Western Engineering Co. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-26-1994

Reported in : (1994)(73)ELT487TriDel

Appellant : Western Engineering Co.

Respondent : Collector of Central Excise

Judgement :

1. Briefly stated the facts of the case as set out in the order-in-original are as follows :- "An intelligence revealed that the party was inter alia, engaged in the manufacture of Air-conditioning machinery and the parts of such machinery. These goods were classifiable under Item 29 A of the Central Excise Tariff in force till 27-2-1986 and thereafter under Ch. 84 of Schedule to the Central Excise Tariff Act, 1985. It was also revealed by the intelligence that the turnover of the party was quite high but the party was not paying any Central Excise duty.

Acting upon the intelligence, the officers of this Collectorate visited the factory of the party at the address mentioned above and also head office situated at 3785, Subhash Marg, Daryaganj, Delhi on 18-9-1987. No records were found/recovered in the factory. Sh. Anil Kumar, Supervisor, who was present in the factory, tendering a statement on the spot explained that the records were kept in head office and at the time of clearance, the Manager used to visit the factory from the head office and issued the necessary documents. He also explained, therein, that they were manufacturing condensers, Air-handling, Air Package Type units, electric panel boards and parts such as motor compressors or blowers etc. The records recovered from the head office were packed and sealed under a panchnama dated 18-9-1987 and brought to office of Central Excise Collectorate.

Sealed records were inventorised on 14-10-1987. Sh. G.R. Khan, Partner of M/s. Western Engg. Co. was summoned for 19-10-1987 for giving the evidence under Section 14 of the Central Excises and Salt Act, 1944. Sh. Khan, on 19-10-1987 tendering a statement under the provisions of Section 14, deposed and elucidated that they were engaged in designing, supply installation and commissioning of Air-conditioning plants through DGS & D and that for that purpose, condensors, chillers, air handling units, package type air-conditioners and electric panels were manufactured by them in their factory situated at the address mentioned hereinafore. He therein also mentioned that during the period of past five years they had not installed any plant for private parties and that after the small scale exemption was extended to the items manufactured by them, they have not paid any Central Excise duty as thereafter they ever remained under exemption limit. On being specifically asked about the quantum and the value of goods manufactured and cleared from their factory, Sh. Khan prepared a list of plants installed and under installation after examining the relevant records on 2-11-1987 but that list did not give the requisite details. As whole of the supplies are through DGS & D information relating to the acceptance of tenders, inspection notes giving dates of despatches etc., goods supplied and bills raised was called for from the C.C.A. Dept. of Supply, DGS & D. On scrutiny of "Acceptance of Tenders", awarded to the party by/through the DGS & D, details of the items which were depicted therein, under specification Technical date, to be of "Western" make, were worked out and on taking the value of those items from the bills raised by the party on DGS & D, the value of clearances from the factory of the party was computed and found as under :-- Value of clearances (in Rs.)Financial ____Year--------------------------------- 1983-84 3,34,840.00, 57,800.00,1984-85 9,47,124.00, 73,400.00,1985-86 4,85,000.00, 2,74,105.00,1986-87 6,32,000.00, 2,40,719.00,1987-88 10,20,066.00 2,29,400.00-- Air-conditioning machinery parts, except condensors, cooling coils, compressors, cooling units, thermostat, starting relays control, expansion and solenoid valves, pressure switches, overload protections thermal relays and cabinets were exempted from whole of duty of Central Excise vide Notification No. 80/62 till 17-3-1985 when that notification was [received] rescinded. But the provisions of Notification No. 80/62 were continued vide Notification No. 63/85 dated 17-3-1985 which was later superseded by Notification No. 66/86 dt. 10-2-1986 in which the provisions in question were kept as they were. Notification No. 66/86 was, however, superseded by Notification No. 166/86 dated 1-3-1986 vide which the exempted parts were made chargeable to Central Excise duty.

