Collector of Central Excise Vs. Techno Chem Engineers

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-23-1990

Reported in : (1990)LC307Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Techno Chem Engineers

Advocate for Def. : Shri. Pravin Sharma

Judgement :

1. The above appeal has been preferred against the order of the Central Excise (Appeals) New Delhi dated 16 7-84, holding inter alia that the assessees were covered by Notification 31/76 CE dated 28-2- 1976 and setting aside the duty demand and confiscation of the seized goods and the penalty imposed by the Assistant Collector.

The respondent herein are manufacturers of Electrolytic Cells and parts thereof falling under T.I. 68 on their own account and also carrying out job work such as fabrication or undertaking repairs etc. either in the Factory itself or at the premises of their customers. It was found that the respondents had cleared goods valued at over Rs.15 lakhs during the financial year 1979-80 without having obtained a central excise licence and without paying Central Excise duty on the value of clearances immediately following the first clearance of Rs. 15 lakhs as per the provisions of Notification 89/79-CE dated 1-3-1979. The value of clearances was calculated inclusive of the value of goods received for job work.

3. The Assistant Collector ordered confiscation of seized goods with a option to redeem the same on payment of the fine and also demanded duty amounting to Rs. 583.25 on goods cleared over and above the first clearances of Rs. 15 lakhs. He also impose a penalty of Rs. 2000/-.

4. The Collector (Appeals) accepted the plea of the assessee (the respondents herein) that they were under the bonafide impression that the value of goods received for job work was to be excluded for computation of the aggregate clearance of Rs. 15 lakhs as set out in Notification 89/79. He also held that Notification 31/76 which exempts manufacturers from applying for and obtaining Central Excise licence if the T.I. 68 goods manufactured by Department are fully exempted, would prevail over the other Notification 11/78 dated 9-5-1978. He also set aside the demand of duty on the goods confiscated on the ground that these goods could be cleared by the assessee within the exemption slab of the next financial year. The Department has filed the above appeal, being aggrieved by this order dated 16-7-1984.

5. We have heard Shri K.D. Tayal, learned SDR for the appellant Collector and Shri Pravin Sharma, learned Advocate for the respondents.

6. At the outset, Shri Tayal draws our attention to the decision of the Supreme Court reported in 1988 (38) ELT 535 (Ujagar Prints ect, etc. v.Union of India & Ors.)and draws support from this decision for his argument that the value of goods received for job work is to be included in the value of clearances for the purpose of calculation under Notification 89/79. According to the learned SDR, the value of clearances was rightly computed by the adjudicating authority while denying the respondents the benefit under Notification 89/79. He submits that the Collector, having held that the Madras High Court has not upheld the understanding of law set out in Trade Notification No.106/80 dated 30-6-1980, ought not to have accepted the plea of the respondents that they were under the bonafide impression that the value of goods received for job work was to be excluded for computation of aggregate clearances for the purpose of Notification 89/79.

7. Learned SDR further submits that Notification 31/76 dated 28-2-76 is not applicable in this case as it grants exemption from licencing control only when

goods manufactured in the factory are fully exempt from duty while the respondents herein manufacture goods which are exempt only subject to fulfilment of certain conditions. He contends that Notification 11/78, dated 9-5-1978 applies to the respondents and they have not satisfied the requirements of the above mentioned notification. He urges us to reverse the order of the Collector and restore the order of the Asstt. Collector.

8. Shri Pravin Sharma, learned counsel for the respondents begins by submitting that the Collector's order is not categoric about the applicability of Notification 89/79. He contends that the respondents fall squarely within the ambit of Notification 119/75 under which duty is to be levied only on the job work charges. He cites the decisions reported in2)1986 (26) ELT 685 (Indian Hume Pipe Company Ltd., and Ors. v. Union of India and Ors.)3)1978 (2) ELT (J-533) (Anup Engineering Ltd., Ahmedabad and Ors. v. Union of India and Ors.)4)1988 (36) ELT 31 (K.E.C International Limited v. Union of India and Anr.) in support of his contention regarding the interpretation of Notification 119/75.

9. His next submission is that Notification 31/76 applied to the respondents and in the alternative, even if it is held that Notification 11/78 applies, then the respondents need apply for a licence only on clearances reaching value of Rs. 12 lakhs. According to him the clearances fall below the limit of Rs. 12 lakhs (excluding value of raw materials received for job work).

10. Regarding seizure of goods within the factory, his contention is that seizure is unwarranted and illegal in the absence of proof of clandestine removal.

