

Collector of C.E. Vs. Indoprint Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-13-1988

Reported in : (1988)(19)LC168Tri(Delhi)

Appellant : Collector of C.E.

Respondent : indoprint Enterprises

Advocate for Def. : Shri. N.I. Mehta

Judgement :

1. Being dissatisfied with that part of the impugned order which held that the demand for Rs. 44,062.80 issued for the period November, 1980 to March, 1981 is time-barred except for few days and that the value of bought out items cannot be clubbed for determining the eligibility under Notification No. 105/80-C.E., dated 19-6-1980, the Revenue had filed the present appeal.

2. Factual backdrop : M/s. Indoprint Enterprises, Ahmedabad, the respondents herein are manufacturer of Textile Machinery falling under Tariff Item 68. During the period from 1-11-1980 to 31-3-1981 the respondents cleared the goods Textile Processing Machinery falling under Tariff Item 68 to the value of Rs. 29,50,785.00. According to the department as per proviso (ii) to Notification No. 105/80-C.E., dated 19-6-1980, the value of clearances eligible for exemption during the relevant period should not have exceeded Rs. 24 lakhs. In other words the respondents were eligible under the said Notification for exemption upto the clearances of Rs. 24 lakhs and they were required to obtain the licence as soon as they exceeded

the limit of 80% of the clearance value, but they failed to do so, and also they had cleared the goods valued to Rs. 5,50,785.00 in excess of exemption limit of Rs. 24 lakhs during the said period. As a follow up action a show cause notice dated 24-9-1981 was issued to the respondents calling upon them to show cause as to why the duty for goods cleared in excess of Rs. 24 lakhs be not recovered. It was the further case of the department that the respondents continued to clear the goods from 1 -4-1981 to 30-11 -1981 without payment of duty amounting to Rs. 3,70,800.00 for the period from 1 -4-1981 to 31-8-1981 and Rs. 6,57,443.24 for the period from 1 -9-1981 to 30-11 -1981. Consequently show cause notices dated 19-9-1981 and 8-12-1981 respectively were also issued to the respondents calling upon them to show cause as to why the duty on such clearances on which the duty has not been paid be not recovered. In reply the respondents admitted the said clearances but disputed their liability mainly on the ground that for the purpose of benefit under the said Notification the value of bought out articles components i.e. to say Rs. 5,63,145.50 cannot be clubbed for determining the total clearances. After the usual adjudication proceedings, the Assistant Collector, who adjudicated the case held that the value of bought out items cannot be excluded for the purpose of determining the clearances under the said Notification.

Consequently he confirmed the three demands amounting to (1) Rs. 44,062.80, (2) Rs. 29,664.00 and (3) Rs. 52,595.46. Against that order of the Assistant Collector, the respondents filed their appeal before the Collector of Central Excise (Appeals), New Delhi. By the impugned order the Collector (Appeals) set aside the two demands of Rs. 29,664.00 and Rs. 52,595.46 being non-maintainable. With respect to the third demand of Rs. 44,062.80, the Collector (Appeals) held that this demand for Rs. 44,062.80 relates to the period from November, 1980 to March, 1981 whereas the show cause noticed/as issued on 24-9-1981.

Consequently out of this demand except for seven to eight days of demand for the month of March, 1981 is totally hit by the time-bar under Section 11A of the Central Excises and Salt Act, 1944 as the extended period of 5 years cannot be made applicable in the absence of any allegation of wilful misstatement or suppression of facts in the show cause notice. As regards the claim of the respondents that the value of bought out items cannot be clubbed together while

determining the total clearances under the said Notification, the Collector (Appeals) agreed with them. Now the Revenue has filed the instant appeal only with respect to the demand for Rs. 44,062.80.

3. Shri J.N. Nigam, learned SDR for the appellants submitted that in the facts and circumstances of the case the learned Collector (Appeals) erred in holding that the value of bought out items need not to be taken into consideration while determining the total clearances under Notification No. 105/80-C.E., dated 19-6-1980. He submitted that from the records of the case it would appear that the respondents are purchasing from the other units the essential parts required for the manufacture of wet processing machines. These parts are namely "T" Maneklal Rubber Blankets, 'ELGI' Air Compressors, Control Panel and Hydraulic Power Pack Unit. Thus, all these parts are the components of the machinery manufactured by the respondents. He further submitted that these components articles bought out by the respondents are being sold by them in a form of complete machine and as such, these component parts are required by the respondents for the purpose of making their machine complete. In other words, the contention is that the respondents are manufacturing textile machinery and selling the products in a complete named machine as per their selling contract and they are not selling the parts thereof. He further submitted that looking to the size of the machine, it is not possible for them to supply the machine in assembled condition to their customers, as such, there is no alternative except to send the component parts of the said machine in boxes. Consequently, it cannot be said that these bought out articles are for the trading of their machines which are not sold separately by invoicing the separate bills but the invoice is prepared for a whole machine which is sold by them to their customers. As a result thereof the value of such bought out articles components are to be included while determining the total clearances under the said Notification. Shri Nigam in support of his contentions cited the case of Dayaram Metal Works Pvt. Ltd. v. Collector of Central Excise, Baroda, 1985 (20) ELT 392 decided by this Tribunal, wherein it was held that the value of such bought out items had to be included in the value of clearances for the purpose of Notification No. 176/77-C.E., dated 18-6-1977. In reply Shri N.I. Mehta, learned Counsel for the respondents mainly relied upon the findings of the Collector (Appeals) and submitted that the bought out Items were supplied

separately without attaching to their machineries and therefore value of such bought out items which were cleared (as it is without any further processing in the factory premises) cannot be clubbed for determining the eligibility under the said Notification. He further submitted that many times the bought out items were supplied from godowns also.

