Kaycee Electricals Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-21-1991

Reported in : (1991)(56)ELT889TriDel

Appellant : Kaycee Electricals

Respondent : Collector of Central Excise

Judgement :

1. M/s. Kaycee Electricals, B-7, Zhilmil Industrial Area, Shahdara, Delhi, has filed an appeal being aggrieved from the order passed by the Collector of Central Excise, Delhi. The said appeal was received in the Registry on the 12th day of March, 1991. Simultaneously, a stay application duly supported with an affidavit was also presented. A notice of hearing dated 18th March, 1.991, was issued to the applicants listing the stay application for hearing for today i.e. the 21st day of May, 1991.

2. Shri Naveen Mullick, the learned Advocate, has appeared on behalf of the appellants. He pleaded that the amount involved is Rs. 4,98,84,151.39 and the period involved is 1st May, 1980 to 31st March, 1983, and the appellant manufactures copper wire rods from copper wire bars. He pleaded that before the Collector the appellant had claimed the benefit of Notification No. 119/66-CE dated 16th July, 1966 as amended by various notifications from time to time and the last amended Notification No. was 32/81-CE dated 1-3-1981. Shri Mullick pleaded that the appellant had contended before the Collector that he was entitled to the benefit of this Notification on the ground that crude copper was used for the manufacture

of copper wire rods and the appellant was entitled to the benefit of Notification No. 119/66-CE dated 16-7-1966 as amended by Notification No. 32/81-CE dated 1-3-1981. He further pleaded that the Advocate had requested the Collector of Central Excise & Customs for adjournment as the issue of Section 11C Notification was very much under consideration of the Government. He pleaded that the hearing before the Collector was on 14th November, 1990. The adjudicating authority order is dated 5th February, 1991. He stated that by a subsequent notification issued under Section 11 C of the Central Excises & Salt Act, 1944, vide Notification No. 3/91-Central Excise (NT) dated 30th January, 1991, the Central Government had exempted the copper wire rods manufactured from copper wire bars from 13th May, 1969 to 1st of August, 1984. Shri Mullick pleaded that in the matter before the Tribunal the period involved is 1st May, 1980 to 31st May, 1983. He pleaded that in case the applicants are desired to deposit the duty amount of Rs. 4,98,84,151.39, it will amount to undue hardship. He further argued that the adjudicating authority, viz., Collector of Central Excise, had not looked into the exemption Notification No. 3/91-CE(NT) dated 30th January, 1991 as the notification was issued after the hearing was over and the appellant had duly brought it to the notice of the Collector that the issue of the notification was very much under consideration of the Central Government and a telex to this effect was also produced before the Collector. Shri Mullick pleaded for the dispensation with the prc-deposit of the duty amount and also made a prayer that the appeal may also be taken up for hearing today and the matter be remanded to the Collector of Central Excise for de novo examination as to the benefit of Notification No. 3/91-CE(NT) dated 30th January, 1991.

3. Shri M.K. Sohal, learned JDR, who has appeared on behalf of the respondent, fairly stated that the exemption notification is dated 30th January, 1991 and the order is dated 5th February, 1991, i.e., after the issue of the exemption notification. Shri Sohal stated that in view of the exemption Notification No. 3/91-CE(NT) dated 30-1-1991, cited by the learned Advocate, he leaves it to the discretion of the Bench. He further stated that in case the Bench is inclined to dispense with the pre-dcposit of the duty amount of Rs. 4,98,84,151.39, he has got no objection to the hearing of the appeal and also the remanding of the matter to the Collector of Central Excise, Delhi for de novo consideration.

4. We have heard both the sides and have gone through the facts & circumstances of the case. The adjudication order is dated 5th February, 1991. On internal page 5 of the impugned order, para 2 of record of personal hearing the Collector has mentioned as under:- "Shri C.L. Beri, Advocate, appeared for personal hearing on 13-7-90 before Sh. K.L. Verma, Collector, Central Excise and sought adjournment for a period of 3 months on the ground that government is considering issue of notification under Section 11C and submitted a copy of letter No. 138/3/90 CX.4 dated 8-4-90 addressed to a small wire drawers' association, Shahdara. It was submitted that on the same grounds matters involving same issue have been got adjourned in CEGAT also.

