excise leviable thereon. But it also contained a proviso, which reads: Provided that nothing contained in this notifies ion shall apply to waste, parings and scrap cleared from a factory in which any other excisable goods other than exempted goods are also manufactured.

(Emphasis supplied) The meaning of the expression "exempted goods" occurring in the above proviso was provided by an Explanation which reads: Explanation--For the purpose of this notification, the expression "exempted goods" means excisable goods which are chargeable to "Nil" rate of duty or, are exempted from the whole of the duty of excise leviable thereon by any other notification (not being a notification where exemption from the whole of duty of excise is granted based upon the value or quantity of clearances made in a financial year) issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 or Sub-section (1) of Section 5A of the said Act.

Ld. Counsel has argued to the effect that the expression "exempted goods" should be held to include not only those goods which were exempted from duty under Notification issued under Section 5A of the Central Excise Act but also those goods in respect of which recovery of duty was waived under Notification issued under Section 11C of the Act.

We have to reject this argument straightaway for two reasons viz. (i) the above 'Explanation' does not take into account a Notification issued under Section 11C of the Act; (ii) the purport of a Notification issued under Section 11C is not to exempt goods from duty of excise in the public interest but to waive duty (leviable and not so exempt) on particular goods for a specified past period having regard to the practice (relating to levy of duty of excise on such goods) prevalent during such period. Any waiver of recovery of duty by the Central Government under Section 11C cannot be equated to exemption from duty under Section 5A of the Act. The scrap in question (in all these appeals) was cleared during the period, April 1999 to September 2000.

For this period, the bodies built on duty-paid chassis of motor vehicles of Headings 87.02, 87.04 and 87.05 have been classified under Heading 87.07 and this classification by the adjudicating authority is not under challenge in these appeals. That the benefit of Notification No. 5/98-CE was not available to goods falling under Heading 87.07 is also not in dispute. As regards Notification No. 8/99-CE referred to by counsel, we note that this notification belongs to the excluded category mentioned in the Explanation ibid vide the bracketed portion and, therefore, applicability of the notification would not render the goods "exempt" for the purpose of the proviso to Notification No.89/95-CE. Thus, during the relevant period, when the scrap was cleared without payment of duty, dutiable products were manufactured in the factory. Therefore, the scrap manufactured and cleared by the appellants attracted the proviso to Notification No. 89/95-CE and, consequently, the benefit of exemption under the Notification was not available to the scrap. Accordingly, we hold that duty of excise is recoverable on the subject clearances of scrap. We have not found any effective challenge, in these appeals, against the demand of duty on the ground of time-bar. The allegation of suppression of facts with intent to evade payment of duty has not been rebutted with requisite evidence and, consequently, it is found that the extended period of limitation has been rightly invoked. It is also noted that a major part of the demand is within the normal period of limitation. In the result, the demand of duty on scrap cleared by the appellants during the relevant period is upheld.4. However, we are not in agreement with the Commissioner imposing penalties on the assessee in this case. The penalties have been imposed on the ground of suppression of information regarding clearance of scrap. But, in the show-cause notices, we have not come across any specific allegation that the party had suppressed any such information.

The finding of suppression of information regarding clearance of scrap, therefore, appears to be beyond the scope of the show-cause notices.

Accordingly, we set aside the penalties imposed by the Commissioner.

5. The impugned order stands modified to the above extent and the appeals stand disposed of.