However,, he admitted that the respondents have contract for the full product and therefore they have to supply the complete machines.

4. We have considered the arguments and find much force in the contention raised by the learned SDR for the appellant. The fact that the respondents have contract for the full product namely complete machine and they are supplying as such to their customers appears to be not in dispute. Likewise the fact that the bought out items consist of "T" Maneklal Rubber Blankets, 'ELG/1 Air Compressors, Control Panel and Hydraulic Power Pack Unit are the component parts of their products i.e. to say Air Compressors machines also appears to be no longer in dispute. Similarly, the fact that these bought out items were acquired by the respondents for completion of the machines which the respondents were manufacturing and supplying to the customers as per their selling contract is also no longer in dispute. On these established and proved facts, the mere fact that these bought out items were supplied by the respondents in knock-down condition would not make any difference. It is an admitted fact that the size of their machinery is quite big and it appears that it was not possible for the respondent to supply their machines in assembled condition to their customers and as such the respondents had to send the component parts in knock-down condition, i.e. to say in unassembled condition. In the case of T.R. Cycles of India v. Union of India, 1983 ELT 681, it was held by the Hon'ble Madras High Court that even though goods are supplied in CKD (Complete knock-down condition) without being assembled before clearances, they have to be treated as fully manufactured goods for the purposes of excise duty. Similar view was taken in the case of Union of India v. Free India Dry Accumulators, 1983 ELT 733 by the Hon'ble Calcutta High Court wherein it was held that the cost of raw material, even when supplied by the customer was includible in the manufacturing cost of resultant article. Thus, in a nutshell the ratio of the decision is that once completely manufactured goods are supplied to the

customer the simple fact that some parts by way of raw material were supplied even by the customer or the manufactured article was supplied not in assembled condition but in CKD condition would not make any difference to the question and that the value of entire raw material, or all parts which go into the making of the manufactured article, shall have to be taken into account. In the case of Associated Soapstone Distributing Company Pvt. Ltd. v. Collector of Central Excise, Indore, 1985 (22) ELT 109, this Tribunal while interpreting Notification No. 105/80-C.E. in question held that Notification No. 105/80-C.E. required the full intrinsic value of the goods, including the value of the raw materials, to be taken into account for calculating the turnover ceiling limit.

Thus on the facts of the instant case we hold that the value of the bought out items cleared by the respondents during the relevant period was while determining the clearances.

5. As regards the demand for Rs. 44,062.80 relating to the period from November, -1680 to March, 1981, the learned SDR submitted that the Collector (Appeals) erred in holding that the said demand was time-bar under except for seven to eight days of demand for the month of March, 1981, being hit by the time-bar under Section 4A of the Central Excises and San Act, 1944. He contended that since the demand was based on annual turnover under the said exemption Notification, the period of limitation would commence from the last date of the year. To support his contention he relied upon the judgment of a Single Judge of the Hon'ble Kerala High Court rendered in the case of 7.7 Pylunny v. Union of India, 1978 ELT (J 705), where it was held that for filing the refund claim based on annual turnover under exemption Notification, the period of limitation would commence from the last date of the year. In reply Shri N.I. Mehta, learned Counsel for the respondents submitted that the said judgment of the Hon'ble Single Judge was over-ruled by a Division Bench of the same High Court on appeal by the Assistant Collector as reported in 1983 ELT 2156 (Kerala).

6. We have considered the arguments. The contention raised by the learned SDR has no force. The Division Bench of the Hon'ble Kerala High Court while over-ruling the decision of the learned Single Judge rendered in the case of 7.7

Pylunny, (supra) has held (see Assistant Collector of Central Excise v. T. T. Pylunny, 1983 ELT 2156) that for claiming the refund based on annual turnover under exemption Notification limitation would run from the date of clearances and not from the end of the assessment year. Thus we reject the contention of the learned SDR and uphold the findings of the Collector (Appeals) that the demand for Rs. 44,562.80 for the period from November, 1980 to March, 1981 was time-barred except for seven to eight days of demand for the month of March, 1981.

7. In the result we set aside the findings of the Collector (Appeals) that the value of the bought out items was not includible while determining the total clearances under Notification No. 105/80-C.E., but uphold the finding that the demand in question was nit under Rule 11A of the Central Excises and Salt Act, 1944 except for seven to eight days of demands for the month of March, 1981. The appeal is accordingly allowed in the these terms and the order of the Collector (Appeals) is modified accordingly.

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