

Eap Industries Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-1993

Reported in : (1993)(68)ELT851TriDel

Appellant : Eap Industries Ltd.

Respondent : Collector of Central Excise

Judgement :

1. M/s. EAP Industries Ltd., Calcutta has filed an appeal being aggrieved from the order passed by the Collector of Central Excise (Judicial), Calcutta-II. The said appeal was presented in the Calcutta registry on the 10th day of April, 1992 and thereafter the same was transferred to the Delhi registry. The stay application duly supported with an affidavit was also simultaneously presented and the same was also transferred to the Delhi registry. When the Bench enquired from the appellant whether the said stay application was not heard by the E.R.B. at Calcutta, Shri R. Swaminathan, the learned Consultant* stated that since the advocate is Delhi based it was more convenient for the appellant to have the hearing of the stay application in Delhi and as such he requested that it should be heard in Delhi. Shri Swaminathan, the learned Advocate* who has appeared on behalf of the appellant has pleaded that the duty in the present matter is Rs. 26,13,964/- and penalty is of Rs. 3 lakhs for the period from 1st April, 1986 to 7th August, 1989 and the show cause notice was issued on 4th June, 1990.

The duty on account of the 2 price lists vide part (I) and part (VI) pertains to captive consumption. He referred to the facts of the case and also the price list

which has been duly mentioned in the letter of the department which appears on page 117 for part (VI) price lists. The Collector has discussed the same in his order-in-original at page 125 of paper book. The learned consultant pleaded that it is a sick unit covered by BIFR order dated 25-2-1988 and also referred to the order of the BIFR dated 12th August, 1992 for rehabilitation of the unit. He fairly stated that no scheme has been drawn and there is a stay granted by the Honourable Calcutta High Court in this regard. He also drew attention of the Bench to the balance sheet for the year ending 31st March, 1990 and pleaded that BIFR in its order has discussed the losses of the appellant to the tune of Rs. 199 lakhs. He pleaded that prima facie the appellant has got a good case on merits. He also pleaded financial hardship. In support of his argument, he cited the following decisions :-Sonodyne Television Company v. Collector of Central Excise 1987 (28) E.L.T. 279 - Jayashree Insulators Ltd. v. C.C.E., Calcutta II and Shri Swaminathan pleaded that the appellant has got prima facie a good case on merits as well as there is financial hardship and the appellant unit had been declared as sick unit. He cited the Honourable Calcutta High Court decision reported in 1990 (62) E.L.T. 290. Similar were the views in the case of Rubber Reclatem Company v. Union of India vide CM No. 5550/93 and CW 220/93, dated 30th July, 1993 of Honourable Delhi High Court. He pleaded that in case the appellant is desired to deposit the duty of Rs. 26,13,964/- and penalty amount of Rs. 3 lakhs, it will amount to undue hardship. He pleaded for dispensing of pre-deposit of the same.

2. Mrs. C.G. Lal, the learned Senior Departmental Representative pleaded that the part (I) price list was available and as such it was unnecessary for resorting to part (VI) price list in terms of Rule 6 of the Central Excise (Valuation) Rules, 1975. She pleaded that it is a common factor for invoking the period of limitation and accordingly the same has been invoked. In support of her argument, she cited in the case of H.M.T. Ltd. v. Collector of Central Excise reported in 1989 (41) E.L.T. 602 (Tribunal) where it was held that a resort to the Valuation Rules can be had only when the normal price of the goods is not ascertainable for the reason that such goods are not sold or for any other reason and the said goods as are captively consumed are sold in the open market. She fairly stated that as per the copies of the orders from BIFR filed by the learned Consultant, she leaves it to the

discretion of the Bench but stated that the Revenue's interest should be protected.

3. We have heard both the sides. We have gone through the facts and circumstances of the case. There is nowhere copies of the price lists filed by the appellant available on record. It is also not disputed that part (I) price lists were available on record. The learned Departmental Representative has cited the decision in the case of H.M.T. Ltd. v. Collector of Central Excise 602. The advocate had referred to many decisions on the prima facie merits as well as financial hardship. He drew the attention of the Bench to the order dated 25th February 1988 passed by the Board for Industrial and Financial Reconstruction vide No. 165/87. The rehabilitation order as passed is reproduced below: "We hold that the company has become a sick industrial company in terms of the aforesaid provisions of the Act." Honourable Delhi High Court in the Rubber Reclatem v. Union of India, Writ Petition No. 220/93, vide order dated 30th July, 1993 has observed as under : The petitioner is a sick undertaking. In this view of the matter under Section 22 of the Sick Industries Act, 1985, the petitioner is not liable to pay the amount so long as it remains sick undertaking.

Similar view has been taken by Calcutta High Court in 1993 (62) E.L.T. 290. Accordingly the writ petition is allowed and the Tribunal is directed to hear the petitioner's appeal without any pre-deposit. With this order, this writ petition is disposed of."Gram Panchayat v. Shree Vallabh Glass Works Ltd. reported in AIR 1990 Supreme Court 1017 in paras 10 and 11 on page 1020 has observed as under :- "10. In the light of the steps taken by the Board under Sections 16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any of the properties of the company shall lie or be proceeded further except with the consent of the Board.

Indeed, there would be automatic suspension of such proceedings against the company's properties. As soon as the inquiry under Section 16 is ordered by the Board, the various proceedings set out under Sub-section (1) of Section 22 would be deemed to have been suspended.

11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the Board

for permissions to proceed against the company for the recovery of their dues/outstanding/overdues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of Section 22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues." 4. In view of the above discussion and keeping in view the fact that the appellant's unit is a sick unit, we are of the view that in case the appellants are desired to deposit the duty amount of Rs. 26,13,964/- and penalty of rupees three lakhs, it will amount to undue hardship. We dispense with the pre-deposit of the same. It is open to revenue authorities to pursue with the recovery proceedings for the amount due in accordance with law, if they so choose.

5. During the course of arguments, the learned Senior Departmental Representative had made a prayer for grant of out of turn hearing. It is open to the respondent to move an application for out of turn hearing in accordance with law if the respondent so chooses.

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