Collector of Central Excise Vs. Bombay Dyeing and Mfg. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-24-1991

Reported in : (1991)LC247Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Bombay Dyeing and Mfg. Ltd.

Judgement :

1. This appeal is filed by the Department against the order in appeal bearing No. PPM-173/Bi-86/88 dated 24-5-1988, setting aside the demands confirmed by the Asstt. Collector vide his order No.V(18A)4-136/82/869 dated 6-2-1985 on the ground that the demand was hit by the period of limitation and that the show cause notice did not contain any allegation as to the wilful suppression or fraud etc.

2. Shri Mondal, the ld. SDR for the appellant submitted that the Collector (Appeals) has not considered the issue on merits and has rejected it only on the ground of limitation. He pleaded that the show cause notice was issued on 28-8-1982 raising the demand covering period from Nov. 1981 to January, 1982. In his submission, the present demand was raised on account of testing the sample of the items manufactured by the respondents on 12-2-1981 and the Chief Chemist's report was received on 5-8-1981 indicating that though the respondents had claimed count in 100s, they were found to be 113s. He submitted that a show cause notice though did not clearly specify that there was suppression or mis-statement, the wordings were clear enough to indicate the same and as such the allegation of suppression could be deemed to have been existed in the show cause notice. He

also took me to the order of the Asstt. Collector to the effect that the respondents had made corrections in their frames and did not care to approach the Excise staff to draw a fresh sample and it was incumbent on the part of the respondents to put forward all the facts before the authorities and the act of suppression did exist and that therefore, the notice issued was legal and the Collector (Appeals) erred in holding the said notice as hit by period of limitation.

3. Shri Christian, the ld. advocate for the respondents however, supported the order of the Collector (Appeals) and submitted that the notice could not be linked as containing the allegation of suppression or mis-statement or fraud. The mis-declaration alleged was already suspected as not correct by the appellants, as early as January 1981 when they drew the sample and in August,1981 when the report of the Chief Chemist was received. He pleaded that if the Department suspected the correctness of the declaration made, they could have resorted to the provisions of Rule 9 of the Rules. They having not done so for that period, it was not open for them to raise the demand for the subsequent period and that too after the expiry of six months without any whisper in the show cause notice about the suppression. He pleaded that the order passed by the Collector (Appeals) is just and proper.

4. Considering the submissions made and perusing the record, the only point for my determination at this stage is, whether the show cause notice issued should be read as alleging act of suppression so as to authorise invoking of the extended period. The material portion on which the Department has relied is as under : " It appears from the test report that the count of the product in question is 113s against 100s as declared by the Mills which has resulted in short levy of central excise duty".

A plain reading of this cannot be taken as the one as alleging act of suppression for invoking the extended period. Positive allegation in that regard has to be made. Even otherwise, the Department was suspected the mis-declaration as early as in January, 1981 and that the suspicion, was confirmed in the month of August, 1981. But the Department appears to have taken no action till 28-8-1982 and thereto they have not demanded the duty for the period during which the sample was drawn but for the period much subsequent thereto. The period for which the demand was raised was, after the test report was received by them and that there was no justifiable ground for them to wait for about one year for issuing the show cause notice.

5. In my view, the approach of the Collector (Appeals) is just and proper and no interference is called for. There is no allegation of suppression made in the show cause notice. The appeal, under this circumstances, is rejected. Consequential relief has to follow.