

Nttf Electronics Training Centre Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-24-1994

Reported in : (1994)(74)ELT99TriDel

Appellant : Nttf Electronics Training Centre

Respondent : Collector of C. Ex.

Judgement :

1. In this stay petition, the appellants are seeking waiver of pre-deposit of Rs. 20,21,383.77 and penalty of Rs. 1.5 lakhs and stay of its recovery during the pendency of this appeal. The brief facts of the case are that the appellant M/s. NTTF Electronic Training Centre issued a show-cause notice dated 14-8-1991. In this show-cause notice, it is alleged that the appellant is a manufacturer of sub-assembly falling under Headings 84.70, 84.71 and 84.73 of Central Excise Tariff Act, 1985 for M/s. Bharath Electronics Ltd., Bangalore and they had contravened Rules 9(1), 52A, 53 read with Rules 226, 173B, 173C, 173G of Central Excise Rules, 1944 and further committed the offences specified in Rules 173Q etc. in as much as, they had suppressed the facts of manufacture and clearance of the said goods to M/s. Bharath Electronics Ltd., Bangalore without following Central Excise procedures and without payment of Central Excise duty, in contravention of the said rules, with an intention to evade payment of Central Excise duty.

2. We have heard Shri N. Venkataraman, Id. Advocate for the appellant and Shri B.K. Singh, Id. SDR for the Revenue.

3. Ld. Advocate submitted that the Election Commission of India had placed order for manufacture of electronic voting machines with M/s.

BEL., Bangalore. M/s. BEL has placed job work for manufacture of sub-assembly with the appellants and that they had supplied them raw-material under proper cover of gate pass and entries made in the registers. It is further submitted that the Government of India issued notification under Section 5A of the Central Excises and Salt Act, 1944 exempting 75,000 electronic voting machines manufactured by M/s. BEL and supplied to the Election Commission of India from the whole of duty of excise leviable thereon which is specified in the Schedule to the Central Excise Tariff Act, 1985. Ld. Advocate pointed out that this being a specific notification under Section 5A of the Act, the goods manufactured including its sub-assemblies would get exempted from payment of duty. In this context, he relied on the ruling of the Gujarat High Court rendered in the case of Vallabh Glass Works v. State of Gujarat as reported in 1993 (Vol. 88) Sales Tax Cases at page 74.

The Hon'ble High Court has laid down in this case that an article to be a 'machinery' must either be a complete machine or number of completed machines or parts or members of machine which, when they are assembled, form a complete machine. It has been held that 'Beaters' which are used by the assessee as parts of crushers they atleast play the role of a part of member of a machine, as most essential part of the machine.

Therefore, Beaters could be the machinery and a restricted meaning to the word "machinery" cannot be constituted while interpreting the exemption notification. Ld. Counsel also submitted that the demands were barred by time as the department was fully aware of the goods being manufactured by M/s. BEL as well as sub-assembly having been manufactured by the appellants. He also pleaded that the appellants were having constant losses. The job charges were only Rs. 6 lakhs while the duty confirmed was more than Rs. 20 lakhs and in the circumstance, if they were directed to deposit the amount, they would be put to great hardship. He also submitted that the balance of convenience is in favour of the appellants and therefore, the pre-deposit should be waived and stay granted till the pendency of the appeal. Ld. SDR pointed out that the notification did not refer to sub-

assemblies and sub-assemblies were specifically mentioned in the tariff, the duty was to be discharged by the appellants. Therefore, he submitted the order passed by the lower authorities was correct in law.

The Id. Counsel offered to deposit Rs. 2 lakhs in this case.

4. We have carefully considered the pleas made by both the sides and we are fully satisfied that there is no suppression in the matter calling for extension of the larger period. The demand is for a period for goods manufactured during Aug' 1989 to Feb' 1990. The show-cause notice has been issued on 14-8-1991. A specific notification under Section 5A of the Act has been issued exempting the electronic machines supplied to the Election Commission of India. The plea taken by the appellants that machinery comprises of its sub-assembly part has much force and the ruling given by the Hon'ble Gujarat High Court prima facie appears to be applicable. The facts and circumstances of the case would disclose that a Government had exempted the electronic machine from imposing any duty in public interest. Taking the ruling cited before me, it follows that even sub-assemblies are also covered. We have perused the balance sheet although there is a good liquidity position in terms of sales and current assets yet the balance of convenience is in favour of the appellants. The appellant would also be put to great hardship if they ask to deposit Rs. 20 lakhs for a job work done of Rs. 6 lakhs only. The current assets, loans and advances are to the tune of Rs. 85,48,594.54 and the current liabilities are shown to the tune of Rs. 75,66,754.68. Therefore, in the facts and circumstances of the case, we accept the offer given by the appellants. The appellants should deposit Rs. 2 lakhs in cash within eight weeks from the date of this order and also furnish bank guarantee for another sum of Rs. 5 lakhs. On their deposit Rs. 2 lakhs and furnishing the bank guarantee of Rs. 5 lakhs within the said period, the balance amount of duty and penalty shall stand waived. On compliance of the order, the appeal could be taken up for out of turn hearing in view of high revenue stakes. The registry should list the case for hearing in September 1994. The matter to come up for reporting compliance in the first week of July 1994.

