

Collector of Central Ex. Vs. Bio Ethicals Pharma Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Sep-22-1993

Reported in : (1994)LC472Tri(Chennai)

Appellant : Collector of Central Ex.

Respondent : Bio Ethicals Pharma Pvt. Ltd.

Judgement :

1. This appeal is filed by the Department against the order of the Collector of Central Excise (Appeals), Bangalore dated 24-7-1990. Under the impugned order the respondents have been allowed benefit of concessional Notification 175/86 for the period 1-4-1989 to 27-4-1989 even though during this period the respondent did not satisfy the eligibility criterion as laid down in the said notification with reference to the total clearances of the excisable goods from their factory in the preceding financial year. Under the criterion as set out in the Notification 175/86 at the relevant time if the aggregate value of clearances of a unit during the preceding financial year exceed Rs. 150 lakhs the unit was not eligible for the benefit of this notification. This limit of Rs. 150 lakhs came to be amended to Rs. 200 lakhs by issuing an amended Notification 119/89, dated 27-4-1989. The respondents on amendment of the notification claimed the benefit of the notification right from the beginning of the financial year and the excess duty which has been paid by them within the period 1-4-1989 to 27-4-1989 was claimed as refund. The learned lower appellate authority in his impugned order has held as under: "During the financial year 1-4-1989 to 31-3-1990 as the notification stood

they were not entitled to the benefits of the Notification 175/86. But by virtue of amendment to this notification on 27-4-1989 the scope of the notification got enlarged to cover manufacturers of units whose aggregate value of clearances do not exceed Rs. 200 lakhs. As a result of this amendment to which the appellants qualify they could avail of the benefit of Notification 175/86 and claim the concessional rate. So instead of paying duty at 15% they would be paying duty @ 5% since they were availing of Modvat facility. Basing on this the appellants filed a claim for refund in respect of duty paid between 1-4-1989 to 27-4-1989. The reasoning of the appellants is valid and is accepted." 2. The learned S.D.R. pleaded that the eligibility for benefit of notification has to be with reference to the notification as it stood at the time of clearance of the goods. Admittedly he pleaded during the relevant period the limit for eligibility of the notification was Rs. 150 lakhs and the respondents by virtue of their clearances being more than this limit during the preceding financial year is not eligible for the benefit of this notification. The latter amendment cannot be retrospective and any benefit that will flow from the amended notification has to be only prospective as it is only on the date when the amendment took place the unit became eligible for the benefit of the notification. He pleaded that the learned lower appellate authority has not entered any detailed reasoning in his order and has merely stated that the "reasoning of the appellant is sound". He pleaded that the learned lower appellate authority has not interpreted the legal position correctly.

3. There was none on behalf of the respondents, who had desired that the matter may be decided based on their written submissions. They have referred to the Trade Notice issued by the Calcutta-II Collectorate (No. 14/GL7/CE/CAL-II/90) dated 13-2-1990 and the relevant portion is reproduced below: "In view of the above and the specific provision made in the notification providing a slab system for levy of duty in a financial year, it is observed that the Notification No. 119/89-C.E., dated 27-4-1989 being not an independent notification should be read together with parent Notification No. 175/86 dated 1-3-1986 and should be given effect jointly for a financial year beginning from 1st April." During the financial year 1989-90 as per unamended Notification No. 175/86 we were not entitled to the benefit of the Notification No. 175/86, dated 1-3-1986. But by virtue of amendment to the said Notification No. i.e. 119/89, dated 27-4-1989 the scope of the

notification got enlarged to cover the manufacturers/units whose aggregate clearance value do not exceed Rs. 200 lakhs. As a result, of this amendment we qualify to avail of the benefit of Notification No. 175/86 and claim the concessional rate. Instead of paying duty at 15% we would have paid 5% ad valorem since we were availing Modvat facility - on account of the fact that the GOI Notification No. 119/89 date 27-4-1989 which has amended the parent Notification 175/86, dated 1-3-1986 and kept all other conditions of the notification unchanged. G.O.I. Notification No. 175/86 as amended from time to time is an exemption Notification based on the value of clearance effected during the financial year and thus should be considered as a whole for the purpose of levy of Central Excise duty in a financial year commencing from 1-4-1989 to 31-3-1990 and not from 27-4-1989 to 31-3-1990 as viewed by the Collector of Central Excise, Belgaum. Furthermore, the G.O.I. Notification No. 119/89 is not an independent notification and should be read together with parent Notification No. 175/86 since the slab system for levy of Central Excise duty is based on the financial year. Hence the contention of the Collector of Central Excise, Belgaum is not correct and cannot be accepted." The short point that falls for our consideration is whether the benefit of an exemption notification which is based on satisfaction of certain criterion laid therein is to be given based on the criterion as it existed at the relevant time when the clearances are made or the benefit can be given if the criterion is changed in favour of the assessee on a subsequent date. Here in this case the benefit of Notification 175/86 was limited to such units whose clearances during the previous financial year did not exceed Rs. 150 lakhs and the respondents made their clearance paying the full rate of duty. By issue of Notification 119/89 dated 27-4-1989 the limit of Rs. 150 lakhs was increased to Rs. 200 lakhs and the respondents' unit based on this criterion became eligible for the purpose of benefit of Notification 175/86. We observe that each clearance is an individual legal event and the duty payment is based on the law applicable at that time of the clearances. Admittedly during the relevant period the respondents were not eligible for the benefit of notification and at that time when they made the clearances they paid the correct duty as was required to be paid under the law prevailing at that time. What happened by the amendment of the Notification 119/89 was that this unit which was outside the ambit of the notification came to be included within the ambit of

the same the limit of aggregate clearances for the purpose the notification came to be increased. There is nothing in the amending notification to say that this amendment will have a retrospective effect and any clearances made earlier notwithstanding the earlier limit of the clearance of Rs. 150 lakhs in the amended notification the benefit of notification could be given to the earlier clearances also.

The interpretation given by the learned Collector (Appeals) would create an anomalous situation as during the financial year if the amendment took place some time towards the end of the year then the eligibility for refund as per the rationale of the orders of the Collector would arise in respect of all the clearances made from 1st of April till the end of financial year notwithstanding the limitation of six months. If limitation is to be applied then there will be discrimination as some of the clearances made would not be covered by the amendment and because of limitation the benefit of notification will be denied in that case. It is a well settled law that any benefit of the notification can be only prospective unless a contrary intention is reflected in the notification and which is not so in the present case. In view of this we hold that the learned lower appellate authority was in error in giving retrospective effect to the amendment and allowing the benefit of notification for the period 1-4-1989 to 27-4-1989. We, therefore, set aside the order of the learned lower appellate authority and allow the appeal of the revenue.

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