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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Sep-29-2004

Reported in : (2004)(117)LC843Tri(Bang.)alore

Judge : S Peeran, J T T.K.

Appellant : C-dac (Erstwhile Electronics

Respondent : Cce

Judgement :

1. The appellants are aggrieved with the Order-in-Appeal No. 8/2003 dated 31.3.2003 which confirming the Order-in-Original No. 8/2002 dated 30.1.2002 passed by the Additional Commissioner of Central Excise, Trivandrum, invoking proviso to Section 11A of the Act and confirming duty amount of Rs. 8,20,335/- and penalty of Rs. 3000/-. The appellants are an autonomous scientific society of Ministry of Information Technology and are registered with the Registrar of Societies, Delhi.

They are engaged in development, manufacture and sale of electronic equipment. The allegation against the appellants was that they have manufactured and removed excisable goods during the financial years 1995-1996 and 1996-1997 without bringing to the notice of the Departmental and hence they are held liable for duty and imposition of penalty. The appellants took the plea among other pleas on merits that the demand was barred by time. In this context, they relied on the certificate given by the Assistant Commissioner under Notification No.167/1971 dated 11.9.1971. They also contended that the Department was fully aware of the activity of the appellant with regard to manufacture and clearance of the goods. They also relied on the CEGAT Final Order No. 98 dated 22.1.2003 pertaining to the demand raised in previous period 1993-1994 to 1996-1997. The Tribunal after due consideration of the fats and circumstances of the case has clearly held that demand was barred by time and there is no suppression of fact with intent to evade duty. However, the Commissioner did not agree to with the contention of the appellants and Tribunal's ruling and hence this appeal.

2. We have heard Shri Manoj Pillai, learned Advocate who appeared for the appellants and Shri R.V. Ramakrishnappa, learned JDR appeared for the Revenue and considered the pleas made by both the sides in the matter.

3. The issue pertaining to merits has been taken up for consideration at the stay level and the Tribunal, by the stay order No. 901/2004 dated 26.8.2004, has granted full waiver of pre-deposit of duty and penalty in view of the earlier Tribunal's ruling rendered by Final Order No. 98/2003 dated 22.1.2203 wherein it was held that there is no suppression of facts with intent to evade duty and also held that the demand is barred by time. We find that the facts being common in the present case. The Tribunal in the Final Order No. 98/2003 dated 22.1.2003 had examined the issue pertaining to the demands raised against the appellants in the previous period 1993-1994 and 1996-1997 by Show Cause Notice dated 18.6.1998. The Tribunal has recorded its findings in Para 2 to 4 of the said Final Order which is reproduced below- 2. Since we are inclined to accept the contention raised by the appellant on the ground of limitation, we do not propose to go into the other contentions raised by the appellant on merits. The period involved is 1993-1994 to 1996-1997. Show 'cause notice was issued on 18.6.1998. The appellant was established in 1974 as a Govt. of Kerala undertaking. The main objective of the Centre was to promote and establish modern scientific research and development in electronics in the State of Kerala and design and develop electronics components. Over a period of years the appellant has dealt with strategic areas like automation and control technology, power electronics, mass communication systems and computers in addition to various defence projects. In January 1994 the appellant entered into an MOU with

M/s Jyothi Ltd., Baroda for development of a Microprocessor based Automatic Voltage Regulator (AVR) for Brushless Alternators. After completion of the development work it was dispatched to M/s Jyothi Ltd., Baroda for field trials. Since the local excise authorities insisted on a certificate from the excise authorities at Trivandrum that the appellants are eligible for exemption under Notification No. 167/71-CE dated 11.9.1971, the appellants wrote a letter dated 6.1.1994 to the Assistant Commissioner requesting for issue of a certificate. Learned Counsel appearing on behalf of the assessee made available a copy of the letter which would show that the appellant has replied in detail into terms of MOU and the process of development of Microprocessor based AVR system. After being satisfied with the nature of the activity of the appellant the Assistant Collector issued a certificate on 10.1.1994, which reads as follows: Certified that it is proved to my satisfaction that the goods produced in Electronics Research and Development Centre, Trivanclrum, are eligible for exemption under Notification No. 167/1971 CE dated 11.9.1971 as amended, as the prototype models are produced during the course of research.

3. It is the contention of the appellant that since the nature of the MOU entered into with other parties arc on the same lime as the one dated 6.1.1994, it cannot be contended that Revenue was not aware of the activity of the appellant. Pursuant to a letter dated 1.11.1995 the appellant has again supplied all the required detail in the questionnaire enclosed with the above letter. Under these circumstances, it is contended that recourse to larger period of limitation cannot be justified, as there was no suppression of fact on the part of the assessee with intent to evade duty. Ld. Counsel placed reliance on a decision of the Supreme Court in Centre for Development of Advance Computing v. CCE, Pune in support of the above contention.

4. The case put forward by the assessee on the ground of limitation was rejected by the Commissioner for the reason that the assessee had a dual personality, one of research activity to fulfill their objective and the other involved commercial purpose. We do not find any merit in this reasoning of the Commissioner. As observed earlier the department was aware of the nature of the activity of the appellant from 1994 onwards. It is after being satisfied that the goods produced by

the center are eligible for the benefit of Notification 167/1971 dated 11.9.1971, the Assistant Collector issued a certificate on 10.1.1994. Under these circumstances, it cannot be taken that the assessee was guilty of suppression of fact with intent to evade duty. We, therefore, hold that recourse to larger period of limitation as provided under the proviso Section 11A was not justified in the facts of the case. We, therefore, set aside the order impugned and allow the appeal.

We find that the Tribunal has arrived at the conclusion that the Department was fully aware with regard to the nature of the activity of the appellants in view of the Assistant Commissioner's certificate dated 10.1.1994 which was extracted in the Final Order No. 98 dated 22.1.2003 as reproduced above. The facts and circumstances of the case as shown in the Final Order dated 22.1.2003 which is extracted above would fully apply to the facts of the present case. The Tribunal has already held in the case of the appellants pertaining to the previous period that there is no suppression of facts with intent to evade duty.

The ratio of the Tribunal ruling would apply to the facts of the appellant's present case. Following the same, the impugned order is set aside and the appeal is allowed with consequential relied, if any.

(Operative portion of the order has been pronounced in the court on completion of hearing on 29.9.2004.)