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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-21-1990

Reported in : (1991)(37)LC642Tri(Delhi)

Judge : H Chander, Vice-, K T P.K.

Appellant : Punjab Recorders Ltd.

Respondent : Cce

Judgement :

1. The appellants are engaged in the manufacture of Pump Refuelling' which are used for dispensing liquid fuels contained in barrels into fuel tanks of vehicles. The pump consists of a high speed D.C. motor operated by a 24 Volts DC Battery. The appellants cleared pumps valued Rs. 3,67,500/-, Rs. 17,46,000/- and Rs. 103,000/- respectively during the period 1981-82, 1982-83 and 1983-84 up to 3.11.1983. The appellants were served with a show cause notice by the Assistant Collector asking them to show cause as to why duty amounting to Rs. 53,392.50 should not be recovered from them on the clearances of Power Driven Pumps during the year 1982-83 and 1983-84 (up to 3.11.1983) in excess of the limit of Rs. 7.5 lakhs for duty free clearances during any financial year under Notification No. 80/80-CE dated 16.9.1980. In their reply to the show cause notice the appellants denied that pumps refuelling manufactured by them were assessable under Tariff Item 30-A as power driven pumps. They contended that their goods being classifiable under Tariff Item 68 no duty was recoverable from them during the years 1982-83 and 1983-84 since their clearances were not in excess of the

exemption limit of Rs. 30 lakhs in respect of goods falling under Tariff Item 68. However, by the impugned order dated 22.9.1984 the Additional Collector confirmed the demand for duty amounting to Rs. 53392.50 and also imposed a penalty of Rs. 20,000/- under Rule 173Q on the appellants.

2. On behalf of the appellants the learned advocate Shri B.B. Gujral appeared before us. He contended that the Additional Collector had erred in holding the appellants' product as Power operated pump classifiable under Item 30A of the Central Excise Tariff. He stated that the pump in question was meant for transferring fuel from tankers into the fuel tanks of vehicles. He added that the high speed D.C.motor incorporated in the pump was run on a 24 Volt self charging DC Battery placed in the tanker and not on any external source of power.

In support of his contention that the fuel dispersing pump in question was not classifiable under Tariff Item 30A, Shri Gujral produced a copy of the Central Board of Excise and Customs letter No. B7/6/69-CX. 1 dated 23.4.1969 which clarified that duty was to be levied only on pumps used for irrigation purposes. He also referred to the copy of the Board's letter No. 7/1/69-CX. 1 dated 14.3.1969 which listed various kinds of non-excisable pumps including the pumps designed for pumping liquid fuels like petrol and diesel oil. He pointed out that Board's letter dated 14.3.1969 was also circulated in the form of Patna Collectorate Trade Notice No. 25/2/69 dated 28.3.1969. Shri Gujral stated that the appellants acted under the bonafide belief that their product being classifiable under Tariff Item No. 68 and their clearances being below Rs. 30 lakhs neither any duty was attracted nor was any licence required to be obtained. He contended that under these circumstances the Additional Collector's order confirming the demand and imposing penalty was unjust. He argued that there being no wilful suppression of facts or misstatement on the part of the appellants, the extended period of limitation could not be invoked whereas the adjudicating authority nad done so without assigning any reason. In support of his contentions, Shri Gujral placed reliance on the following case law:New Polymer Industries v. CCE, Baroda (iii) Golden Press v. Dy. Collector of Central Excise, Hyderabad and Ors. CCE, Guntur v. Andhra Sugar Ltd. 3. On behalf of the Department the learned JDR Shri M.S. Arora contended that there was no force in the appellants argument that their

product was not a power operated pump. He stated that pumps manufactured by the appellants being worked by 24 Volt ' battery had to be deemed as power operated. He added that the clarification issued by the Board in 1969 that pumps other than those used for irrigation were not to be charged to duty under Tariff Item 30-A was superseded by Tariff Advice No. 122 dated 10.11.1981 which clarified that pumps driven by external source of power for handling liquids were classifiable under Tariff Item 30-A. Shri Arora contended that after the issue of the Tariff Advice in case the appellants had any doubt they should have sought clarification from the Department. He stated that from the finding that the appellants did not obtain a licence and also failed to file a classification list, it follows that they had suppressed facts with the intent of evading duty. In support of the points made by him Shri Arora quoted the following case law: (i) British India Corpn., Dhariwal v. CCE, Chandigarh 4. Dealing with the points made by Shri Arora, Shri Gujral stated that the appellants' product could not be deemed as power operated simply because of use of a battery. He contended that die question whether a machine is power operated has to be decided in terms of Section 2(g) of the Factories Act He added that the Tariff Advice issued in 1981 to the departmental officers could not overrule the public notice issued in 1969 on the basis of Board's instructions. He reiterated his stand that there was no finding in regard to any wilful suppression or misstatement of the facts by the appellants.

5. We have gone through the ex-records of the case and considered the submission made on behalf of both the sides. It is seen that the points that arise for consideration in this case are: (i) Whether the fuel dispensing pumps manufactured by the appellants could be deemed as power driven pumps classifiable under Item 30-A of the Central Excise Tariff.

