Bespask Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-05-2004

Reported in : (2005)(179)ELT453Tri(Mum.)bai

Judge : A Wadhwa, S T S.S.

Appellant : Bespask

Respondent : The Commissioner of Central

Judgement :

1. The appellants are engaged in the manufacture of motor vehicle pails, engine parts, electric motor pails and during the relevant period they were availing the benefit of SSI exemption in terms of Notification No. 9/98 dated 02/06/98 and Notification No. 9/99 dated 28/02/99. The revenue's case against the appellant is that they had wrongly availed the benefit of the exemption in respect of one of their products i.e. machined brackets, inasmuch as the said goods bore the brand name of their buyer. On the other hand, the appellant contend that their buyer M/s. Magneti Marclli Automotive Components (I) Ltd., were the manufacturer of alternators and they were manufacturing machined brackets (part of alternator) using moulds supplied by their customers on which the words "Magnetti Marclli" were engraved. As such, it is their contention that it cannot be said that they have manufactured the goods with the brand name of their customers. They also relied upon the Clause 4 of the Notification in question which grant exemption to the goods bearing a brand name on the specified goods which are in the nature of components of parts of any machinery and are cleared for use as original

equipment. The demand was also set assailed on the point of limitation.

2. The above contentions of the appellants were not accepted by the original adjudicating authority who confirmed the demand of duty of Rs. 55,004/- and also imposed personal penalty of equal amount under the provisions of Section 11AC. In addition, personal penalty of Rs. 10,000/- was imposed under Rule 173Q. On appeal against the above order, Commissioner (Appeals) set aside the penalty under Rule 173Q but upheld the confirmation of demand of duly and imposition of penalty under Section 11AC. Hence, the present appeal.

3. We have heard Shri V.B. Gaikwad, Ld. Advocate appearing for the appellants and Shri R.B. Pardesi, Ld. JDR for appearing for the revenue.

4. We find that in terms of paragraph 4 of Notification in question, the exemption is not available to the specified goods bearing brand name or trade name of another person. However, there are exceptions to the said clause, which are to the effect i.e. if such specified goods are in the nature of pails cleared for use as original equipment in the manufacture of another machinery or equipment the exemption shall not be denied. The conditions attached to the (SIC) clause is that the assessee should follow the procedure laid down in Chapter X of the Central Excise Rules, 1944. However, as per proviso to the said Clause 4 (a) the manufacturers, whose aggregate value of clearances for home consumption of such specified goods for use as original equipment has not exceed rupees fifty lakhs in a financial year is required to submit a declaration regarding such use instead of following the procedure laid down in Chapter X.5. The appellant's claim of relief under the said Clause 4 (a) of the Notification has been denied on the ground that they have not filed the declaration as regards the use of the specified goods as original equipment. However, it is seen that avenue is not doubting the use of the goods as original equipment by the appellant's buyers. The appellants were undoubtedly entitled to the benefit to the said clause subject to filing of the declaration. In our view, the above procedural lapse should not come in the way of the appellants entitlement to relief, especially when the declaration required to be filed is only in the nature of an intimation to the revenue, as regards the total clearances and the use of the goods as original equipment. There being no doubt about the two

aspects, the appellants should not be denied the benefits.

6. In any case, we find that the demand in question is also barred by limitation, notice having been raised after a period of six months from the relevant dale. The appellants have contended that there was no intention to evade duty, inasmuch as the duty paid by them was being claimed by their customers as credit. Even now, after depositing the amount of duty, during the course of investigation, they have approached their range Superintendent for issuance of Rule 57E certificate.

7. We are in agreement with the above contention of the appellants.

There is no positive misstatement or suppression on their part so as to invoke the longer period of limitation against them. We hold that the demand is also barred by limitation.

8. We also note that the appellants had deposited the entire amount of duty before issuance of the show cause notice and as such in terms of the Larger Bench decision of the Tribunal in the case of Commissioner of Central Excise, Delhi v. Machino Montell (I) Ltd., (2004 (62) RLT 709 (CESTAT-LB), no penalty could be legally imposed under the provisions of Section 11AC.