5. [Contra per : P.C. Jain, Member (T)]. -I have carefully perused the order proposed by my learned brother, Shri S.L. Peeran, Judicial Member but I regret with respect that I am unable to agree with the conclusions reached by him. I need not recapitulate the facts which have already been set out in the order of the learned brother. I may refer to those facts which are not already there in the course of discussion in my order.

6. It is not disputed by the appellants/applicants that they were manufacturing sub-assemblies which are parts of electronic voting machine. It is also not the appellants' case that sub-assemblies are not marketable goods in their own rights and as such excisable under Tariff Headings 84.70, 84.71 and 84.73 of the CET, 1985. Once the sub-assemblies/parts are excisable goods in their own rights they become liable to duty. Since the appellants have admittedly manufactured them, duty is separately leviable on such parts/sub-assemblies unless there is a specific exemption notification exempting such parts/sub-assemblies from excise duty. Ad hoc exemption order in respect of electronic voting machines would obviously be not available to parts/sub-assemblies which as stated above are separate excisable goods in their own right. Supreme Court's judgment in the case of Empire Industries 1985 (20) ELT 179 would squarely be applicable so far as liability to duty of the parts/sub-assemblies is concerned. Reliance placed by the learned advocate on 1993 (88) STC 74 in the case of Vallabh Glass Works v. State of Gujarat in my view is totally misplaced. The word 'machinery' has been given a very wide meaning including the beaters in the context of exemption notification of the Gujarat Sales Tax Act. This is apparent from the relevant extracts of para 14 of the said judgment which are reproduced below :- Beaters would, therefore, be machinery and we cannot give restricted meaning to the word 'machinery' specifically when we construe the word in the context of exemption notification. The object of the said entry is to give benefit to 'machinery' in its wider sense so as to include its parts also. Any restricted meaning to the word 'machinery' would render the exemption meaningless because a new industry would be required to pay tax for purchase of essential parts of machine. The very object of exemption would be defeated.

We, therefore, hold that the word 'machinery' as used in the entry 53 must be widely construed. In the case before us the beaters are the most integral part of the crusher or the machine-without which quartz stones cannot be crushed.

7. I also feel that there is no prima facie case regarding demand of duty being time barred. The appellants themselves never intimated about the manufacture of such sub-assemblies/parts. Learned advocate had relied upon a declaration and an undertaking sent by M/s. Bharat Electronics Ltd. (BEL) dated 17-7-1989 (pages 46 & 47 of the Paper Book) for availing the benefit of Notification No. 214/86. In the said letter (at page 46 of the Paper Book), we do not find any mention of the appellants' name being given by BEL as one of the job workers. From the undertaking at page 47 of the Paper Book also I do not find the appellants' name in the body of the undertaking. The undertaking at page 47 dated 17-7-1989 is typed and duly sent to Superintendent of Central Excise, HB Range, Bangalore. There is, however, an impression of a rubber stamp, as could be seen from a photo copy at page 47 of the Paper Book showing the name of the appellants. On a query from the Bench, learned advocate admitted that the copy produced at page 47 was from one of the papers in the appellants' own record. The original undertaking given by BEL could not contain the rubber stamp of the appellants because such a rubber stamp of appellants' name and address should not normally be available with BEL. Prima facie, therefore, it appears that the rubber stamp at page 47 of the photo copy of the undertaking has apparently been put by the appellants themselves. No other material has been brought on record to show that the department was in the knowledge of manufacture of sub-assemblies/parts by the appellants. On the other hand, I also find prima facie that the letter and undertaking both dated 17-7-1989 were totally misleading on the part of the BEL inasmuch as the ad hoc exemption order in respect of the electronic voting machines in the name of BEL had already been issued well before 17-7-1989 and was already in the hands of BEL. The whole exercise, therefore, in my prima facie view appears to be one of wilful mis-statement by BEL because when the electronic voting machines had been fully exempted by the ad hoc exemption order, there was no question of filing any declaration and undertaking by BEL for availing of benefit of Notification 214/86. I, therefore, hold that the appellants do not have any prima facie case in their favour. Question of balance of convenience

