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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-06-1989

Reported in : (1989)(21)LC202Tri(Delhi)

Appellant : Collector of C.E.

Respondent : Baidyanath Ayurved Bhawan Ltd.

Judgement :

1. The issue to be decided in this case is whether the respondents were entitled to the exemption under Notification No. 71/78-C.E., dated 1-3-1978 as amended by Notification No. 141/79-C.E., dated 30-3-1979 for the financial year 1979-80.

2. The facts of the case, as emerge from the orders of the lower authorities, are that the respondents manufactured P.P. Medicines, P.H.Oils, P.P. Foods and Dantman-jan Lal from their five units at Jhansi, Nagpur, Patna, Naini and Calcutta. During the financial year 1978-79, they cleared P.P. Medicines, P.H. Oils and P.P. Foods from their five units to the extent of Rs. 19,75,283.74. In the said year they also cleared Dantmanjan Lal valued at Rs. 6,66,683.00. The Assistant Collector of Central Excise, Kanpur added the value of clearances of all the four products, which exceeded Rs. 20 lakhs in the financial year 1978-79 and held that the respondents were not eligible for the exemption under the above notification for their clearances during the financial year 1979-80. Accordingly, he confirmed the demand of Rs. 26,283.11 relating to the period from 1-4-1979 to 31-1-1980. The order of the Assistant Collector was challenged by the respondents before the Collector of Central Excise (Appeals), New Delhi, who, following the judgment of

Gujarat High Court in the case of Darshan Hosiery Works and the order-in-appeal No. 17-CE/ALLD/83, dated 10/11.3.1983 of the Collector of Central Excise (Appeals) in the case of M/s. Baidyanath Ayurved Bhawan Private Limited, Naini, set aside the order-in-original of the Assistant Collector and allowed the appeal filed by the respondent herein. In the present appeal before us, the Revenue has challenged the order of the Collector (Appeals).

3. The respondents have filed a cross-objection in which they have stated that the appeal filed by the Revenue before this Tribunal is barred by limitation. They have also contended in the cross-objection that Dantmanjan Lal is an Ayurvedic Medicine and it was mentioned in Item 14-E of the CET by way of exclusion. As Ayurvedic Medicine is specified in T.I. 14-E, though by way of exclusion, the same is a specified goods as per Notification No. 71/78-C.E. and the same did not fall under T.I. 68, which is a residuary item. In support of this contention, they have relied on the judgment of Gujarat High Court in the case of Darshan Hosiery Works v. Union of India - 1980-Cen-Cus-683-D = 1980 ELT 390 (Guj.). It has also been stated in the cross-objection that Explanation to T.I. 68 was added by virtue of which the goods which are referred to in any of the Tariff Items 1 to 67 of the CET for the purpose of excluding such goods from the description of the goods in that item should be deemed to be the goods not specified in that item. This Explanation was added with effect from 19-6-1980. They have contended that the ayurvedic medicines could not be brought within the purview of the T.I. 68 prior to 19-6-1980 as the Explanation to T.I. 68 was not retrospective. They have, therefore, stated that the value of Dantmanjan Lal, which is an ayurvedic medicine, should not be included in the aggregate value of clearances of all excisable goods during the preceding financial year, i.e.

1978-79, for the purpose of exemption benefit during the financial year 1979-80.

4. We have heard Shri Durghayya for the appellant and Shri Lachman Dev for the respondents and have also gone through the records of the case.

As regards the first point raised in the cross-objection, namely, that the appeal filed by the Revenue is hit by limitation, the Additional Collector of Central Excise, Kanpur has filed an affidavit. On perusal of the affidavit it has been found that

there was no delay in filing the appeal before this Tribunal. Shri Lachman Dev has, thereafter, dropped the objection of limitation raised in the cross-objection.

5. On merits of the case, Shri Durghayya has argued that the present case is fully covered in favour of the Reveaue by the Tribunal's earlier decisions, reported in 1985 (22) ELT 175 (Tribunal), 1985 (22) ELT 844 (Tribunal), 1987 (27) ELT 671 (Tribunal) and 1987 (32) ELT 602 (Tribunal). He has, therefore, prayed that the order of the Collector (Appeals) may be set aside and the appeal of Revenue be allowed.

