Collector of Central Excise Vs. Krishna Fruit Products Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-18-1992

Reported in : (1992)(43)LC268Tri(Delhi)

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

Appellant : Collector of Central Excise

Respondent : Krishna Fruit Products Ltd.

Judgement :

1. The Collector of Central Excise, Guntur has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Appeals), Madras. A notice of hearing dated 12th December, 1991 was sent by registered post. Nobody has appeared on behalf of the respondents. The respondents have not filed any application for adjournment, nor they have made any arrangement for proper representation before the Bench. Smt. J.M.S. Sundaram, learned SDR has appeared on behalf of the appellant. Accordingly we proceed to decide the matter ex pane. Mrs. Sundaram pleaded that the issue involved is in respect of the respondents' claim of refund dated 30th August, 1988 in respect of special excise duty of Rs. 1381.71 paid by them on the pre-Budget stock of Mango pulp, held by them on the midnight of 29.2.1988/1.3.1988 and cleared from 1.3.1988 to 15.7.1988. Smt.

Sundaram, learned SDR pleaded that the issue has been decided by the honourable Supreme Court in the case of Mis Vallore Fabric v. CCE reported in

1990 (25) ECC 125 and also a decision of the Tribunal in the case of CCE v. Indian Oil Corporation Ltd. , wherein the Tribunal had held: Special Excise Duty in force at the time of manufacture although actually exempted and continued to be in force though by a special enactment at the time of clearance of goods--Goods cleared on or after 1.3.1988 chargeable to Special Excise Duty.

2. We have heard the learned SDR and have also gone through the records! The facts of the present matter are similar to the decision of Indian Oil Corpn. (supra) cited by the learned SDR. Para 8 from the said judgement is reproduced below:' 8. The interpretation of the words used in the Finance Minister's speech in the manner set out in the Tribunal's order and, in the manner expounded by Shri Raghavan Iyer, stem from different perceptions. But if we look at the substance, we are faced with the position that special excise duty was not a duty imposed for the first time by the 1988 Finance Bill. It was already in existence in 1987 having been introduced by the 1987 Finance Bill though all goods were actually exempted from the levy by an exemption notification. The fact of exemption, however, does not, as it were, wipe out the fact that special excise duty was in force as a result of the 1987 Finance Bill. The thrust of Shri Iyer's argument, however, is that the levy of special excise duty is not, unlike the levy of basic excise duty (this term is used to denote the levy of excise duty in accordance with the First Schedule to the Central Excises and Salt Act, 1944, or, as the case may be, the Schedule to the Central Excise Tariff Act, 1985), a continuing or permanent levy, that is, a levy of a permanent character. It had to be authorised by the annual Finance Acts. The authority for the levy flows from each separate Finance Act. Thus the special excise duty authorised by the 1987 Finance Bill is not of the same character as the special excise duty authorised by the 1988 Finance Bill.

Therefore, in Shri Iyer's submission, since the 1988 levy of special excise duty was not in force at the time the goods were manufactured, the said levy cannot be collected from the goods when they were cleared after the imposition of the levy. This line of argument, in our opinion, flies in the face of the factual position which is that special excise duty was in force in 1987 and the levy was continued in the year 1988 though by a separate Finance Bill.

The nomenclature and the character of the levy did not undergo any change from 1987 to 1988. The special excise duty authorised by the 1988 Finance Bill, in our opinion, is not a levy altogether distinct and different in character from the levy of special excise duty authorised by the 1987 Finance Bill merely for the reason that the authority for the two levies flowed from two different enactments.

It is true that the goods manufactured prior to 1.3.1986 were exempt from the levy of Special Excise duty under the 1987 budget and such exemption continued during the month of March 1988. The levy authorised by the 1988 Finance Bill had come into force from the midnight of 29.2.1988/ 1st March 1988 by virtue of the declaration under the Provisional Collection of Taxes Act. Since the SED of 1988 was no different from the SED of 1987, as noted by us earlier, the SED of 1988 was attracted on the clearance of these goods on and from 1.3.1986 by operation of Central Excise Rule 9A. In our view, there is no question here of any retrospective application of the 1988 levy of SED. In this-view of the matter, we are of the opinion that there is no disharmony between the operation of the Clause 82(1) of the 1988 Finance Bill and Central Excise Rule 9A as urged by Shri Ignatius. Nor, in our opinion, is there any lack of nexus between manufacture and collection. This is because goods were manufactured when special excise duty was in' force and were cleared when the special excise duty was in force though, no doubt, in terms of two different enactments. In the Bombay Tyres International case (supra), the Supreme Court has observed that though the levy of excise duty is on manufacture of goods, the actual stage of collection could be deferred by law to a stage at which it would be convenient to collect the lax. It is not clear how this principle, referred to by Shri Ignatius helps the case of the respondents. If we arc dealing with a situation when there was. no levy of Central Excise at the time of manufacture of the goods but there was a levy at the time of their clearance, the situation may possibly be different. Here, however, there is a situation where there was a levy of SED (though actually exempted) at the time goods were manufactured and the levy continued to be in force (though by a separate enactment) at the time the goods were cleared. The principle, does not, advance the cause of the respondents.

3. We follow the earlier decision of the Tribunal and accordingly, we set aside the impugned order and allow the appeal and uphold the findings of the Assistant Collector. The appeal is allowed.