(ii) Whether the Boards' instructions No. B7/6/69-CX. 1 dated 23.4.1969 and Patna Collectorate Trade Notice No. 25/2/69 dated 28.3.1969 incorporating Board's instructions that fuel dispensing pumps were not chargeable to duty under Central Excise Tariff Item 30A could be deemed as binding on the adjudicating authority.

(iii) Whether the extended period of 5 years was available to the Department for the recovery of the short levy.

6. As regards the first point it is seen that the refuelling pump in question incorporating a DC motor operated by a 24 Volt rechargeable battery was meant for dispensing fuels such as petrol and diesel oil from tankers or barrels into fuel tanks of vehicles. The appellants' case is that even though the pump operated on a battery, it could not be deemed as power operated. They have contended that in absence of any definition in the Central Excise Tariff, the question whether a machine is power operated has to be decided in terms of the definition of the 'power1 in Section 2(g) of the Factories Act.

7. In this regard we find that the refuelling pumps in question incorporated an electric motor which was admittedly operated by electric power provided by a battery. We are, therefore, of the view that they could be deemed as power operated. In this regard it is seen that the term 'power' is defined in Section 2(g) of the Factories Act as: electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal energy.

Since the pump was operated by a battery which provided electrical energy and such energy was converted into mechanical energy by a DC motor, it follows that even in terms of the definition of 'power' in the Factories Act, the refuelling pumps manufactured by the appellants could be deemed as power operated pumps, classifiable under Item 30-A of the Central Excise Tariff. Hence, the answer to the first question is in the affirmative.

8. Coming to the second point, we find that the Honourable Supreme Court in the case o/Orient Paper Mills Ltd. v. Union of India 1978 ELT (J. 345) : ECR C 267 SC : Cen-Cus Aug. 1973 (i) has laid down that quasi-judicial authorities should not allow their judgments to be influenced by administrative considerations or by the instructions or directions given by their superiors and such directions given by higher authorities, however high they may be, shall be invalid and will only have the effect of vitiating the quasi-judicial proceedings. We are., therefore, of the view that the instructions issued by the Board and also the Trade Notices issued by certain Central Excise Collectorates on the basis of such instructions stating that fuel dispensing pumps were not to be treated as chargeable to duty under Tariff Item 30-A of the Central Excise Tariff were not binding upon the adjudicating

authority who was required to arrive at his own judgment in regard to the classification of the goods, on the basis of the wordings of the relevant item in the tariff. Hence, the answer to the second point is in the negative.

9. In regard to the question whether having regard to the facts and circumstances of this case it was permissible for the Department to invoke the extended period of five years under the proviso to Section 11A of the Central Excises & Salt Act, 1944 we find that the appellants' case is that they had not paid duty on the clearances in excess of the exemption limit of Rs. 7.5 lakhs on the bona fide belief that the refuelling pumps manufactured by them were not classifiable under Item 30A of the Central Excise Tariff. They have contended that there can be no finding against them of wilful suppression of facts or tnisstatement with the intent of evading duty since even in accordance with the Board's instructions dated 23.4.1969 conveyed to the trade through Patna Collectorate Public Notice dated 28th March, 1969 pumps designed for dispensing fuel were not chargeable to duty under Item 30-A of the Tariff. On the other hand the learned JDR has contended on behalf of the Department that it was permissible for the adjudicating authority to invoke the extended period for the recovery of short levy since the appellants failed to obtain a Central Excise licence and continued to clear their goods without payment of duty even after 1981 when all doubts about the dutiability of power driven pumps designed for handling liquids under Item 30A of the Tariff were put to rest with the issue of Board's Tariff Advice No. 122 dated 10.11.1981. We are, however, not impressed with the arguments of the learned JDR since a tariff advice is a departmental circular issued for the guidance of the officers. It appears that even after the issue of the Tariff Advice there was ample scope for doubt in the mind of the appellants about the dutiability of various types of power operated pumps in view of the circulars issued by the Board and various Collectorates on this subject and on this account they failed to take out a licence and pay the duty.

Under these circumstances we are of the view that as held by the Supreme Court in the case of Padmini Products v. Collector of Central Excise the appellants cannot be accused of wilful misstatement or suppression of facts with the intent to evade duty. The relevant extracts of the judgment are reproduced below: We are unable to accept this position canvassed on behalf of the revenue. As mentioned

hereinbefore mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not would not attract Section 11-A of the Act. In the facts and circumstances of this case, there were materials as indicated to suggest that there was scope for confusion and the appellants believing that the goods came within the purview of the concept of handicrafts and as such were exempt.

If there was cope for such a belief or opinion, then failure either to take out a licence or to pay duty on that belief, when there was no contrary evidence that the producer or the manufacturer knew that these were excisable or required to be licensed, would not attract the penal provisions of Section 11-A of the Act 10. We, therefore, hold that this was a case of mere failure or negligence on the part of the appellants, and the extended period of limitation under Section HA was inapplicable, and short levy, if any, in respect of the clearances within the normal period of 6 months could alone be recovered from the appellants. For the same reasons we hold that there were no grounds for imposition of penalty and the same has to be set aside.

10A. In view of the foregoing we set aside the order appealed against.

The appeal is allowed by remand to the Assistant Collector for recovering the short levy, if any. in terms of this order.