6. On merits of the case, Shri Lachman Dev has reiterated what has been stated in the cross-objection. He has also stated that Explanation to T.I. 68 was added with effect from 19-6-1980. The period in the demand relates to 1-4-1979 to 31-1-1980. As such, during the relevant period the goods could not be brought under the purview of T.I. 68. He has argued that Dantmanjan Lal is an ayurvedic medicine, but by the exclusion clause in Tariff Item 14-E it became non-dutiable. Such medicines were also exempted from the Central Excise duty by Notification No. 55/75-C.E., dated 1-3-1975, as amended by Notification No. 62/78-C.E., dated 1-3-1978. Another contention raised by Shri Lachman Dev before us is that the classification list was filed by the respondents under T.I. 14-E. In column 5 in the classification list the respondents described other goods as per "catalogue enclosed".

Dantmanjan Lal was included in the catalogue. Classification list was duly approved and the respondents operated on the basis of the approved classification list and the legal position as it existed prior to 19-6-1980. In this case, the show cause -notice was issued on 26-3-1980 which covered a period from 1-4-1979 to 31-1-1980. Approved classification list could not be amended with retrospective effect. In support of his argument he has relied on the decisions reported in 1986 (25) ELT 94 (Tribunal) and 1987 (31) ELT 951 (Tribunal). He has also stated that even otherwise, the demand extends to a period beyond six months prior to the issue of show cause notice.

7. In reply to the arguments of Shri Lachman Dev, Shri Durghayya has stated that the point that classification list was approved and the approved classification could

not be re-opened, was not raised before the lower authorities. It is raised for the first time now. He has, therefore, prayed that the respondents could not be allowed to raise this point at this stage.

8. We have gone through the orders of the lower authorities. There is no indication that the respondents herein raised before the Assistant Collector or the Collector (Appeals) the ground that the classification list was approved and they operated on the basis of the approved classification list. In the absence of this point having been raised before the lower authorities, there is no findings of the Assistant Collector or Collector (Appeals) on this point in their orders. This is a point of fact. There is also no application from the respondents to raise this new ground before us. In the circumstances, we reject the arguments of Shri Lachman Dev on this point.

9. As regards merits of the case, Shri Durghayya has relied on a few decisions of this Tribunal. In 1985 (22) ELT 175 (Tribunal), in the case of Shree Vaidyanath Ayurved Bhawan Limited, Nagpur v. Collector of Central Excise, Nagpur, it has been held that Dantmanjan is not an ayurvedic medicine, but a toilet requisite classifiable under Item 68 of the Central Excise Tariff. In 1985 (22) ELT 844 (Tribunal), in the case of Shree Vaidyanath Ayurved Bhawan Limited, Patna v. Collector of Central Excise, Patna and Anr., also it has been held that the Dantmanjan Lal is not an ayurvedic medicine or drug, but a toilet requisite falling under Item 68 of the CET and that it is not entitled to exemption under Notification No. 55/75-C.E. Again, in the case of Collector of Central Excise, Allahabad v. Vaidyanath Ayurved Bhawan Limited, Naini, reported in 1987 (27) ELT 671 (Tribunal), it has been held by this Tribunal that Dantmanjan Lal is not an ayurvedic medicine, but it is excisable under Item 68 of the CET. In the said decision it has also been held by the Tribunal that the value of Dantmanjan Lal is includible in the value of clearances of the respondents to determine the admissibility of duty exemption under Notification No. 71/78-C.E., dated 1-3-1978. In its decision reported in 1987 (32) ELT 602 (Tribunal) in the case of Coaltar Chemicals Mfg. Co. v. Collector of Central Excise, Baroda, this Tribunal has held that the value of goods falling under T.I.68, though exempted, is includible in the value of excisable goods for the purpose of total clearances of Rs. 20 lakhs in the

preceding financial year under Notification No. 71/78-C.E. In the earlier decisions, the question of classification of Dantmanjan Lal was considered by this Tribunal in great details and thereafter it was held that these goods were not Ayurvedic Medicines, but were covered by the Central Excise Tariff Item 68. We do not find any reason to differ with the earlier views of the Tribunal on this point. Accordingly, we hold that the Dantmanjan Lal cleared by the respondents in this case is covered by T.I. 68. This being the position, the judgment of Gujarat High Court in the case of Darshan Hosiery Works v. Union of India is not applicable to the present case.

