

Simac Group (India) Pvt. Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-02-2005

Reported in : (2005)(101)ECC461

Judge : S Kang, Vice, A T V.K.

Appellant : Simac Group (India) Pvt. Ltd.

Respondent : Cce

Judgement :

1. In this appeal, filed by M/s. SIMAC Group (India) Pvt. Ltd., the issue involved is whether the benefit of Notification No. 120/75-CE dated 30.4. 1975 is available to the goods manufactured by them.

2. Shri G. Umapathi, learned Advocate, submitted that the appellants manufacture hand knitting machines, which under an agreement are supplied in bulk to M/s. Singer Sewing Machine Company; that the said agreement, entered on 9.8.1963, was terminated on 3.1.1975; that with the introduction of Tariff Item 68 in the erstwhile Tariff w.e.f. 1.3.

1975, their product became chargeable to duty under the said Tariff Item; that Notification No. 120/75 exempted excisable goods falling under Item 68 cleared from the factory and on sale, from so much of the duty of excise leviable thereon as is in excess of the duty calculated on the basis of the invoice price charged by the manufacturer for the sale of such goods subject to the conditions stipulated in

the Notification; that Proviso (iv) of the Notification provided that the exemption shall be applicable only if the invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the manufacturer and the buyer or any person associated in business with the buyer other than the relationship created by sale of the aforesaid goods; that a show cause notice dated 16.6.1976 was issued to them to show cause as to why the price list should not be filed, in part IV under Section 4(1)(a) (3) of the Central Excise Act on the basis of prices charged by M/s. Singer Sewing Machine Co. from their customers; that the Assistant Collector passed Order-in-Original dated 3.1.79 holding that M/s. Singer were not acting as their distributors and that the price charged by the appellants from M/s. Singer were acceptable as assessable value: that, however, the Collector (Central Excise), in exercise of powers under Section 35 A (ii) of the Act, issued a show cause notice dated 24.12.1997 for the period from 1.4.75 to 30.9.79 invoking the provisions of Rules 10(1), 173Q, 173PP and 173C of the Central Excise Rules, 1944 asking them to show cause as to why the goods should not be assessed to duty under Section 4 of the Central Excise Act on the prices at which the goods were sold by M/s. Singer and, accordingly, the demand of duty was also made; that the Commissioner under Order in Review dated 15.10.82, has held that the prices were influenced by commercial, financial and other relationship and, therefore, the Condition No. 4 of the Proviso to Notification No. 120/75 was not fulfilled and, accordingly, he confirmed the demand. He, further, mentioned that on appeal preferred by them, the Appellate Tribunal vide Final Order No. 515/93-A dated 5.11.93, has held that though the distributorship agreement with M/s. Singer has been terminated w.e.f.

3.1.75, informal arrangements for selling the machines through M/s.

Singer remained upto 1.10.79; that the Tribunal has, further, held that for the purpose of Notification, it could not be treated as a related person and the benefit of notification cannot be denied to the appellants; that on appeal filed by the Revenue, the Hon'ble Supreme Court, vide Order dated 21.11.2002 in Civil Appeal No. 11931 of 1995, has remanded the matter to the Tribunal as the Tribunal ignored the evidences referred to by the Collector; that the Supreme Court also

observed that the Tribunal had not considered various other contentions raised by the appellants, such as the power to issue the notice and on the question of limitation and directed that all these aspects would be considered afresh by the Tribunal in accordance with law.

