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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-22-2004

Reported in : (2004)(117)LC83Tri(Delhi)

Judge : J Balasundaram, A T V.K.

Appellant : Gilard Electronics P. Ltd.

Respondent : Cce

Judgement :

1. The issue involved in this appeal filed by M/s. Gilard Electronics is whether the extended period of limitation is invocable for demanding duty from them.

2. Shri K.K. Anand, learned Advocate, submitted that the appellants manufacture electronic components and they charge design and development charges also from their customers; that the practice adopted by the appellants was to issue as separate Rule 52A invoice for charging design and development charges wherein all the informations such as rate, quantity, amount, PLA No. etc., were also mentioned; that these invoices were also submitted along with the RT 12 returns to the Department; that this practice was being followed since the beginning; that the demand of duty has been confirmed after issuing the show cause notice on 15.2.2001 for the period February 1996 to March 2000; that as the fact of charging design and development charges from their customers had been brought to the knowledge of the Department by way of furnishing the invoices, it cannot be alleged by the Department that there was any mala fide intention on the part of the

appellants to evade payment of duty. He emphasised that the mere non-mentioning of development charges in the price declaration will not amount to suppression of facts for invocation of the larger period of limitation.

He relied upon the decision in the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay wherein it has been held by the Apex Court that "where facts are known to both the parties the omission by one to do what he might have done and not that he must have done does not render it suppression of fact".

Reliance has also been placed on the decision in the case of Ultra Flax (P) Ltd. v. CCE, Faridabad wherein it has been held that extended period of limitation is not invocable if the appellants were under the bona fide belief that duty is not payable.

3. Countering the arguments, Shri R.C. Sankhla, learned SDR submitted that the appellants have nowhere in their price declaration at all declared that they were collecting design and development charges from their customers; that this fact has been suppressed by them from the Department; that the mere filing of invoices in which these charges have been collected does not mean that the fact of collecting the charges was known to the Department as the invoices could not be related to any particular goods. He relied upon the decision in the case of Madras Petro Chem. Ltd. v. CCE, Madras wherein it has been held that where the assessee is working under self removal scheme, it is obligatory on the part of the assessee to make proper and correct declarations as required under the law. He, therefore, contended that as the fact of collecting design and development charges has not been intimated to the Department, the larger period of limitation is invocable.

4. We have considered both sides. The extended period of limitation is invocable in cases where duty has been short paid or not paid, etc., on account of collusion, fraud, mis-declaration or suppression of facts or contravention of any provisions of the Act or Rules with intent to evade payment of duty. It has not been controverted by the Revenue that Rule 52A invoices showing design and development charges were submitted along with RT 12 returns by the assessee. This fact itself goes to show that there was no mala fide intention on the part of the assessee to keep the fact of collecting design and development charges suppressed from the

Department. The only mistake committed by them is that the method adopted by them was not as per law. This fact should have been shown by them in their price declaration. But the mere non-mentioning of the fact of collecting these charges in the price declaration, will not mean that they had any mala fide intention to evade payment of duty. This was the view expressed by the Supreme Court in the case of Pushpam Pharmaceuticals case (supra). Thus, we hold that in the present matter, the extended period of limitation is not invocable and the demand of duty for the said period is set aside. The matter is sent back to the adjudicating authority to work out the demand for the normal period of limitation as stipulated in Section 11A(1) of the Act.

The penalty is also set aside. The appeal is disposed of in the above terms.

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