

Lucas T Vs. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-30-1989

Reported in : (1989)(23)LC85Tri(Delhi)

Appellant : Lucas T

Respondent : Ltd.

Judgement :

1. This is a revision application filed by the appellants before the Government of India and which on transfer to this Tribunal is being treated as an appeal filed before the Tribunal. The appellants are aggrieved against the order of the Appellate Collector of Central Excise, Madras. Brief facts of the case are that the appellants manufacture electric horns for motor vehicles and claimed the benefit of the Notification No. 71/78 and had made clearance of the horns to the tune of Rs. 4,96,760.20 upto GPI 82 dated 5.7.1982. The scrutiny of invoices, however, showed that they had collected Central Excise duty amounting to Rs. 1,04,297.35 and which was not reflected in the value of the goods as shown in the Gate passes.

2. The lower authorities after adding the duty element collected found that the appellants had made clearances in excess of the exempted limit of Rs. 5 lakh and duty to the tune of Rs. 21,222.10 was demanded from them under Rule 10 of the Central Ex cise Rules, 1944. A show cause notice was issued in the proceedings to the appellants on 5-9-1979 demanding duty in respect of clearance made during the year 1978-79.

3. The appellants pleaded before the lower authorities that in terms of Section 4(4)(d) the value for the purpose of assessment, does not include, inter alia, duty of excise payable irrespective of whether the same was actually paid.

4. The learned Consultant for the appellants pleaded that the value of clearances exceeded Rs. 5 lakh only when the duty element collected by them was added to the value of the goods as shown in the gate passes.

He pleaded that the show cause notice was issued on 5-9-1979 and the demand was time-barred. He pleaded in the show cause notice, no allegation or suppression of facts or mis-statement has been made and proviso to Rule 10 whereby the demand could be raised for the longer period beyond six months could not be invoked.

5. The learned S.D.R., on behalf of the Department, pleaded that appellants had filed a declaration dated 29-3-1978 as required for the purposes of the exemption Notification and pointed out that in this declaration, there is no indication that the appellants were recovering the duty element from their customers.

6. He pleaded that the fact of suppression is prima facie there. He pleaded that the duty element, while it had been shown in the invoices, was not reflected in the value declared in the gate passes. He pleaded that the ingredients of suppression of fact have been clearly brought out in the show cause notices although the show cause notice in terms does not allege suppression as such.

7. He pleaded since the ingredients required for invoking the longer time limit of five years as set out in the Proviso to Rule 10 as applicable are there and in the show cause notice necessary facts in this regard have been set out, there was no legal infirmity in the lower authority's order. He, in this connection, cited the case of *Cheran Engineering Corporation v. C.C.E., Coimbatore* [1986 (26) ELT 611]. He pleaded once it is shown that the suppression of facts is there, the demand is within time in terms of Proviso to Rule 10 as application at the relevant time.

8. The learned Consultant for the appellant, Shri Vardarajan pleaded that the fact of non-inclusion of the Central Excise Duty was known to the Department. He

pleaded that it was necessary that the charge of suppression should have been spelt out in the show cause notice and in that event they would have replied to the charge.

In this connection, he cited the following Case Law:1.1986 (8 ECR 353) - In the case of Secals Ltd. v. C.C.E., Madras.2.1983 ECR 291 - In the case of Shambhumal v. Collector.

9. The learned Departmental Representative by way of clarification stated that the fact that the Excise duty was collected by the appellant was not known to the Department.

