

Accura Industries Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-16-1991

Reported in : (1993)LC29Tri(Delhi)

Appellant : Accura Industries

Respondent : Collector of Central Excise

Judgement :

1. Brief facts of the case as given in the order-in-original No. 23rd May, 1981, are as follows :- 1.1 The appellants herein filed three classification lists 1/87,2/87 and 3/87 with an intention to clear their goods during the financial year 1987-88 for goods falling under Chapter 82, Chapter 85 and Chapter 90 of the Central Excise Tariff. Alongwith the classification lists, the appellants furnished a copy of SSI registration certificate bearing No. 260/73/1458 dated 24-1-1979 in respect of unit No. 2, Sona Industrial Estate, Parsi Panchayat Road, Andheri (East), Bombay and the copy of the certificate was endorsed to Lower Parel Address. It is relevant to mention at this stage that the appellants in 'Statement of Facts' to their appeal memorandum has stated that they sold their unit at Andheri on 1-4-1982. Since the appellants were not able to produce any SSI registration certificate for their unit at Lower Parel or whether they were availing any exemption under Notification 77/85 or 85/85 prior to the year 1986, a show cause notice was issued to them asking them to show cause as to why their claim for availing exemption under Notification No. 175/86 be not set aside.

1.2 The Assistant Collector in his order dated 23-5-1988 has held that the appellants herein have admitted that they did not have an SSI registration certificate for their Lower Parel Unit; that the appellants were availing exemption under Notification No. 77/83 dated 1-3-1983 for the financial year 1983-84 only. The appellants did not produce any evidence of having filed any declaration for subsequent years, namely 1984 & 1985. In the absence of such a declaration, the Assistant Collector in the aforesaid order-in-original has held that the appellants were not entitled to the benefit of exemption Notification 175/86 and that the classification list for the financial year 1986-87 was erroneously approved by his predecessor. Accordingly, he did not extend the benefit of Notification No. 175/86 dated 1-3-1986 in respect of the goods mentioned in the three aforesaid classification lists 1 to 3/87.

1.3 On appeal before the lower appellate authority, the appellants herein did not succeed. The lower appellate authority has observed that the appellants herein did not furnish any evidence to prove that they had been enjoying exemption from duty under Notification No. 77/83 dated 1-3-1983 and 77/85 dated 17-3-1985.

1.4 The appellants' learned consultant, Shri R.C. Sethi, has now urged that the orders of the lower authorities are ex facie wrong inasmuch as it has been held clearly by the Assistant Collector in his order-in-original dated 23-5-1988 that the appellants had been enjoying the benefit of exemption under Notification No. 77/83 dated 1-3-1983 for the financial year 1983-84. He has also drawn attention to the appellants' letter dated 26th August, 1985 addressed to the concerned Range Office in response to the Superintendent's letter F. No. C.Ex./Gen. 6/R/VIII/85/Bombay dated 20th August, 1985 on the subject "Exemption from licensing control Declaration in terms of Notification No. 111/78 or Notification 2/81 - Information regarding" [available at page 30 of the Paper Book marked as Exhibit 'B' Colly]. This letter points out that the value of clearances in the previous financial year 1984-85 was Rs. 8.5 lakhs i.e. well below the exemption limit. In the face of this clear finding in both the orders of the lower authorities the terms of the Notification No. 175/86 are clearly fulfilled.

2.1 It has also been urged that the SSI dated 24-1-1979, mentioned supra in the facts, would be applicable to their unit at Lower Parel after sale of their other unit at Andheri on 1-4-1982. Therefore, they would be covered by the main provisions of para 4 of the Notification No. 175/86.

2.2 It has been further urged by the learned consultant that availment of the benefit of exemption under Notification 77/83 or 77/85 did not depend upon filing of declaration under Notification No. 111/78 or Notification No. 2/81. The declaration under Notification No. 111/78 or Notification 2/81 related only to exemption from the licensing control.

