

Raletronics Ltd. Vs. Assistant Collector of Central Excise

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Court : Karnataka

Decided On : Mar-26-1992

Reported in : 1992(39)ECC69; 1992(60)ELT388(Kar); ILR1992KAR2955; 1992(3)KarLJ86

Judge : S. Rajendra Babu, J.

Acts : [Central Excise Act, 1944](#) - Sections 11A and 11A(1) and 35A

Appeal No. : Writ Petition No. 2280 of 1989

Appellant : Raletronics Ltd.

Respondent : Assistant Collector of Central Excise

Advocate for Def. : Shri Ashok Haranahalli, C.G.S.C.

Advocate for Pet/Ap. : Shri G. Chandrakumar, Adv.

Judgement :

ORDER

1. The petitioner is engaged in the manufacture of television sets at its factory in Bangalore. The petitioner is aggrieved by the issue of show cause notices at Annexures 'C' and 'D' under Section 11A of Central Excises and Salt Act, 1944 (hereinafter referred to as the 'Act'). The first show cause notice is dated 23-5-1988 and relates to the period between January 1988 to April 1988. The second

show cause notice is dated 16-9-1988 and relates to the period between May 1988 to August 1988. Indisputably the show cause notices in question are issued within six months from the relevant date referred to in Section 11A of the Act. These two show cause notices have been issued by the Superintendent of Central Excise.

2. It is contended on behalf of the petitioner that the basis for the issue of Show Cause notices being short levy of excise duty as a result of suppression of facts or violation of Act or the Rules with an intent to evade payment of excise duty the proviso to Section 11A(1) of the Act is attracted, and the Collector of Central Excise alone can exercise the powers in relation to such matters and not any officer of lower grade and hence they are invalid. To support the said proposition relied is placed upon the decisions in Gujarat State Fertilizer Co. Ltd. and Another v. Union of India and Others [1988 (34) E.L.T. 442 (S.C.)] and Partap Rajasthan Copper Foils & Laminates Ltd. v. Collector of C. Ex. [1989 (44) E.L.T. 775 (Tribunal)].

3. Sri Ashok Haranahalli, learned Central Government Standing Counsel submits that Section 11A(1) of the Act is attracted in cases where duty of excise has not been levied, or has been short-levied or short paid the condition being issue of show cause notice within the period of six months from the relevant date whatever may be the reasons for such non-levy or short levy and irrespective of whether as a result of fraud, collusion or willful misstatement or suppression of facts or contravention of any provisions to the Act or otherwise. He urges that proviso is attracted only in cases where extended period of limitation beyond six months from relevant date is sought to be utilized. He submits that the ratio of the decision of Gujarat High Court in Gujarat State Fertiliser Co. Ltd. v. Union of India and Others [1988 (34) E.L.T. 442 (S.C.)] is not applicable to the present case and that decision in Partap Rajasthan Copper Foils & Laminates Ltd. v. Collector of C. Ex. [1989 (44) E.L.T. 775 (Tribunal)] is erroneous.

4. An analysis of Section 11A would reveal the following :

The notice under Section 11A of the Act has to be ordinarily issued within six months from the relevant date as defined therein. The proviso to Section 11A(1) is

to the effect that notice can be issued within five years from the relevant date, if the non-levy, short payment or short levy or erroneous refund has resulted on account of (a) fraud, or (b) collusion, or (c) wilful misstatement or suppression of facts, or (d) contravention of the Act or Rules, with intent to evade payment of duty. These four elements refer to a state of mind and would apply where an assessee has knowingly or deliberately done something or omitted to do something which had led to non-levy, short levy or erroneous refund of duty. To apply Section 11A(1) without reference to proviso, notice has to be issued within a period of six months from relevant date and there is no requirement of any state of mind referred to above and any of the facts of non-levy, short levy or erroneous refund, by itself would suffice. It is only in cases where the extended period under the proviso is invoked the notice will have to be issued by the Collector. Thus the legislature has classed the notices issued within six months from relevant date, and notices issued beyond that period into two categories. In the latter case certain conditions are imposed while in the former no such conditions are necessary to be complied with. If this distinction is borne in mind and the proviso is read, the matter would become clear.

5. The learned Counsel for the petitioner urged that the words used in the proviso for the words 'Central Excise Officer', the words 'Collector of Central Excise' and for the words 'six months,' the words 'five years' are substituted in case where there is any short levy or short payment or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts or contravention of any of the provisions of the Act or the Rules made thereunder with intent to evade payment and hence in this circumstances the Section 11A(1) gets displaced by the proviso. I do not think that this contention is tenable at all. I have explained above the effect of the proviso is only to extend the period of limitation and in order that extended period of limitation is exercisable certain conditions are imposed. Firstly that there should be the state of mind referred to by me earlier and secondly the notice should be issued by the Collector. Thus in effect the proviso is attracted only in cases where extended period of limitation is invoked and not the normal period of six months from relevant date.

6. In the decision referred to by the learned Counsel for the petitioner in Gujarat State Fertiliser Company Gujarat High Court did not consider the effect of issue of notice where it is issued by an Officer inferior to Collector within a period of six months from the relevant date because in that case clearly proviso was attracted as the notice was issued beyond the period of six months from relevant date. For the reasons already stated the view expressed in Partap Rajasthan Copper Foils & Laminates Ltd. case is not well-founded and with respect I cannot agree.

7. It is contended on behalf of the petitioner that levy of Excise duty on Television Chassis is without jurisdiction and illegal in view of the Notification No. 373/86 C.E., dated 29-7-1986. Whether the said notification is applicable or not would need examination of facts and findings given thereon. Hence it would be more appropriate for the petitioner to file objections to the same and obtain a decision thereon in the proceeding initiated under Section 11A and approach this Court after exhausting statutory remedies. Petitioner is permitted to file objections to the notices issued herein within three months from today.

8. In the result petitioner is dismissed subject to the petitioner filing objections within a period of three months from today and the authority shall proceed to dispose of the matter in accordance with law. Rule discharged.