10. By Notification No. 141/79-C.E., dated 30-3-1979, earlier Notification No. 71/78-C.E., dated 1-3-1978 was amended. By this amendment, after Clause (ii) the following clause was inserted as Clause (iii) in condition (a) of the first paragraph of Notification No. 71/78-C.E.: "(iii) who manufactures excisable goods falling under more than one Item Number of the said First Schedule and the aggregate value of all excisable goods cleared by him or on his behalf for home consumption, from one or more factories during the preceding financial year, had exceeded rupees twenty lakhs." Explanation IV was also added to the Notification No. 71/78-C.E. by this amending notification dated 30-3-1979. The added Explanation is as follows : "Explanation IV. - For the purposes of computing the aggregate value of clearances under this notification, the clearances of any specified goods, which are exempted from the whole of the duty of excise leviable thereon by any other notification issued under sub-rule (1) of Rule 8 of the aforesaid Rules and for the time being in force, shall not be taken into account." According to the above Explanation the clearances of any specified goods, which are exempted from the whole of the Central Excise duty by notification issued under . Rule 8(1) of the Central Excise Rules shall not be taken into account for computing aggregate value of clearances.

As already held by us, Dantmanjan Lal is classifiable under Tariff Item 68. This Tariff Item is not specified in the Exemption Notification No.71/78-C.E. The value of T.I.68 goods should, therefore, be included in the computation of aggregate value. Clause (iii) of condition (a) of the first paragraph of the Notification No. 71/78-C.E. says that the benefit of this exemption notification is not admissible to a

manufacturer who manufactures excisable goods falling under more than one Tariff Item of the aggregate value of all excisable goods cleared by him or on his behalf for home consumption, from one or more factories during the preceding financial year had exceeded rupees twenty lakhs. Admittedly, the total value of clearances of P.P.Medicines, P.P. Foods, P.H. Oils and Dantmanjan Lal during the financial year 1978-79 from all the units of the respondents exceeded rupees twenty lakhs. Accordingly, in terms of the aforesaid Clause (iii), the respondents are not entitled to the exemption under the said notification, as amended, for the financial year 1979-80. In its earlier decisions reported in 1987 (32) ELT 602 (Tribunal) and 1987 (27) ELT 671 (Tribunal), this Tribunal has taken similar view.

Therefore, on merits of the case we set aside the order of the Collector (Appeals) and allow the appeal filed by the Revenue before us.

11. Shri Lachman Dev has argued that the demand for duty extends beyond a period of six months prior to the date of issue of show cause notice.

We observe that the show cause notice was issued on 26-3-1980 and the period covered by the show cause notice was 1-4-1979 to 31-1-1980.

Thus, the period covered by the show cause notice extends beyond six months prior to the issue of the notice. We observe from the show cause notice No. C. No/20.MP/PPM/79, dated 26-3-1980, copy of which is placed in the paper-book, that the respondents were asked to explain why duty should not be demanded under Rule 10 of the Central Excise Rules, 1944 to the extent of Rs. 26,883.00.

In the show cause notice, there was no allegation of suppression of facts or wilful mis-statements. Shri Lachman Dev has made a categorical statement before us during the hearing that Dantmanjan Lal Was included in the catalogue enclosed to the classification list filed by the respondents. This statement has not been rebutted by Shri Durghayya by producing any evidence. This being the position, we hold that demand for duty could not be raised for more than six months prior to the issue of show cause notice. In the circumstances, the demand for duty should be limited to six months only under Rule 10 of the Central Excise Rules, 1944 and the consequential refund should be allowed to the respondents.

12. The appeal is allowed subject to limitation of demand for duty to six months prior to the issue of show cause notice as stated above.

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