

Servo Electronics Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-18-1995

Reported in : (1996)(82)ELT267TriDel

Appellant : Servo Electronics

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order of Collector of Customs and Central Excise (Appeals) dated 30-9-1985.
2. Ld. Counsel sought leave to file a synopsis and a date sheet. He stated that the appellants were having three sheds in Delhi Small Industries Development Corporation Complex, Okhla Industrial Estate, Phase-II. They are manufacturing voltage stabilizers and parts thereof in these sheds under the same management.
3. A question had arisen whether production of shed Nos. 83 and 84 was required to be clubbed for the purpose of determining whether they were entitled to the benefit of exemption under Notification No. 46/81 or department was entitled to deny them the benefit clubbing the two together on the ground that the production had exceeded prescribed limit of Rs. 30 Lacks.
4. The matter had earlier come before the Tribunal for the period prior to 12-2-1982 and was settled by the Tribunal's Order No. 199/85, dated 14-3-1985.

5. In this order, the Tribunal had upheld the department's contention that the production of these two sheds was required to be clubbed but reduced the penalty.

6. One of the reasons as to why the Tribunal had not accepted their contention was that they were unable to produce the evidence at that stage that the shed No. 84 was a separate unit or entity registered under the Delhi Shop and Establishment Act.

7. After this order on one hand they had applied to the Inspector of Factories under the Shop and Establishment Act and on the other hand the Central Excise Authorities. The A.C. had however, once again rejected their contention and passed the order dated 6th May, 1982.

They had appealed against that order and the Collector (Appeals) has set aside this order vide Order No. 151/88.

8. However, after the Inspector of Factories had visited their factory, the Deputy Chief Inspector, Shops and Establishment issued a Certificate of Registration under that Act registering it on 4-3-1982.

9. It was their contention that in view of this position the production of the two sheds could no longer be clubbed and therefore they were entitled to the benefit of the notification for the period from 12-2-1982 to 30-4-1982.

10. In response to queries from the Bench the Id. Counsel could not show anything which would indicate that the facts as mentioned in the order-in-original and the order-in-appeal were incorrect. He also could not show whether the order of the Tribunal in their own case for the previous period and reported in 1985 (5) ECR 1042 was brought to the notice of the Collector (Appeals).

11. Ld. D.R. drew attention to the order-in-original, in particular the operative portion of the order on pages 5-8 of that order which reads as follows : "From the facts on records it is clear that M/s. Servo Electronics (P) Ltd., is a partnership concern. In their partnership deed executed on 1-5-1979 the business premises of the factory has been mentioned as Shed No. 83-84, DSIDC Complex, Okhla Ind. Area, New Delhi. The partnership deed does not mention two independent units.

2. Further it is evident that in the ground plan of the factory submitted to the Chief Inspector of Factories for registration and grant of license, under the Factories Act - both sheds 83-84 have been shown as place of manufacture. To reiterate sheds 83 & 84 have not been shown as separate units.

3. It further appears that in their application the number of workers employed is indicated as 50. This obviously includes workers in both sheds 83 & 84, DSIDC Complex, Okhla.

4. The Deputy Regional Director of the Regional Office of the Employees State Corporation has also certified that the address of M/s. Servo Electronics is 84 & 84, DSIDC, as also have the Asstt.

Commissioner of Regional Provident Fund.

5. There is also sufficient evidence on record that the party has been maintaining one set of accounts for both units, a single payment register/muster roll etc.

6. Further, there were no separate set of invoices for the two sheds - a single set of invoices bearing continuous serial no. are in use.

7. The local Sales Tax and Central Tax Registration also indicates that they are not separate units.

8. Further, it has already been established vide the Asstt.

Collector's order No. V(68)17/20/82/3962, dated 6-5-1982, that units 83-84, DSIDC Complex, Okhla are one entity, since 1976 - when they were registered under the Factories Act. It was only on 4-3-1982, that the party tried to register unit No. 84 separately, subsequent to a detection of evasion of excise duty by the preventive party on 12-2-1982. It was conclusively proved vide the above-mentioned order that the assessee was not entitled to the benefit of exemption under Notification No. 46/81 as amended. It was also established vide the above order that the assessee had failed to substantiate his claim for the independent character of the unit at Shed No. 84.

It thus appears that shed No. 84, DSIDC Complex, Okhla was got registered under the Shop and Establishment Act, 1954, subsequently for the purpose of fragmentation of the factory. It was done to evade central excise duty by wrongly availing exemption under Notification No. 105/80-C.E., dated 19-6-1980 - as M/s. Servo Electronics had already exceeded the limit of 30 Lacks in the financial year 1981-82, and were not eligible for the exemption under 105/80 during 1982-83.

This is more specifically cogent in the light of the Supreme Court judgment in the Jayshree case - The ratio of this order would apply in this case too. Therefore, the goods manufactured under T.I. 68 whether from Shed No. 83-84, DSIDC Complex, Okhla, New Delhi do not qualify for the exemption under Notification No. 105/80, dated 17-6-1980" 12. Ld. S.D.R. further stated that Ld. Collector (Appeals) has also observed rightly as follows : "3.0 ...The short question to be decided here is whether shed No. 84 and 83 could be considered independent or have to be clubbed together for the purposes of notification under which exemption is claimed. Similar issue was examined in depth by CEGAT in their order No. 199/85 in case of the appellants." 13. We have considered the above submissions. We observe that the issue is squarely covered by Tribunal's own order in appellants own case w.r.t. these very sheds and the item in question. The Tribunal's order even covers the issue as to whether taking out a certificate under Shop and Establishment Act can alter the situation and the answer is in the negative.

14. We take note of the fact that the appellants have not been able to show that any of the facts mentioned in the order-in-original and the order-in-appeal read out by the Ld. S.D.R. were in any way incorrect.

15. In the circumstances, we feel that Ld. DR is correct in pointing out that the department's action is required to be upheld. We therefore see no merit in appeal; and we reject the same and confirm the orders of the lower authority.

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