Beside above, the Notification No. 64/83 dt. 1-3-1983 exempted the air-conditioning machinery/appliances and the parts thereof from whole of Central Excise duty upto the condition that the value of clearance of all excisable goods for home consumption by or on behalf of a manufacturer from one or more factories, or from any factory by or one half of one or more manufacturers during the preceding financial year, had not exceeded Rs. 2.5. lacs.

Notification No. 65/83 dated 1-3-1983 had also been issued to exempt the goods in question up to the value of first clearances of Rs. 15 lacs from the Central Excise duty in excess of 50% of effective rate. These provisions vide these two notifications remained effective till the financial year of 1986-87 as they were vide Notification No. 75/87 dated 1-3-1987, the exemption from whole of duty to goods in question was extended upto the value of first clearances of Rs. 5 lacs and the value of clearances of Rs. 10 lacs in excess of first 5 lacs was exempted to the extent of 40% of effective rate of duty. Exemption contained in Notification No. 75/87, dated 1-3-1987 was to be admissible to a manufacturer if the value of clearances of all excisable goods from his factory had not exceeded Rs. 40 lacs during the preceding financial year." After due adjudication, the Collector of Central Excise duly confirmed a demand of duty of Rs. 922,558.46 under Rule 9(2) of Central Excise Rules, 1944 read with Section 11A of Central Excises and Salt Act, 1944. He also imposed a penalty of Rs. One lakh under Rule 173Q. Hence this appeal from the appellants herein.

2. Ld. Consultant, Shri K.L. Bhasin submits that the appellants herein undertake works contracts for supplying parts of air-conditioning plant at various sites and

installing, erecting, commissioning the said plant at those sites. In this connection, contract is entered into between the DGS & D and the appellants. For example A/T No. ME-4/201 /426 dt.

17-9-80/04/1/136 dt. 7-8-1981 (available at page 120 of the paper book) has been shown to us. Page 128 of the said A.T. lists out the supply, installation and commissioning of the equipment at DDU Hospital at Harinagar, New Delhi. Out of the aforesaid huge list of supply of goods, ld. consultant points out that some of the parts are manufactured by them, some are bought out from the market. These are assembled and erected into a plant after undertaking construction of civil works for the purpose of erection of that plant. Civil work undertaken in the A/T mentioned above is given at page 135 which speaks of minor civil work as foundations for our equipment supports for cooling towers and condenser water piping etc. Ld. Consultant submits that the Collector in arriving at the value of the goods cleared during the various financial years has taken the entire value of the contracts work and given only 10% benefit towards erection, installation, commissioning charges and the civil works required to be undertaken by them. In other words 90% of the total contract value has been taken as the value of the goods. This value it appears, has been taken on the basis of the arrangement of payments by the DGS & D to the appellants.

Further, value of the goods has been taken in that financial year in which the payment has been made. Ld. Consultant points out that deduction of merely 10% out of the total value of contract is most arbitrary inasmuch as arrangement of payment has no relation whatsoever to the value of the goods cleared from the factory. It is apparent from the A/T itself that large quantity of goods are purchased by the appellants from the market. It is well settled, submits the ld.Consultant, that no duty is liable to be paid on the bought out items from the market. He also points out to a Board's telex taken by them from their Association which states as follows : "F.No. 145/6/86-CX.4(.) IT IS REPORTED THAT THE EXCISE DUTY IS BEING DEMANDED IN CERTAIN COLLECTORATES ON REFRIGERATION AND AIR-CONDITIONING PLANTS INSTALLED/ASSEMBLED AT SITE OUT OF DUTY PAID PARTS, COMPONENTS, ACCESSORIES THEREOF (.) MATTER HAS SINCE BEEN EXAMINED BY THE MINISTRY (.) IT IS VIEWED THAT NO

