The Commissioner of Central Excise and Customs Vs. Chloritech Industries

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SooperKanoon Citation : sooperkanoon.com/745174

Court : Gujarat

Decided On : Jul-22-2008

Reported in : 2009(235)ELT17(Guj)

Judge : D.A. Mehta and; H.N. Devani, JJ.

Acts : Central Excise Act, 1944 - Sections 4, 4(1), 4(3), 11AB and 11A(2B)

Appeal No. : Tax Appeal No. 185 of 2008

Appellant : The Commissioner of Central Excise and Customs

Respondent : Chloritech Industries

Advocate for Def. : None

Advocate for Pet/Ap. : Hriday Buch, Adv. for Appellant 1

Disposition : Appeal dismissed

Judgement :

D.A. Mehta, J.

1. The appellant-revenue has proposed the following question:

Whether in the facts and circumstances of the case the Tribunal erred in holding that no interest as prescribed under the provisions of Section 11-AB of the Act can be recovered when the differential duty is paid on price variation?

2. The facts briefly stated are that the respondent-assessee is manufacturing goods which are liable to duty of excise under The Central Excise Act, 1944 (the Act). It is the case of the appellant department that the respondent-assessee had issued supplementary invoices for rate difference on the basis of escalation clause in the purchase order and such supplementary invoices were issued between 01.04.2001 to 31.03.2004. That consideration to the tune of Rs. 1,90,89,420/- was received towards such supplementary invoices and admittedly, excise duty to the tune of Rs. 30,54,305/- has been paid voluntarily in discharge of legal obligation contained in Section 11A(2B) of the Act. That due to such delayed payments the respondent-assessee became liable to pay interest at the prescribed rate as provided in Section 11AB of the Act. After issuing show cause notice the adjudicating authority held that in light of provisions of Section 4 of the Act, and more particularly the definition of the term 'transaction value' as appearing in Sub-section (3) of Section 4 of the Act, duty was payable for the goods sold on the price actually paid or payable and, therefore, there was delayed payment of duty making the respondent-assessee liable to pay interest worked out at a sum of Rs. 2,32,668/-. The order of the adjudicating authority has been confirmed by the Commissioner (Appeals). However, Customs, Excise and Service Tax Appellate Tribunal, Western Zonal Bench, Ahmedabad (the Tribunal) has allowed the appeal of the respondent-assessee by holding that no interest is leviable when differential duty is paid on price variation by relying upon two decisions of the Mumbai and Bangalore Benches of the Tribunal viz. (i) CCE Aurangabad v. Rucha Engineering (P) Ltd. 2006 (206) ELT 278 (Tri-Mumbai); AND (ii) Bharat Heavy Electricals Ltd. v. CCE Bangalore 2007-Trol-173-Cestat-Bang.

3. Learned advocate for the appellant has referred to provisions of Section 4 of the Act to point out that duty of excise is chargeable on any excisable goods with reference to the value of such goods, on each removal of the goods and for the purposes of working out the value on which such duty is leviable transaction value thereof is defined to mean the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to the assessee, or by reason of, or in connection with the

sale, whether payable at the time of the sale or at any other time. Therefore, according to the learned Counsel, the Tribunal had committed an error in law giving rise to a substantial question of law as proposed.

4. On a plain reading of the definition of the term 'transaction value' it becomes clear that the same means the price actually paid or payable for the goods, when sold; thereafter, the definition includes, in addition to the amount charged as price, any amount that the buyer is liable to pay to the assessee, whether payable at the time of sale or at any other time, by reason of sale, or in connection with sale. Thus, it becomes apparent that the value, on which duty is chargeable, has to be the price actually paid or payable for the goods. Even the inclusive definition requires that the additional amount which the buyer is liable to pay to the assessee is by reason of or in connection with the sale, whether payable at the time of sale or at any other time. The emphasis is on the factum of the buyer being liable to make the payment. This becomes clear when one reads the word 'payable' and the latter part of the provision which talks of buyer being liable to pay. In other words, at the point of time when the transaction was entered into the buyer must be aware that a particular price is payable qua the transaction in question, or that he is liable to pay at a future point of time but that liability must have arisen at the point of time of the transaction. This is more than abundantly clear because Section 4(1) of the Act fastens charge on transaction value, i.e. value placed on the goods at the time of transaction.

5. If at the given point of time when the transaction took place the additional price was not fixed, the liability of the buyer to pay the additional amount was not known to the buyer, mere existence of an escalation clause in the contract between the parties cannot bring the subsequent escalation within the meaning of the definition for the purposes of levying interest. Duty of excise would become payable even subsequently in point of time and that is the admitted position between the parties, the respondent-assessee having already discharged that liability.

6. Section 11AB of the Act itself says that interest is to be paid on the amount short paid from the first date of the month succeeding the month in which the duty ought to have been paid under the Act. Therefore, the provisions of Section 4 of

the Act have to be read in context of this requirement, namely, whether there was any liability to pay duty under the Act at the point of time when the transaction was entered into. If neither side to the transaction was aware as to the amount which was to be charged and which was to be paid under the escalation clause on the date when the transaction was entered into, no liability to pay interest can arise under the provisions of Section 11AB of the Act.

7. In the aforesaid set of facts and circumstances of the case, it is apparent that it is not even the case of the revenue that the buyer, who purchased the goods from the respondent-assessee, was aware as to the amount that the buyer was liable to pay upon operation of escalation clause on the day when the transaction took place. Hence, no substantial question of law arises from the impugned order of the Tribunal.

8. The appeal is accordingly dismissed.