should not arise in this case because the entire process of manufacture and clearance of goods have been of clandestine removal and without the knowledge of the department. If the appellants have not collected any duty from BEL on certain wrong understanding of law and facts they had done so at their own risk and no leniency prima facie is called for. As far as the financial condition is concerned, I find that the applicants/appellants appear to have a sound financial condition. From the balance-sheet for the period ending 31-3-1993 it is apparent that the applicants have current assets, loans and advances to the extent of Rs. 85,48,594.54 p. whereas their current liabilities are only to the tune of Rs. 9,81,839.86 p.

They thus have nett current assets to the tune of Rs. 75,66,754.68 p.

From a perusal of their Income and Expenditure Account, I also note that their scale of operations on account of job charges are to the tune of over Rs. 78 lakhs. In the circumstances, I find that they have a capacity to raise adequate funds. Having regard to the overall facts and circumstances of the case, I would direct the appellants/applicants to deposit an amount of Rs. 10 lakhs (Rupees ten lakhs only) within a period of eight weeks from the date of communication of the order. On compliance with the aforesaid direction, balance amount of duty and penalty shall stand waived. I have no objection to the case being given out of turn hearing on account of heavy stakes of revenue involved and the issue being within a narrow range.

Whether in the facts and circumstances of the case, the stay petition of the applicants is to be allowed on deposit of Rs. 2 lakhs in cash within 8 weeks and also, furnishing a bank guarantee for another sum of Rs. 5 lakhs, as directed by the Judicial Member; Whether it is to be allowed on pre-deposit of an amount of Rs. 10 lakhs within a period of 8 weeks, as directed by the Technical Member.

8. Ld. Counsel, Shri N. Venkataraman, relying upon the case law - JMC Industries v. Collector of Central Excise, reported in 1991 (53) E.L.T.321 (Tri.) contended that though raw-material supplier cannot be held to be the manufacturer, yet where an undertaking is given, as in the present case by BEL, the obligation to pay duty shifts to such person.

Here there is also admission by BEL in this regard and hence, the Counsel urged, the proceedings would be only against BEL. The Id.Counsel also cited an Orissa High Court judgment in the case of Greaves Cotton v. Sales Tax Officer - (67) STC 364 in support of the argument that in a stay matter in taxation when there is difference between two judges, the view that is beneficial to the assessee should be adopted.

9. Shri K.K. Jha, Id. S.D.R. supported the order proposed by Hon'ble Member (Technical) and contended that the applicants' name does not figure in the undertaking given by BEL. The applicants had also failed to give any intimation of their activity to the jurisdictional Central Excise Officers. Hence, there was suppression of facts by the applicants. The Id. S.D.R., further, contended that the Orissa High Court judgment cited by the Id. Counsel is distinguishable as in that case both the judges had agreed that there was a prima facie case in favour of the assessee. In the present case, Member (Judicial's) order does not have any observation that the applicants have made out a prima facie case on merits.

10. The submissions made by both the sides have been carefully considered. It would appear, prima facie, that the main plank of the Department's case rests on the apparent effort on the part of BEL in seeking to arrange matters in such a way as to avail of Notification 214/86 over and above the ad hoc exemption granted to them. BEL had submitted before the Collector that applicants had manufactured the goods on their behalf. The fact remains that BEL had filed a declaration, and considering the fact that the question whether the applicants' understanding about the exemption, was correct and bona fide, is presently a contentious issue, and having regard, further, to their financial liquidity aspect, the order proposed by Hon'ble Member (Judicial) would appear to be more appropriate. It is accordingly concurred with.

11. In terms of the Majority Opinion the applicant shall deposit in cash a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) and furnish bank guarantee, for another sum of Rs. 5,00,000/-(Rupees Five Lakhs only), within 8 weeks from the date of receipt of this order. On compliance of this order, the balance of duty and penalty shall stand waived and recovery stayed thereof. The registry shall list the case for

reporting compliance and for fixing final date for hearing of the appeal, as per the terms of the order, after expiry of the period granted for deposit of the sum, indicated herein.

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