EXCISE DUTY IS LEVIABLE ON THE PLANT WHEN THE REFRIGERATION AND AIR-CONDITIONING PLANTS ARE ASSEMBLED/INSTALLED AT SITE (KNOWN AS CENTRAL PLANTS) PROVIDED THAT PARTS, COMPONENTS, AND ACCESSORIES USED IN THE ASSEMBLY AT SITE HAVE PAID APPROPRIATE EXCISE DUTY AS SUCH INSTALLATION/ASSEMBLY MAY NOT AMOUNT TO A (.) LOWER FIELD FORMATIONS MAY BE SUITABLY INSTRUCTED IMMEDIATELY (.)" He submits that in view of this clear circular of the Board, no duty is liable to be charged either under the old tariff or under the new tariff on the air-conditioning plants or refrigeration plant assembled, erected, installed and commissioned at site. He also points out that there have been many instances where the goods were cleared from the factory say in 1981 but the payment was received by the appellants in 1983-94. The Collector has taken the clearances as during the financial year 1983-84. He submits that this is against the provisions of law.

Duty is required to be paid at the time of removal of the goods from the factory under Rule 9(2) of the Central Excise Rules, 1944. Date of receipt of payment or date of raising of the bill either by the party or by its customer has no relation to the date of clearance of the goods from the factory. Ld. Consultant has submitted that the air handling units by no imagination can be considered as 'refrigerating air-conditioning machinery'. It is only a machine for supplying and directing air. There is no compressor and cooling coil in the said air handling unit. He also points out that in a classification list submitted in March '80, these were shown as non-excisable goods and the department never took objection. As regards housings of walk-in-coolers held by the Collector as 'cabinet' of the walk-in-coolers, ld.Consultant points out that these are not 'cabinets' as known in commercial parlance. He submits that it cannot be cabinet till the control units are assembled in the housing. He places reliance for this proposition on Tribunal's judgment as reported in 1985 (21) E.L.T. 485.

He, therefore, submits that the impugned order suffers from so many legal infirmities. It therefore, deserves to be set aside.

3. Ld. JDR on the other band reiterates the findings of the adjudicating authority. He submits that the Collector has given a detailed order. He has adequately dealt with all the submissions of the appellant, and nothing new has been pointed out by the appellants for setting aside the order.

4. We have carefully considered the pleas advanced from both the sides and have gone through the various records. We are of the view that the Collector has not, with regard to classification of air handling and water coolers, applied his mind to the entire evidence available on record. We also notice that the Board's telex circular dt. 13-6-1986, already set out above, was not before the adjudicating authority. It makes very clear that no excise duty is leviable when the refrigeration and air conditioning plants are assembled/installed at site (known as Central plants) provided that parts, components and accessories used in the assembly at site have paid appropriate excise duty. This circular of the Board has not been taken into account by the Collector while arriving at his decision in the impugned order to fasten duty on the appellants. We also notice that the Collector is not well founded on any ground when he allows only 10% deduction from the works contract price in arriving at the value of the goods for the duty liability of the appellants. Proper valuation of the goods has to be made. The plea regarding classification of air handling unit has also not been properly considered by the Collector. He has not taken into account the plea that the air handling unit does not have a condenser or a cooling coil or a compressor to bring the same within the scope of refrigerating and air conditioning the machinery. The plea of walk-in-coolers similarly requires to be reconsidered in the light of the Tribunal's decision and the catalogue now produced by the appellants. In short, the matter is fit for remand and liable to be re-adjudicated in the light of our observations above. Hence, while setting aside the impugned order, we direct the Collector to re-adjudicate the case. Appeal is disposed of in the above terms.

At this stage, ld. Consultant points out that in terms of Tribunal's Stay Order No. E/329/90-B1 dt. 31-10-1990 the appellants herein were directed to predeposit Rs. 2 lakhs. Since the impugned order has been set aside, the said amount of Rs. 2 lakhs be directed to be refunded to the appellants forthwith. We find this plea of the ld. Consultant well founded according to law. Accordingly, we direct the

Collector to refund the amount of Rs. 2 lakhs made by the appellants as pre-deposit in terms of the aforesaid order. Thereafter, he should expeditiously re-adjudicate the case as directed above.