

Collector of Central Excise Vs. Industrial Oxygen Co. (Pvt.) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-23-1987

Reported in : (1988)(15)LC265Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : industrial Oxygen Co. (Pvt.) Ltd.

Judgement :

1. The facts of the case in brief are that the respondents manufacture gases falling under Central Excise Tariff Item 14-H and other goods falling under T.I. 68. They sent Inox expansion engines and Inox molecular seive battery falling under Tariff Item 68 to their factory at Mandi Govindgarh under G.P. Nos. 64 and 65 dated 22-9-1982 claiming exemption of Central Excise duty under Notification No. 118/75-C.E., dated 30-4-1975, as amended by Notification No. 105/82-C.E., dated 28-2-1982. This exemption was available when the goods were sent to another factory after observing the procedure laid down in Chapter-X of the Central Excise Rules. In this case, the consignee factory at Mandi Govindgarh had not obtained L-6 licence before the goods were sent to them and there was also no CT-2 certificate. On arrival of the goods at the destination, the consignee factory gave an intimation of receipt of the goods to the Central Excise Officer. A show cause notice dated 18-12-1982 was issued to the respondents asking them to show cause as to why Central Excise duty amounting to Rs. 22,800/~ should not be recovered from them and why penalty should not be imposed under Rule 9(2) of the Central Excise Rules, 1944 for contravention of Rules 173F, 173G(1) and 9(1) of Central Excise

Rules inasmuch as they failed to determine the duty liability of those goods valued at Rs. 2,85,000 and to pay the duty before removing the goods from their Pune factory. They were also charged for contravention of Rule 173G(2) read with Rule 52A of the Central Excise Rules for removing the goods without valid transfer documents and without payment of duty. They were further charged for contravention of Rule 198(2) on the ground that they furnished misleading information regarding the admissibility of the benefit of Notification No. 118/75-C.E., dated 30-4-1975 as amended although the Mandi Govindgarh factory had no L-6 licence when the goods were sent to them. M/s. Industrial Oxygen Co. (P) Ltd., Mandi Govindgarh were asked to show cause as to why penalty should not be imposed on them for contravention of Rule 174 of Central Excise Rules read with Rule 192 and Section 6 of the Central Excises and Salt Act, 1944 by receiving non-duty paid goods without possessing appropriate licence.

2. On adjudication of the case, the Additional Collector accepted the respondents' contention that there was no mala fide intention in sending the goods without payment of duty. He observed that the respondents sent the goods without payment of duty under a bona fide belief that their unit at Mandi Govindgarh had obtained L-6 licence and C.T. 2 certificate and that they would have been eligible for exemption of duty but for want of L-6 licence and CT-2 certificate. He refrained from demanding duty on the goods which would have been cleared under the procedure set out in Chapter-X of the Central Excise Rules. He, however, imposed a penalty of Rs. 500 on the respondents under Rule 173Q of the Central Excise Rules for their failure to take proper care to ensure whether L-6 licence and C.T. -2 certificate were issued to their counterpart Mandi Govindgarh factory prior to despatch of the goods. Additional Collector absolved M/s. Industrial Oxygen Co. (P) Ltd., Mandi Govindgarh from the charge levelled against them.

3. In the appeal filed before us, the Collector of Central Excise, Pune has prayed that the Order-in-Original passed by the Additional Collector be modified, demanding Central Excise duty at the appropriate rate on the goods removed by the respondents to their Mandi Govindgarh factory.

4. Appearing for the Revenue, Shri Shishir Kumar has argued before us that the procedure laid down in Rule 192 of the Central Excise Rules was not followed in this case as there was no L-6 licence and C.T.-2 certificate before sending the goods. The benefit of exemption Notification No. 118/75-CE, as amended is, therefore, not admissible to the respondents. They should pay the duty due on the goods. As regards the cross-objection filed by the respondents, Shri Shishir Kumar has stated that mens rea is necessary for Rule 173-Q mens rea is not necessary. He relied on the decisions reported in (i) 1978 (2) E.L.T. J 199, (ii) 1986 (24) E.L.T. 80 and (iii) A.I.R. 1975 S.C. 1039.

