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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-27-2004

Reported in : (2004)(95)ECC513

Judge : A T V.K., P Bajaj

Appellant : Saroj Textiles Ltd.

Respondent : Cce

Judgement :

1. This appeal has been directed against the impugned Order-in-Original dated 17.4.2003 vide which the Commissioner as adjudicating authority, has confirmed the duty of Rs. 1,16,83,256 under Section 11-D of the Act on the appellants on the ground that they had recovered this amount in excess of the duty from the customers and also confirmed duty of Rs. 59,910 in respect of the processed fabrics of cotton shirting and duty of Rs. 39,093 regarding 12 bales of suitings, on them for having cleared these goods without payment of duty.

2. The learned counsel has contested the validity of the impugned order confirming the demand under Section 11-D of the Act by contending that the provisions of this Section during the relevant period i.e.

16.12.1998 to 28.2.2001 were not attracted to the appellants as they were paying the duty in terms of Section 3-A of the Act on the basis of the production capacity/number of chambers of the stenter and as such had nothing to do with the quantity of the goods manufactured and cleared by them during that period. To substantiate his contention, the learned counsel placed reliance on the ratio of the law laid down in the case of Viral Ispai Ltd. v. CCE, Mumbai, 2003 (89) ECC 218 (T), wherein it has been ruled that "The Compounded Levy Scheme was introduced from 1.8.1997 and it required payment of duty by a manufacturer entirely unconnected with the quantity of goods that it manufactured, and based solely on the capacity to manufacture." The learned counsel has also referred to the law laid down in the case of Bripanil Industries Ltd. v. CCE, Bangalore, 2002 (83) ECC 46 (T) : 2002 (144) ELT 391 (T), wherein it has been observed that the provisions of Section 11-D of the Act are not applicable to additional excise duties.

Another case relied upon by the learned counsel is of Poddar Industrial Corporation v. CCE, Patna, 2003 (158) ELT 473 (T), Wherein in an identical case the provisions of Section 11-D were sought to be invoked against the assessee by the Department, but the same was not allowed by the Tribunal.

3. On the other hand, the learned SDR, has contended that since the duty element was separately shown in the invoices, it must be presumed that the same has been independently recovered by the appellants from the customers over the above the duty already included by them in the contracted sale price, therefore, the demand has been rightly confirmed against them under Section 11-D of the Act.

4. We have heard both sides and gone through the record. In our view, the contention raised by the learned counsel deserves to be accepted.

Admittedly, the appellants were engaged in processing textile fabrics with the aid of hot air stenter being an independent processor during the period in question and the goods manufactured by them were notified to be subject to Central Excise duty payable on the basis of capacity of production. Their duty liability under Section 3-A of the Act read with Hot Air Stenter Independent Textile Processor Annual Capacity Determination Rules, 1988 was accordingly determined by the Commissioner at Rs. 7.973 lacs per month for the period 16.12.1998 to 28.2.2000 vide order dated 28.2.2001 and at Rs. 10 lacs per month for the period 1.3.2000 to 28.2.2001 vide order dated 24.11.2000. They paid the duty accordingly in terms of these orders.

5. It is also evident from the record that appellants had been selling, during the period in dispute, their goods to the Government/Semi-Government Departments. The major portion of the goods manufactured and cleared by them during that period, was supplied to the Indian Railways, Postal Department and Para Military forces and other Government/Semi-Government Departments on consolidated contract price. No. excise duty was to be paid extra to them by these buyers as it was clearly so stipulated in the tender orders.

6. The plea of the Department that since the appellants showed the rate of duty separately in some invoices, it should be presumed that they charged the duty separately from the buyers, cannot be legally accepted. By mentioning the rate of duty separately in the invoices, it is difficult to conclude that they had charged the duty extra from the buyers. They had, in fact, charged only the contract price from the buyers in spite of mentioning the notional rate of duty separately in the invoices by splitting the consolidated monthly advance paid duty by them. They were not even required to state the notional rate of duty in their invoices as they could not charge more than the contract price.

They had, in fact, not actually charged any money more than the contract price from the buyers as is evident from the invoices.

Therefore, no capital can be allowed to be made by the Department out of the mistake committed by the appellants in working out and indicating the notional rate of duty on the individual clearances, in some invoices, as they were not required to pay the duty on the individual clearances, because they were working at that time under the Compounded Levy Scheme under which they were required to pay the duty in lump sum, determined on the basis of their production capacity under Section 3-A of the Act irrespective of the fact that whether they were able to recover that much duty from their customers or not Their duty liability under Section 3-A of the Act was not correlated to the clearances of the goods made by them during the period in dispute.

Therefore, it was not incumbent upon them to disclose even the notional rate of duty leviable on the individual clearances made by them in the invoices.

7. Besides this, there is nothing on the record to suggest if the appellants had recovered any amount representing as duty from their buyers over and above the contract price. As observed above, the price collected by them during the period in dispute was the contract price at which they agreed to sell the goods to the above detailed buyers from specifically indicated in their tender orders that extra duty will not be payable by them, and they would be paying only the contract price.

8. In view of the above referred detailed facts and circumstances, the provisions of Section 11-D could not be invoked against the appellants.

The ratio of the law laid down in the case of Virat Ispat Ltd. v. CCE, Mumbai, supra, wherein it has been observed that under the Compound Levy Scheme, the duty liability of the manufacturer is wholly unconnected with the quantity of the goods cleared by them is fully attracted to the case of the appellants. Similarly, the law laid down in the case of Bripanil Industries Ltd. v. CCE, Bangalore, supra, also very squarely covers the case of the appellants wherein it has been constantly ruled that the provisions of Section 11-D would be attracted only if it was shown that the manufacturer has collected any amount over and above the duty amount and where the goods had been sold by him at a contract price in which duty was already inbuilt, he could not be said to have recovered any extra amount of duty from the buyer by simply showing the rate of duty separately in the invoices. The law laid down in Poddar Industrial Corporation v. CCE, Patna, supra, also fully covers the case of the appellants. Therefore, the impugned order of the adjudicating authority confirming the duty under Section 11-D of the Act is not legally tenable and is set aside.

9. However, the learned counsel has not contested the duty demand of Rs. 59,910 and Rs. 39,093 confirmed on the appellants in respect of the processed fabrics of cotton shirting and 12 bales of suiting khakhi, as detailed in the impugned order. These duty amounts had already been even deposited by the appellants. Even the claim for modvat credit which was put up before the adjudicating authority in respect of the inputs used in the manufacture of cotton shirting, has not been

pressed by the learned counsel before us. Therefore, the impugned order confirming the above-said duty amounts and disallowing the modvat credit, is upheld.10. In view of the discussion made above, the impugned order of the adjudicating authority accordingly stands partly modified. The appeal of the appellants stands partly, to the extent discussed above, allowed with consequential relief, if any, permissible under the law.