11. On a careful consideration of the submissions made by both the parties herein, it is seen that firstly it has to be decided whether the value of goods cleared by the respondents was within the exemption limit under Notification 89/79, dated 1-3-79. This notification exempted goods falling under Item 68-CET cleared by or on behalf of a manufacturer of a value not exceeding Rs. 15 lakhs in a financial year from the whole of the duty payable thereon subject to the condition that total investment on plant and machinery was below Rs. 10 lakhs.

The department's case is that the respondents had cleared goods valued at Rs. 15,17,431.25 during the financial year 1970-80 and hence on the clearances of goods of value beyond Rs. 15 lakhs, the respondents were liable to pay duty. The respondents' contention is that in respect of job work done by them the value of clearance should be calculated taking only the job charges into consideration and not the value of the goods themselves, and if the value of clearance is arrived at on this basis, they would be within the Rs. 15 lakh exemption limit. For this, they rely on a series of decisions of the various High Courts on Notification 119/75, dated 1-3-75 which exempted goods falling under Item 68-CET manufactured as job work from so much of duty as is in excess of the duty calculated on the basis of the amount charged for job work. It may be seen on a perusal of Notification 89/79, which is under consideration in this case, that it is an exemption notification based on value of clearances in a financial year. It is observed that this very same notification was the subject matter of a decision by the Bombay High Court in the case of Narendra Engineering Works. v. Union of India -1981 (8) ELT 859 (Bom) in which the High Court observed "Mr.

Govilkar contended that the 1979 notification did not operate for the purpose of the determination of the value; it operated only for the purpose of fixing the exemption limits. Value was to be arrived at by applying the provisions of Section 4 of CESA, 1944. This is substantially correct". The Court then proceeded to decide the case following the ratio of the Supreme Court in the case of A.K. Roy v.Voltas Ltd.-1977 (1) ELT (J-177) on Section 3 of Central Excises & Salt Act, 1944 relating to determination of assessable value of excisable goods and held that in the case of job work, raw material cost was not to be included for purpose of Section-4. However, subsequently the Larger Bench of the Supreme Court in the case of Ujagar Prints v. Union of India -1988 (38) ELT 535 (SC) among other issues, laid down the law relating to the provisions of Section 4 of Central Excises & Salt Act, 1944, in relation to job workers, and gave a finding that assessable value of goods produced by job worker out of material supplied by customers was not to be confined to processing charges, but should also include the cost of raw materials. Hence, it is clear that for the purpose determining eligibility to exemption under Notification 89/79 in terms of the value of clearances in a financial year, such value has to be considered in accordance with Section 4 of Central Excises & Salt

Act, 1944 and the Supreme Court has laid down that in respect of job workers, assessable value under Section 4 has to include not only the charges for job work but also the cost of materials supplied by customers. In this view of the matter, the respondents' reliance on provisions of Notification 119/75 will not advance their case, and, in fact, it is seen that in the Narendra Engg. case, the Bombay High Court noted this exemption notification, but concluded that for the purposes of value of clearances in Notification 89/79, provisions of Section 4 of Central Excises & Salt Act have to be looked into. For the same reason, reliance placed by the respondents on High Court decisions interpreting Notification 119/75 will not be of much avail. In this view of the matter, therefore, the department's contention that the respondents had exceeded the Rs. 15 lakh limit on value of clearances during 1979-80, and had to pay duty on clearances in excess thereof, has to be upheld and hence the duty in this respect has rightly been demanded.

12. As regards the other question in this appeal, whether the respondents were eligible for exemption from taking out a Central Excise licence under Notification 31/76, dated 28-2-76, there is not much force in the respondent's argument that exemption under Notification 89/79 is unconditional and hence they are eligible for the exemption as it is an exemption based on value of clearance in a financial year based on value slab. However, the Collector (Appeals) in his order also had not in effect accepted this plea of the respondents that they were exempted under Notification 31/76, but had only held that there were sufficient grounds to accept the respondent's plea that faced with two Notifications 31/76 and 111/78 they genuinely believed that Notification 31/76 covered their situation. In such circumstances, order of Collector (Appeals) setting aside the penalty and confiscation of the goods appears to us reasonable especially in the light of the Supreme Court decision in the case of Padmini Products v. Collector of Central Excise -1989 (43) ELT 195 in which it was held that mere failure or negligence on the part of the manufacturer to take out a licence where there was scope for doubt whether licence was required or not would not attract penal provisions.

13. We further hold that the seizure of the goods within the factory is not legal and valid in the absence of proof of clandestine removal and we find support for this view in the judgment reported in the case of Southern Steel Ltd. Hyderabad v.

Union of India -1979 (4) ELT (J-402).

15. The cross objection is misconceived as the respondents are not aggrieved by any part of Collector (Appeals)'s order, and it is, therefore, dismissed as such.