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Prodigy Computers and Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : May-02-2005

Reported in : (2005)(191)ELT1160Tri(Chennai)

Judge : P Chacko

Appellant : Prodigy Computers and

Respondent : Cce

Judgement :

1. The appellants are engaged in the manufacture of "Automatic Data Processing Systems" (Heading 84.71 of the CETA Schedule). During the periods 12.6.98 to 31.3.99, 1.4.99 to 31.3.2000 and 1.4.2000 to 31.12.2000, they were availing the benefit of Notifications 9/98-CE, 9/99-CE and 9/2000-CE respectively. These Notifications allowed them the benefit of concessional rate of duty along with the benefit of Modvat credit on inputs. From the documents maintained by the party, it appeared to the department that they had realised normal rate of duty from their customers during the aforesaid period and that they had retained with them an amount of Rs. 6,14,123/- realised in excess from customers as Excise Duty, instead of depositing the amount to the Government's credit under Section 11D of the Central Excise Act.

Therefore, in a show-cause notice (SCN) dt. 11.2.02, the department proposed to recover the above amount from the appellants under Section 11D(2) of the Act. Two other demands were also raised on various grounds in the same SCN but

these demands were dropped by the original authority while confirming the demand of Rs. 6,14,123/-against the appellants under Section 11D(3) of the Act. The original authority also imposed a penalty of Rs. 70,000/- on the party under Rule 173Q of the Central Excise Rules, 1944. Aggrieved by the decision of the original authority, the party preferred appeal to the Commissioner (Appeals), who affirmed the demand of Rs. 6,14,123/- but set aside the penalty.

The present appeal is against the demand of Rs. 6,14,123/- made under Section 11D of the Central Excise Act.

2. Heard both sides. Ld.Senior Advocate submitted that no amount in excess of the duty chargeable at the concessional rate in terms of the relevant Notification was collected by the appellants from their customers during the period of dispute and that though their Chartered Accountants had certified to this effect, the same was not acceptable to the lower authorities. Ld.Counsel did not dispute the fact that the appellants had shown the normal rate of duty and the duty amount payable at such rate, in their invoices issued to the buyers. It was, however, submitted that it had so happened by mistake, which, according to him, was evident from the relevant RT-12 Returns filed by the party during the relevant period. Referring to samples of RT-12 Returns (copies available on record), ld.Senior Counsel pointed out that each of these returns showed as "DUTY PAID" the amount calculated at the concessional rate allowed by the relevant Notification. It was also pointed out that all these returns were duly acknowledged by the Superintendent of Central Excise and no objection whatsoever was raised by him. It was also submitted that, in all the invoices, issued after the period, of dispute, the appellants have shown only the concessional rate of duty. In these invoices, what is shown as "Amount of Duty Payable" is the amount calculated at the concessional rate only. This correct practice is being continued ever since the aforesaid mistake was realised by the appellants. With reference to a sample Invoice dt.

8.2.2001 (copy available on record), ld.Counsel pointed out that the price shown in this invoice was the same as the price shown for identical goods in an invoice [mentioning normal rate of duty and amount calculated at such rate as "Amount of

Duty Payable"] issued towards the end of the period of dispute. Ld.sr.counsel argued that this clearly indicated that any excess amount was not collected as duty by the appellants from their buyers during the period of dispute.

According to ld.Counsel, when the appellants produced their Chartered Accountants' Certificate to prove that they had not collected any excess duty from their buyers during the period of dispute, it was the burden of the Revenue to rebut the evidence adduced by them. In this case, there was no rebuttal from the side of the Revenue. Therefore, counsel argued, the finding of the lower authorities that the appellants had collected an excess amount of Rs. 6,14,123/- as duty from their customers during the period of dispute was not supported by evidence and, therefore, the demand raised under Section 11D was not sustainable.

3. Ld.Counsel also pointed out that the plea of limitation raised by the party was not considered by the lower authorities. The RT-12 Returns filed by the party from time to time during the period of dispute showed only the duty at concessional rate, " DUTY PAID". The relevant invoices, wherein normal rate of duty and amount collected at such rate were mentioned, were available to the department by the end of the year 2000. Thus the alleged recovery of excess duty by the appellants from their customers was very much known to the department.