10. The point for decision in these proceedings is whether the demand is barred by limitation. We observe that at the relevant time the old Rule 10 was in force and the same is reproduced for convenience of reference - "(1) Where any duty has not been levied or paid or has been short levied or erroneously refunded or any duty assessed has not been paid in full, the proper officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid, or which has been short-levied, or to whom the refund has erroneously been made, or which has not been paid in full, requiring him to show cause why he should not pay the amount specified in the notice: (a) where any duty has not been levied or paid, has been short-levied or has not been paid in full, by reason of fraud, collusion or any wilful mis statement or suppression of facts by such person or his agent, or (b) where any person or his agent, contravenes any of the provisions of these Rules with intent to evade payment of duty and has not paid the duty in full, or (c) where any duty has been erroneously refunded by reason of collusion or any wilful mis-statement or suppression of facts by such person or his agent, the provisions of this Sub-section shall, in any of the CASES CITED to above, had effect as if for the words "six months" the words "five years" were substituted." It is seen that the extended time period can be invoked only if it is established by the Department that the short-levy was the result of suppression of facts by the appellants. The term of "Suppress and Suppression" in the Concise Oxford Dictionary has been described as under- "Suppress - withhold or withdraw from publication, keep secret, not reveal. Suppression-

suppression of truth, mis-representation by concealment of facts that ought to be made known." In the Chambers Twentieth Century Dictionary, the word "Suppression" has been described as under - "to hold back, esp from publication, circulation, divulgation, expression, development, to check, to stop, restrain, to hold in, to moderate, to leave out" In the New Webster's Dictionary of the English Language, the term "Suppression" has been described as under - "to conceal, as one's feelings; not to tell or reveal, as news; to retain without making public" It is seen from the above that so far as the expression suppression of fact as used in the proviso to Rule 10 is concerned, there has to be according to the dictionary meaning above - an Act of withholding the information or concealing the same with an element of deliberateness. In the show cause notice, there is no narration of facts to show that the appellant had withheld that information deliberately or consciously withheld the information from the Department regarding the element of the excise duty collected by them in the invoices raised in respect of the goods. What has been stated is that while in the gate passes, the value did not include the duty element as collected by them, in the invoice the same was shown. The question is whether this can be taken to be tantamounting to suppression of fact. We observe that before the lower authorities all along, the appellants have been taking the plea that so far as the duty element is concerned whether they pay to the Department or not, the same was not required to be included for computing the value of the goods. In fact, there was at the relevant time a view held by some and also there was a judgment of the High Court later that for the purpose of arriving at the assessable value under Section 4, the duty as leviable under the Tariff irrespective of whether a lower rate of duty or nil rate of duty was actually payable in terms of a notification was required to be abated from the sale price and later by an amendment to the Act, the position in regard to this was clarified and the earlier collections of duty made based on the position as stood clarified by the amendment, were also deemed to be covered by this amendment. This amendment was introduced by Clause 47 of the Finance Bill, 1982. We observe that in the GP 1 and GPII, there is no column for the invoice value to be shown in the relevant column for declaration of the assessable value. There is no allegation that the appellants were required to show invoice value in the gate pass and they only showed the assessable value. What the appellants have apparently done is

that they have shown the value after abating the duty element collected by them. As we mentioned at the relevant time, there was a view that duty element as set out in the Tariff was required to be abated irrespective of whether the goods were charged to a lower rate of duty or exempted from payment of duty. This Tribunal in the case of Lallubhai Aminchand v. Collector of Central Excise, Bombay -1984 (18) ELT319 (Tri) has held the limitation period applicable for mistaken interpretation of a provision would not be the longer period but the shorter period. We, therefore, do not find that any ground has been laid in the show cause notice that the appellants resorted to suppression of facts and which resulted in the short payment of duty. In the absence of any allegation in the show cause notice in regard to suppression and also the circumstances thereof, the show cause notice itself cannot be held to be proper for invoking the longer time period. The Tribunal in various decisions have held that unless the allegation of suppression of fact was made or the circumstances in regard thereto are set out even if the term suppression of fact as such is not used but the circumstances set out in the show cause notice are such that these clearly bring out the fact of suppression, the longer time period cannot be invoked. In the present proceedings, the show cause notice does not contain any facts as to how the appellants are guilty of suppression of fact in regard to the assessable value. We, therefore, hold that the demand having been raised beyond the period of six months is not maintainable in law and therefore set aside.

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