5. Arguing for the respondents, Shri N.D. Khosla has stated that the omission to follow Chapter-X procedure cannot disentitle the respondents to the benefit of the exemption notifications. He has relied on the decisions in the cases of (i) Indian Oil Corporation, Begusarai v. Collector of Central Excise, Patna -1985 (21) E.L.T. 727 (Tri.), (ii) National Mechanical Works, Calcutta v. Collector of Central Excise, CalcuttaHindustan Chemical Works, Jullundar City v. Collector of Central Excise, ChandigarhHindustan Petroleum Corporation Ltd. v. Collector of Central Excise, Bombay - 1987 (9) E.T.R. 310. Shri Khosla has also argued that there was no suppression of facts or misstatement on the part of the respondents and hence no penalty should have been imposed on them. For this argument he has relied on the decision reported in 1988 (33) E.L.T. 548 (Tri.) in the case of Collector of Central Excise, Bombay II v. Indopharma Pharmaceuticals Works.

6. We have considered the case records and the arguments of both sides.

The question to be decided by us is whether the absence of L-6 licence and C.T.-2 certificate would make the goods ineligible for the benefit of exemption under Notification No. 118/75-C.E. dated 30-4-1975 as amended. The purpose of observing the procedure laid down in Chapter X of the Central Excise Rules in this case is to ensure that the goods are actually received at the destination factory and used for captive consumption. The goods sent by the respondents to their unit at Mandi Govindgarh were actually received in that factory and the receipt of the goods in that factory was intimated to the Central Excise Officer.

This is an admitted fact. Duty cannot, therefore, be demanded on the goods although the consignee factory did not have the L-6 licence and C.T.-2 certificate. However, the respondents should have ensured before sending the goods that L-6 licence and C.T.-2 certificate were actually obtained by the consignee. For this lapse the Additional Collector has imposed a penalty of Rs. 500 on the respondents. Shri Khosla has cited a few decisions in support of his argument that the omission to follow Chapter X procedure cannot disentitle the respondents to the benefit of the exemption. In the decision reported in 1985 (21) E.L.T. 727 (Tri.), this Tribunal held that omission to follow Chapter X procedure could not invalidate entitlement to concessional assessment. The Tribunal observed, "No doubt it is true that for this consignment of LDO a G.P.-2 should have been prepared for its duty-free movement to the said power station under Chapter-X procedure of the Central Excise Rules, 1944. This was an error and everybody accepts it to be so. But in our opinion this error is not serious enough to invalidate the entitlement of the oil to concessional assessment under the Notification. In the decision reported in 1983 (14) E.L.T. 2370 (Tri.), this Tribunal held that when the parts of refrigerators were cleared with full knowledge of the local Central Excise Officer, and they were received and acknowledged at the destination by the Central Excise Officer, there has been factual compliance with the conditions of the Notification No.50/70-C.E. for claiming concessional rate of duty. In 1984 E.C.R. 1533 (CEGAT), the Tribunal held inter alia that "The law has to be followed in spirit and the breach of procedural requirements does not disentitle the appellants from claiming immunity from payment of duty when they had closed down their factory and stopped the manufacture of excisable goods, the intimation of which was duly sent to the excise authorities." In the case of Hindustan Petroleum Corporation Ltd. -1987 (9) E.T.R. 310, the Assistant Collector held that though the procedure under Chapter X was not complied with, the object and spirit of the Notification No. 287/79-C.E. was duly complied with. He did not find any ground to sustain the demand for duty and had ordered the withdrawal of the demand. On perusal of the records, the Collector issued a show cause notice under Section 35A(2) of the Central Excises & Salt Act to the appellants asking them to show cause as to why the Assistant Collector's order should not be set aside and why the differential duty of Rs.1,28,10,978.48 should not be demanded and recovered from them. The

Tribunal held in that case that if the appellants did not manufacture Transformer Oil themselves and were selling the same to L-6 licence holders and in substance they had duly complied with Chapter X procedure laid down in the amended Notification No. 287/79-C.E. and in effect they could not comply with the same earlier as they were not aware of the same, Tribunal should quash the demand created against the appellants. The ratio of these decisions is applicable in the present case. There has been substantial compliance of Chapter X procedure inasmuch the goods were received at the consignee factory for captive consumption. The absence of L-6 licence and C.T.-2 certificate should not stand in the way of availing of the benefit of exemption notification. In the circumstances, we do not find any infirmity in the decision of the Additional Collector in not demanding the duty. We, therefore, uphold the impugned order and dismiss the appeal filed by the Revenue.

7. Additional Collector has given reasons for imposing penalty of Rs. 500 on the respondents. We do not have justification to set aside the penalty. In the circumstances, the cross-objection filed by the respondents is also dismissed.

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