The question whether an industrial unit was liable to exemption or was availing exemption under a previous Notification 77/83 or 77/85 depended upon the quantum of clearances of excisable goods from the factory. The benefit of exemption has to be given irrespective of the fact whether a unit has been licensed by the excise authorities or not.

This has been the clear ratio of the Tribunal's judgment in the case of Collector of Central Excise v. Atlas Radio and Electronics Pvt. Ltd. [1989 (39) ELT 123-Tribunal]. He, therefore, submits that the impugned order be set aside and the appeal be allowed.

3. Learned Jt. C.D.R., Shri K.K. Bhatia, on the other hand, reiterates the findings of the lower appellate authority. He relies in his support on a decision of the Tribunal (SRB) reported in 1990 (48) ELT 40.

4. We have carefully considered the pleas advanced on both sides. Para 4 of the exemption notification for a proper appreciation of the controversy arising in this matter is reproduced below :- "4. The exemption contained this notification shall be applicable only to a factory which is an undertaking registered with the Director of Industries in any State or the Developmental Commissioner (Small Scale Industries) as a small scale industry under the provisions of the Industries (Development and Regulations) Act, 1951(65 of 1951): Provided that nothing contained in this paragraph shall be applicable, - (a) in case where the value of clearances from a factory during the preceding financial year or in the current

financial year did not exceed or is not likely to exceed rupees seven and a half lakhs; or (b) in a case where a manufacturer has been availing of the exemption under this notification or any of the notifications specified below, during the preceding financial year, - It is apparent from the given facts that the appellants do not have an SSI registration certificate in respect of their unit at Lower Parel.

Their plea that SSI registration certificate for their unit at Andheri (since sold out) should be treated as applicable for their unit at Lower Parel cannot be accepted. We, however, find sufficient merit in their plea that they had been availing of the exemption during the preceding financial year under this Notification or the Notification 77/83 or 77/85. The fact that they were availing of the exemption in the preceding financial year under this very Notification 175/86 cannot be disputed at this stage because it is admitted in the order-in-original that the benefit of the Notification 175/86 was extended to them by the approval of the classification list by the competent authority. It is immaterial for the purpose of classification list 1 to 3/87 that the classification list for the financial year 1986 was wrongly approved as alleged. The fact remains that the appellants were availing of the benefit of this Notification 175/86 during the preceding financial year. There is also sufficient force in the learned consultant's plea that the scope of the expression 'availing of the exemption' occurring in proviso (b) to para 4 of the Notification 175/86 reproduced above, cannot be restricted to cases where a person has filed a declaration under Notification 111/78 or Notification 2/81.

The question whether a manufacturer was availing of the exemption would depend upon whether it was liable to avail of the exemption on the basis of the conditions set out in any of the notifications listed in para 4(b). We agree with the learned consultant's plea that the availment of an exemption notification is independent of exemption from licensing control on filing of a declaration under Notification 111/78 or Notification 2/81. The lower authorities have not denied that the extent of clearances during the preceding financial year have been (as given in para 3 of the Statement of Facts to the appeal memorandum) as follows :- Therefore, it has to be held that the appellants herein were availing of the exemption under Notification 77/85 during the preceding financial year 1985-86 and hence it was rightly given the exemption under Notification 175/86, for the financial year 1986-

87.

4.1 Consequently, the benefit of exemption Notification No. 175/86 dated 1-3-1986 cannot be denied to the appellants for the three classification lists, namely 1,2 and 3/87 in question in this appeal.

Hence we allow this appeal.

5. Before parting with this matter we observe that the citation relied upon by the learned Jt. C.D.R. 1990 (48) ELT 40 (Tribunal) is not at all relevant. The controversy in that case related to the scope of the word 'or' occurring in proviso (a) to para 4 of the Notification 175/86, it did not have any bearing on the scope of proviso (b) to para 4 of the notification as in this case.

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