

K. Ram Kumar Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-27-2005

Reported in : (2006)(193)ELT504Tri(Mum.)bai

Judge : K Kumar, S T Chittaranjan

Appellant : K. Ram Kumar

Respondent : Commissioner of Central Excise

Judgement :

1. Heard both sides. The appellants are engaged in manufacturing of Towers and Tower accessories. M/s. Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) placed order on the appellants for supply of Towers and Tower accessories for Simhadri and Vizag Transmission System Project financed by the Japan Bank for International Cooperation (JBIC). The appellants have claimed exemption under Notification No.108/95-C.E. on the basis of a certificate obtained and furnished by APTRANSCO to the effect that the project under which the impugned goods would be utilized is being financed by an International organization namely JBIC. However, subsequently it came to be known that JBIC is not an approved international organization under the said notification and the earlier certificate issued by the Government of Andhra Pradesh was withdrawn. The appellants have subsequently paid the entire duty involved in the present appeal as the impugned goods were not entitled to exemption under Notification No. 108/95-C.E. The learned Advocate for the appellants fairly concedes that the duty demand is not being contested by the appellants. The contest is against the

penalty of Rs. 82,77,277/- imposed on the first appellants, penalties of Rs. 2,00,000/- each imposed on the second and third appellants, and demand of interest against delayed payment of duty.

2. The learned Counsel for the appellants argues that since the duty has already been paid prior to the issue of show cause notice, no penalty is impos-able on the appellants. He also contends that for the same reason, no interest is payable by the appellants under Section 11AB of the Central Excise Act, 1944. Hivoltrans Electricals Pvt. Ltd. v. CCE 2004 (175) E.L.T. 739 (T) Danke Electricals Ltd. v. CCE (iv) Commissioner v. Rashtriya Ispat Nigam Ltd. 2004 (163) E.L.T. A53 (S.C.) CCE v. JKON Engg. Pvt. Ltd. 4. We have considered the arguments advanced from both sides. We are of the view that since the impugned goods were cleared without payment of duty under Notification No. 108/95-C.E. only on the basis of a certificate issued by the Government of Andhra Pradesh treating the fund provider JBIC as an authorized international agency, the duty becomes payable under the Notification when subsequently such certificate has been withdrawn on the ground that JBIC is not an eligible international funding agency. We are of the view that when the conditions of an exemption notification is violated, the duty can be demanded in terms of the notification as held by the Apex Court in Para 12 of its decision in the case of Mediwell Hospital and Health Care Pvt. Ltd. v. Union of India . Such demand also does not fall foul of the limitation period prescribed in respect of short levy and non-levy as held by the Hon'ble High Court of Karnataka in the case of Medical Relief Society of South Kanara v. UOI . We note that the amount of duty has been voluntarily paid by the appellants and there is no contest against the duty demand.

5. As regards the penalty imposed by the adjudicating Commissioner, we are of the view that in the circumstances of this case where the exemption was availed on the basis of a certificate issued by a State Government authority, the imposition of penalty is not justified. We also note in this context that the appellants have been reimbursed the duty amount by way of cash refund from DGFT as terminal excise duty on the impugned goods holding the clearance as deemed export.

6. As regards the demand of interest, we are of the view that such interest is payable on account of deferred payment under Section 11AB of the Central Excise Act, 1944 w.e.f. 11-5-2001 i.e. from the date of enactment of the Finance Act, 2001. The provisions of the said Section 11AB is very clear that the interest is payable irrespective of whether the duty demand was determined under Sub-section (2) of Section 11 A, or has been paid under Sub-section (2B) of Section 11A before issue of show cause notice. The specific wording of the Section 11AB leaves no doubt that even when the duty has been paid before issue of show cause notice, interest is payable on deferred payment of duty.

7. Appeal is partly allowed in the above terms by setting aside the penalty.

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