

Collector of Central Excise Vs. Titanium Equipment and Anode Mfg.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-26-1988

Reported in : (1989)(22)LC249Tri(Delhi)

Judge : V Raghavachari, V Gulati, P Jain

Appellant : Collector of Central Excise

Respondent : Titanium Equipment and Anode Mfg.

Judgement :

1. This is an appeal filed by Collector of Central' Excise. Madras against the order of Collector of Central Excise (Appeals) Madras. The brief facts of the case are that the respondents manufacture AB coolers and preheaters out of the raw materials sup-plied by their buyers M/s.

Tata Chemicals Ltd., Bombay and cleared the Roods availing of the benefit of notification No. 119/75 and paid duty on the job charges without taking into reckoning the value of raw materials supplied to them by their buyers. It was alleged in the show cause notice that the respondents had suppressed the information regarding the value of raw materials used in the manufacture of the products mentioned above. The respondents while pleading that they were eligible to the notification No. 119/75, stated that they had not suppressed any information and had filed the necessary RT 12 returns and that the Department was well aware of their paying duty on the job charges and that there was no question of suppression of facts. The clearances in this case were made under the 4 Gate

passes bearing Nos. 3/19.4.1980, 21/10.6.1980, 134/30.3.1981 and 15/23.5.1981. The clearance against Gate Pass No. 15/23.5.1981 was made after the notification No. 119/75-CE had been rescinded and the respondents had in spite of that claimed the benefit of notification No. 119/75 and paid duty accordingly and cleared the goods. The Collector (Appeals) following the ratio of Hon'ble Calcutta High Court decision in Associated Pigments Limited.

Collector of Central Excise 1983 ELT 876 (Cal), held that the duty had been correctly paid in respect of the clearances made when notification No. 119/75 was in force and held that duty in respect of the clearances made against Gate Pass No. 15/23 5.1981 was not eligible for the benefit of notification, the same having been rescinded and upheld the levy in respect of the same.

2. The respondents do not appear to have filed any appeal in respect of that portion of demand which has been confirmed by the appellate authority. Revenue however, have filed the appeal against the findings of the Collector whereby he has allowed the benefit of notification No.119/75.

3. The learned Departmental Representative for the Department, pleaded that raw materials supplied had been utilised in the manufacture of complete items of equipment and the same article as requested by them, had not been returned by them as required under notification No.119/75. He pleaded that totally a new commodity came into existence and pleaded that in terms of the decision of this Tribunal in the case of National Organic Chemicals Ltd. v. Collector of Central Excise, Bombay and Pigments Chemicals v. Collector of Central Excise, Jaipur , the duty was chargeable on the full value of the equipment inclusive of the value of the raw materials supplied.

4. The learned Advocate for the appellants pleaded that he was aware of the decision in the case of National Organic Chemicals Ltd. referred to by the Departmental Representative and stated that in view of that decision of the Tribunal, he is not pressing the plea that duty in respect of the goods was chargeable only on the job charges. He however, pleaded that the goods had been cleared on payment of duty as seen from the dates on the Gate passes on 19.4.1980, 10.6.1980 and 30.3.1981 while the show cause notice is dated

20.11.1982. He pleaded that there is no specific allegation in the show cause notice that the respondents had availed of the notification No. 119/75 with the intent to evade payment of duty. He pleaded that the Department was aware of the fact that the respondents had paid duty in terms of notification No, 119/75 and the RT 12 returns filed in this regard had also been finalized. He stated that in the light of this, the longer period in terms of Section 11A could not be invoked and the demand was clearly barred by limitation in this connection, he cited the judgment in the case of Jay Engineering Works Ltd, Calcutta v. Collector of Central Excise, Calcutta Cegat and drew our attention to para 9 which is reproduced below Apart from the above, all that the show cause notice alleged was that the appellants during the period 1977 to 31.3.1981 had supplied raw materials for the manufacture of component parts, namely, aluminium blade down rods etc. to different jobbers on the job charges basis and in turn received back the said finished product without discharging any Central Excise duty. There was no allegation of fraud, collusion, wilful mis-statement or suppression of facts.

There was no allegation of intent to evade payment of duty. For invoking the longer time limit of five years for demand of duty in view of Madras High Court decision in Light Roofings Limited v. The Superintendent of Central excise and two Ors. 1981 ELT 738 (Madras) it was necessary to allege and prove the ingredients aforesaid and intent to evade payment of duty : that is lacking in the show cause notice. That not having been done on the strength of the show cause notice the invoking of five years period for making the demand cannot be sustained and there is no dispute that if the shorter time-limit of 6 months be invoked in the case, the whole demand against the appellants is time barred. Central Excise Bombay II v. Pioneer In the light of the above discussions, we hold that in the present case before us, Central Excise duty was payable on sodium meta silicate which was removed from the factory after conversion from sodium silicate. The respondents were however entitled to the benefit of concessional rate of duty under notification No. 148/81 dated 1.8.1981 if the same was otherwise admissible on sodium meta silicate during the relevant period. Further as the Department did not allege in the demand notices any fraud, collusion, wilful mis-statement or suppression of facts on the part of the respondents , the demand for duty should be restricted to a period of six months prior to the date of issue of the demand notices on 23.3.1982

i.e. it should be restricted to the period from 24.9.1981 to 28.2.1982 only.

5. The point that falls for our consideration is whether the demand is barred by limitation or not. We observe from the record that the respondents claimed that they had made their clearances after complying with the necessary Central Excise formalities and had also filed the RT 12 returns. The allegation regarding the value of the raw materials not having been included in the value of goods.

6. Lower appellate authority has not decided this question. Instead it has allowed the case of assessee on the merit of the issue whether notification 119/75 dated 30.4.1975 is applicable to a person who manufactures on job charges basis a completely different article from the raw materials supplied to him. His finding is not correct in view of Tribunal's judgment in the case of Nocil; it has been conceded by the assessee's advocate during the hearing. In view of the lower appellate authority's finding, the appellant -Collector also has not brought enough material on record on the question of time bar.

7. We do not know whether clearances were effected by the assessee respondent after completing all central excise formalities such as approval of classification list. Only fact available is that RT 12s have been finalised corresponding to 3 gate passes dated 19.4.1980, 10.6.1980 and 30.3.1981; we do not know whether the price as a whole of the goods was declared or whether the description 'job charges' was mentioned either in the price list or in the invoices if the invoices were sent along with the RT 12. We do not have on record either the copy of the declared price list or the invoices as made by the assessee. In the absence of these records, it is not possible to say whether the Department knew about the prices at which the goods were cleared being only the job charges and with that knowledge RT 12s were finalised. Nor has the assessee respondent brought on record any positive evidence by way of cross-objections to prove his plea of time-bar.

8. Show cause notice makes no positive allegation of suppression of value of raw material from which the goods were manufactured by the assessee. The original authority has given a finding against the assessee on their plea of time-bar.

9. Accordingly in the foregoing facts and circumstances we hold that the question of time-bar should be examined by the Collector (Appeals) and a finding given thereon and then he should decide the matter in terms of that finding. The appeal is therefore, allowed by remand in the above terms.

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