Shri C.L. Beri, Advocate, again appeared for personal hearing on 14-11-90. He reiterated argument given in their earlier statements, ISI specifications etc. Shri P.C. Jain's order in appeal dated 6-6-84 etc. The Advocate reiterated and asked for adjournment on the same grounds of issue of Notification under Section 11C by the Government of India. They produced the copy of the Board directing the field staff that the demands may not be enforced in such cases until further orders." A simple perusal of the para No. 2 of the record of personal hearing on internal page 5 shows that the date of hearing was 14th November, 1990 and the telex of the Board was also produced before the Collector. The order passed by the Collector is dated 5th February, 1991. Though the telex was brought to the notice of the Collector, it appears that the Collector was not aware of the Notification No. 3/91-CE(NT) dated 30-1-1991. There is a gap of five days from the date of issue of the notification and the passing of the order. For the proper appreciation of the correct legal position Notification No. 3/91 -CE(NT) dated 30th Jan. 1991 which appears on page 37 of the paper book is reproduced below: - G.S.R. 53(E) - Whereas the Central Government is satisfied that according to a practice that was generally prevalent regarding levy of duty of excise (including non-levy thereof) under the Central Excises & Salt Act, 1944 (1 of 1944), the duty of excise on copper wire rods falling under the then existing tariff item No. 26A of the First Schedule to the said Act, manufactured out of duty paid copper wire bars, was not being levied under Section 3 of the said Act, during the period commencing on the 13th day of May, 1969, and ending with the 1st day of August, 1984.

And whereas the special duty of excise on such copper wire rods was also not being levied under the relevant law related to the levy of such duty during the period aforesaid; Now, therefore, in exercise of the powers conferred by Section 11C of the said Act, the Central Government hereby directs that the whole duty of excise and the special duty of excise leviable under the said Act or, as the case may be, under the said law, on such copper wire rods, but for the said practice, shall not be required to be paid in respect of such copper wire rods, on which the said duty of excise or the special duty of excise was not levied during the period aforesaid, in accordance with the said practice." A simple perusal of the above notification shows that where the copper wire rods are manufactured from copper wire bars during the period 13th May, 1969 to 1st August, 1984, the same are exempt from the central excise duty. The notification issued by the Government under Section 11C is with retrospective effect. The Tribunal had dealt with similar matter in the case of CCE Jaipur v. R.S. Metal (P) Ltd. & M/s Jaipur Metal & Electricals Ltd. vide Order No. E/109 & 110/91-B1 dt. 29-4-91.

Operative part of the said order is reproduced below : - "We set aside the order and remand the matter to the Assistant Collector having jurisdiction to examine the extending of the benefit of Notification No. 3/91(NT)-CE dated 30th January, 1991 under Section 11C and thereafter give consequent relief, if any. We further order that while readjudicating the matter, the Assistant Collector shall grant opportunity of personal hearing to the respondent and shall observe principles of natural justice. We further direct that he should re-adjudicate the matters within 3 months from the date of the receipt of the order. For statistical purposes, the appeals are allowed by way of remand. The Cross Objection filed by the respondents is in support of the order passed by the Collector of Central Excise (Appeals). The same is dismissed." In view of the above discussion, we are of the view that if the applicants are desired to deposit the duty amount of Rs. 4,98,84,151.39, it will amount to undue hardship. We dispense with the pre-deposit of the duty amount of Rs. 4,98,84,151.39.

5. During the course of arguments, the learned Advocate had made a prayer for the hearing of the appeal and remanding of the matter to the Collector of Central Excise, Delhi. Shri M.K. Sohal, learned JDR, has got no objection to the hearing of

the appeal and also remanding of the matter.

6. In view of the discussion, in the foregoing paras, we set aside the impugned order and remand the matter to the Collector of Central Excise, New Delhi having jurisdiction to re-adjudicate the same in accordance with law. While re-adjudicating the matter, he will observe principles of natural justice and also grant an opportunity of personal hearing. He will see and also examine the extension of the benefit of Notification No. 3/91-Central Excise (NT) dated 30th January, 1991.

Accordingly, we set aside the impugned order. The appeal is allowed by way of remand.