3. We heard Sh. G. Umapathi, learned Advocate for the appellants and Smt. Krishna A. Mishra, learned SDR for the Revenue. The hand knitting machines, manufactured by the appellants were classifiable under Item 68 of the erstwhile Central Excise Tariff and were charged to duty on ad valorem basis. Notification No. 120/75 dated 30.4.75 allowed the facility to the manufacture of excisable goods falling under Tariff Item 68 to discharge the duty on the basis of invoice prices. One of the conditions, stipulated in Notification, was that the invoice price should not be influenced by any commercial, financial or other relationship between the manufacturer and the buyer. This condition also provided that the said influence may be either by contract or otherwise. The Revenue has succeeded in making out a case that the invoice prices at which the goods were cleared by the appellants to M/s. Singer were influenced by commercial, financial or other relationship since about 90 per cent of the production was cleared to M/s. Singer, who have also made available interest free loans to the appellants. M/s. Singer had also imposed some conditions on the direct disposal of the goods within the country by the appellants. They had also imposed conditions in other aspects of the manufacture, such as, colour scheme, finishing, quality control, inspection etc. The learned SDR has also relied upon the decision in the case of Diamond Clock Manufacturing Co. Ltd. v. CCE, Pune, 1988 (34) ELT 662 (T), wherein it has been held that the invoice price under Notification No. 120/75 is available only if the price is not authorised by any commercial, financial or other relationship. She has also mentioned that this decision of the Tribunal has been confirmed by the Supreme Court as reported in 1999 (112) ELT A164. She also drew our attention to the findings of the Appellate Tribunal in earlier Order on account of which matter was remanded by the Supreme Court. These findings are as under: "The nature of relationship between Simac and Singer, Singer's interest in the sale of Simac products, Simac's dependence on Singer for finances, sale, marketing, etc., exceeded the normal area of buyer and the seller and would have made the prices tainted, but for the exemption Notification No. 120/75-CE." "We

have seen that the involvement of Singer in the activities of Simac was more than that of a normal buyer. For the purposes of Section 4 of the Act it would amount to a buyer, but for Notification No. 120/75-CE, the same criteria could not apply." We, therefore, hold that the appellants are not eligible to the benefit of Notification No. 120/75 dated 30.4.1975.

4. The learned Advocate submitted that the show cause notice dated 11.6.76 was issued to them for denying the benefit of Notification No.120/75 and for demanding duty upto 1976 only; that, thus, the Collector, in exercise of the power under Section 35A of the Central Excise Act, as it stood at the relevant time, did not have the power to extend the period of demand of duty; that, similarly, as there was no penal provision was invoked in the show cause notice, the Collector could not issue the show cause notice for imposing penalty. We find substantial force in these submissions of the learned Advocate.

Sub-section (2) of Section 35A of the Act, empowers the Collector of Central Excise to call for and examine the record of any proceedings, in which any decision or Order has been passed under the Central Excise Act or Central Excise Rule made thereunder by a Central Excise Officer subordinate to him for the purpose of satisfying himself, as to the correctness, legality or propriety of such decision or Order and to pass such Order thereof as he thinks fit. Sub-section (3)(a), further, provided that no decision or Order shall be varied so as to prejudicially affect any person unless he is given a reasonable opportunity of making a representation and, if he so desires, of being heard in his defence. Sub-section (3)(b) empowers the Collector if he is of the opinion that any duty of excise has not been levied or short levied, to make Order levying or enhancing the duty, after issuing a show cause notice to the assessee within time limit as specified in Central Excise Rules. It is not in dispute that the show cause notice was issued in 1976 and, therefore, in exercise of the powers under Section 35A, the powers of the Collector, to review the Order, was restricted upto 1976 and it is not open to him to enhance the period upto 1979. Section 35A (2) empowers the Collector to call for the records of any decision for the purpose of satisfying himself about the correctness, legality or propriety of the decision. The section does not vest with him the power of enhancing the original period covered by the show cause notice

and the order/decision passed in pursuance to that show cause notice. Similarly, Section 35A does not empower the Collector to invoke the penal provisions which were not initially invoked in the show cause notice originally issued to the appellants.

In view of this, we hold that the demand of duty of excise is limited to the period mentioned in the show cause notice dated 11.6.76 and the appellants are liable to pay the duty of excise for the said period.

The remaining demand of duty from them is set aside. As in the initial show cause notice, no penalty was sought to be imposed, we set aside the penalty also imposed on the appellants. The appeal is disposed of in the above terms.

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