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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-29-1989

Reported in : (1989)(24)ECC288

Appellant : Karnataka Soaps and Detergent

Respondent : Collector of C. Ex.

Judgement :

1. These two appeals and the Cross Objection arise out of the same order of the Collector (Appeals) Madras dated 19-2-1985 and relate to a common issue. Appeal No. E/1460/85-A has been preferred by M/s Karnataka Soaps & Detergents Ltd. with Cross Objection by the Collector, whereas the Collector of Central Excise, Bangalore himself is the appellant in Appeal No. E/2958/ 85-A. Briefly, the facts are that M/s Karnataka Soaps & Detergents Ltd. manufacture soap, detergent products etc. The soap manufactured by them is assessable under the erstwhile Tariff Item 15-CET. They used rice bran oil in the manufacture of washing soap and claimed concession of Excise duty under Notification No. 25/75-C.E., dated 1-3-75. This notification is one which seeks to give exemption of duty on the soap manufactured from indigenous rice bran oil or from a mixture of such oil in order to serve as an incentive for use of rice bran oil. The department found, on scrutiny of the price list and other duty-paying documents relating to washing soap, in respect of which, the incentive exemption was availed of, that the amount of duty actually paid was less than the duty payable as shown in the price list. Therefore, a show cause notice was issued demanding differential duty of Rs.

70,604.64 Basic duty and Rs. 1363/- Special Excise duty for the period 16-3-79 to 31-5-83 and the demand was confirmed by the Asstt. Collector, who held that the actual duty paid by the assessee alone is deductable from the same price to arrive at the assessable value and also held that since the price lists were provisionally approved, the demand was not hit by limitation under Section 11-B of the Central Excises and Salt Act, 1944. The Collector (Appeals) upheld the demand on merits but held at the same that the department could not invoke the longer period of limitation and hence restricted the demand to a period of six months under Section 11 A.2. Shri S. Muthumani, the learned consultant appearing for M/s Karnataka Soaps & Detergents Ltd. contended that the Collector's order on merits upholding the department's view was erroneous. He referred to the provisions of Section 4(4)(d)(ii) as amended, which would clearly show that for determining the amount of effective duty payable on goods for purposes of deduction of such amount to arrive at the assessable value, a notification which is in the nature of incentive rebate notification as in the case of notification No. 25/75 should not be taken into account as per the explanation to the subject section. He further contended that there was nothing in the said notification that the concession would be available only where the benefit of exemption was passed on to the customers. He also supported the Collector's order in so far as the question of limitation was concerned.

3. Shri S. Krishnamurthy, the learned SDR appearing for the Appellant Collector contended that the issue of the effective assessable value under Section 4(4)(d)(ii) is squarely covered by several decisions of the Tribunal and of the High Courts and cited and relied upon the case of Mis Spic India Limited v. Collector of Central Excise, Madras -1984 (18) E.L.T. 103 (Tribunal) and the case of Union Carbide India Ltd. v.C.C.E. reported in 1983 (12) E.L.T. 549 (Tri.). He further argued that as regards the limitation, the Collector (Appeals) went wrong in not considerating the fact that the price list was provisionally approved and in such a case, the question of limitation would not arise.

4. We have carefully considered the submissions made by the learned consultant and the learned SDR. The issue regrding the determination of assessable value for the purpose of assessment under Section 4(4)(d)(ii) of Central Excises and Salt

Act, 1944 has been well settled by a series of decisions of the High Court and that of the Tribunal.

The High Courts of Karnataka and Andhra Pradesh have considered this Section as amended, in the case of Mangalore Chemicals & Fertilizers v.Assistant Collector of Central Excise -1986 (23) E.L.T. 48 (Karnataka) and in the case of Asstt. Collector Central Excise, Rajahmundry v.Andhra Pradesh Paper Mills - 1987(32) E.L.T. 684 (A.P.). The Hon'ble High Courts have held in the cases cited supra that only duty as reduced and actually paid on the manufactured goods should be; excluded in determining the assessable value. The Karnataka High Court has further specifically held that in case of exemptions, only the actual or real duty paid by the assessee shall alone be excluded and not the duty hypothetically chargeable under the Act. The Tribunal had also taken the same view in regard to the above said Section of the Act.

Therefore, on merits, the view held by the Collector (Appeals) is unassailable. We do not find any substance in the plea put-forth before us that the Explanation to Section 4(4)(d)(ii) would show that incentive exemption notification like 25/75 would also have to be excluded because we find that the amendment made in the Explanation to Clause (d) (ii) of Sub-section (4) of Section 4 of the Central Excises and Salt Act, 1944 by the Finance Bill 1984 has been explained at the time of the Budget saying that the effect of the amendment is that for determining the amount of effective duty payable on goods under assessment for the purposes of deduction of such amount from the cum-duty price in order to arrive at the assessable value, the notification providing for the proforma credit of any duty including the countervailing duty of customs, on the raw material or component parts used in the manufacture of the goods under assessment, shall not be taken into account. Apart from this, the very wording of the Notification 25/75 shows that it is straightforward notification exempting the varieties of soap mentioned therein from so much of the Central Excise duty leviable thereon as is quantified in the notification subject to the conditions therein. In the circumstances, the Collector (Appeals)'s order on the merits of the case is correct in law and is upheld.5. The department's appeal is on the question of limitation and the main plank of the appeal is that the Collector (Appeals) ought to have considered the fact that the price lists were provisionally approved and hence limitation would not apply to such provisional assessment. We are, however, unable to agree with this contention. The Collector (Appeal) has correctly pointed out in his order while dealing with this contention that the demand in this case has not been made as a result of finalination of the price lists in terms of Rule 9-B of the Central Excise Rules and he has also relied upon the Tribunal's decision in the case of Orient Paper Mills v. Collector of Central Excise, Calcutta -1983 (2) ETR 629 to the effect that where the demand is not shown to be made as a result of finalisation of provisional assessment, it cannot be said that the goods were provisionally assessed. This conclusion of the Collector (Appeals) is well founded. We further find that in this case, a Show Cause Notice has been issued for recovery of the amount as short-levied under Section 11-A of the Central Excises and Salt Act, 1944 imputing suppression of facts to the assessee which further goes to show that it was not a case of finalisation of assessment under Rule 9-B. Therefore, we do not see any reason to interfere with the findings of Collector (Appeals) in the impugned order relating to limitation.

6. The Cross Objection filed by the department being on the same issue also stands disposed of by this order.