Collector of Central Excise Vs. Modern theatres Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-20-1987

Reported in : (1988)LC625Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Modern theatres Ltd.

Judgement :

1. The respondents M/s. Modern Theaters Ltd. cleared four prints of a dubbed film "Bandipotu Mutha" (Telugu) and four prints of dubbed film "Asaadualaku Asaduythlu" (Telugu), availing the exemption under Notification 275/77-C.E., dated 12-8-1977. Show cause notice dated 21-8-1981 was issued to them that since the duty concession in respect of the said films have already been availed of in respect of the original Tamil version no such exemption was further available in respect of the dubbed versions and therefore they are liable to pay duty of Rs. 4,725.00. The respondents replied denying liability. On adjudication the Assistant Collector, under his order dated 2-10-1982 confirmed the demand. On appeal the said order was set aside by the Collector (Appeals) under his order dated 21-2-1983. In doing so the Collector relied on an order of the Central Board in another appeal' relating to Prasad Film Laboratories. This appeal by the Collector of Central Excise Madras is against the above said order dated 21-2-1983.

2. The respondents have by their letter dated 25-9-1987 indicated that they would not be appearing before us either in person of through authorised representative. None has therefore appeared on behalf of the respondents. We have heard Shri

Balbir Singh for the department and have perused the records.

3. In allowing the appeal before him the Collector noted that he was doing so in view of the order dated 3-1-1981 of the Central Board of Excise and Customs in the case of Prasad Film Laboratories. The Collector had noted that though it appeared that the said order of the Board was the subject matter of review proceedings at the instance of the Government, he was bound to follow the order of the Central Board unless it is reversed in the review proceedings.. Shri Balbir Singh points out that the said order of the Central Board has in fact been set aside in the review proceedings, after transfer of the said proceedings to this Tribunal. The decision of this Tribunal in the said case is reported in 1987 (29) E.L.T. 460. Shri Balbir Singh submits that since the Collector relied only on the order of the Central Board, and the said order has now been set aside, we should, following the said earlier decision of this Tribunal, allow this appeal and restore the order of the Assistant Collector.

4. But it appears to us that the said result may not follow from the decision reported in 1987 (29) E.L.T. 460. The said case related to a feature film which had no spoken words and therefore the sound track remained the same in all the versions the difference between two several language versions, being only with reference to a small introductory portion in which the story of the film had been displayed in the script of the respective language version. The Tribunal extracted the following passage from the order of the Collector in the said case (which order was set aside by the Central Board on appeal) :- "The feature films cleared under Tamil, Hindi and Malayalam versions cannot be termed as dubbed films in the real sense in the conventional method of dubbing. The conversation in one language has to be translated and re-drafted in other scripts and for each language, a separate sound track has to be incorporated in the positive. The prints so dubbed in different languages are covered by Censor Board Certificates and individual sets are entitled to the exemption on the first 12 prints in each language." 5. Therefore, in the said case the Collector himself had been of the opinion that if the different versions had been by way of dubbed films in the normal sense he would have been inclined to grant the benefit of exemption in respect of each language version. It is for the reason that in the said case the different versions were not

dubbed films in the normal sense that the Collector refused the exemption for the different language versions. This Tribunal also took note of the said fact and held that all the versions were of the same film and hence exemption was available only once. The Tribunal observed in para 8 that it is to be noted that neither in the appeal to the Board nor in the reply to the review notice had it been urged by the respondents therein that the version in each language was a separate dubbed version with a distinct track, the visual portion alone being common to all the versions. We are therefore of the opinion that the ratio of the decision in 1987 (29) E.L.T. 460 cannot be applied to the facts of the present case.

6. In the present case the visual portion alone remained the same in both language versions, the audio portion being entirely distinct, the sound track in the original version being in Tamil and that in the dubbed versions being in Telugu. In the circumstances we are satisfied that the respondents were entitled to the separate exemption claimed by them in respect of the dubbed versions.

7. We accordingly hold that the confirmation of the demand by the Assistant Collector was not a proper and that the order of the Collector (Appeals) setting aside the same was correct.