According to ld.Counsel, the department ought to have issued the SCN within a reasonable period of 6 months, no period of limitation having been prescribed under Section 11D of the Central Excise Act. In this connection, reliance was placed on the Supreme Court's judgment in GOI v. Citedal Fine Pharmaceuticals , wherein it was held that, where no period of limitation was prescribed in the statute, the statutory authority had to exercise its powers within a reasonable period depending upon the facts of the ease.

4. Ld.DR submitted that the relevant invoices, which were the proper duty-paying documents, clearly indicated that the appellants had collected duty at normal rate from their customers. The particulars relating to payment of duty on goods, as furnished in these invoices, were conclusive proof of the fact that the normal rate of duty had been realised by the manufacturer. According to ld.DR, no further evidence was required for raising a demand on the party under Section

11D.According to him, the Chartered Accountants' certificate had no evidentiary value in the face of the relevant invoices. Adverting to the plea of time-bar raised by the counsel, ld.DR submitted that no period of limitation had been prescribed under Section 11D and, therefore, the SCN could not be held to be time-barred.

5. I have given careful consideration to the submissions. The primary question of fact to be settled in this case is whether the appellants had actually collected from their buyers, during the period of dispute, excess amount of duty on the goods cleared by them during such period as alleged in the SCN. Before proceeding to examine this question, I think it is necessary to have a look at Sub-section (1) of Section 11D, extracted below : SECTION 11D. Duties of excise collected from the buyer to be deposited with the Central Government. - (1) Notwithstanding anything to the contrary contained in any order or direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder, every person who is liable to pay duty under this Act or the rules made thereunder, and has collected any amount in excess of the duty assessed or determined and paid on any excisable goods under this Act or the rules made thereunder from the buyer of such goods in any manner as representing duty of excise, shall forthwith pay the amount so collected to the credit of the Central Government.

6. In this case, there is no dispute of the fact that the appellants were assessing duty themselves and that, in the RT-12 Returns filed by them during the period of dispute, they mentioned the concessional rate of duty and furnished the amount collected at such rate as the "DUTY PAID". That these returns filed by the party were duly acknowledged by the proper officer of Central Excise is also not in dispute. In all these returns, duty was assessed at the concessional rate only, a fact not in dispute. The Revenue has claimed that the appellants collected an amount in excess of this duty from their customers. This claim is based on the relevant invoices issued by the appellants to their customers during the period of dispute. Each of these invoices mentions the normal rate of duty and the amount collected at such rate as the "Amount of Duty Payable". Undisputedly, these invoices were also referred to in the self-assessment memoranda of the relevant RT-12 Returns, wherein duty was assessed at concessional rate. The RT-12 Returns were filed by the assessee under Rule 173G of the Central Excise Rules,

1944 and these were duly acknowledged by the proper officer of Central Excise. This procedure was not an empty formality.

It enabled the department to verify as to whether duty had been correctly assessed and paid by the party, whether any amount in excess of the duty assessed was collected by them from their customers etc. It appears from the records that no such verification was done by the department. On their part, the appellants produced their Chartered Accountants' certificate which certified that no excess duty was collected from the purchasers. This evidence coupled with the particulars of self-assessment furnished in the RT-12 Returns would go to show that the appellants did not collect from their customers any amount as duty in excess of the duty assessed during the period of dispute. As rightly pointed out by ld.Counsel, this evidence adduced by the appellants was not rebutted by the department. I am not inclined to accept an invoice as conclusive evidence of the particulars mentioned therein. It was open to the Department to gather evidence from the customers to prove that they had paid normal rate of duty on the goods purchased from the appellants. No such attempt was made in this case.

7. Section 11D does not refer to invoice. It significantly refers to "duty assessed or determined". Insofar as a manufacturer working under Chapter VII A of the Central Excise Rules, 1944 is concerned, the expression "duty assessed" is a reference to self-assessment in RT-12 Return. In the instant case, as already noted, the RT-12 Returns filed by the appellants during the period of dispute clearly showed that duty was paid at concessional rate on the goods removed to the customers. In the absence of evidence of any amount having been collected as duty in excess of the concessional duty from the customers, it has to be held that the appellants did not collect any amount in excess of the duty assessed and paid on their goods during the period of dispute and, therefore, Section 11D was not invocable against them. The demand raised on the appellants by the lower authorities under Section 11D cannot be sustained.

9. Having taken the above view, I think it is not necessary to examine the limitation issue.

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