

Amco Batteries Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Jan-18-1996

Reported in : (1996)LC111Tri(Chennai)

Appellant : Amco Batteries Ltd.

Respondent : Collector of C. Ex.

Judgement :

1. This appeal is against the order of the C.C.E., Bangalore. Under the impugned order, the appellant has been penalised and also duty has been demanded from them for the reason that in respect of some of the dry batteries which were removed from the factory to the depots the charging of the same was done there and they had recovered charges over and above the assessable value declared to the authorities towards charging.

2. The learned Counsel pleaded that out of a total turn over of Rs. 7777.25 lakhs covering thousands of batteries, the charging was done only in respect of a very small fraction of batteries less than 1% at the depots. He has pleaded that the departmental authorities were aware of the removal of the dry batteries and they had approved the classification list and the price list of the same. It should be presumed that the authorities were aware that the charging of the batteries was done elsewhere than in the factory of the appellants. He pleaded the appellants were under the bona fide impression that the goods had to be charged to duty only at the time of their clearance from the factory and that any subsequent operations to render the goods marketable for the purpose of use of the consumers would not

be considered as further manufacture and that no further duty would be required to be paid towards the cost of the charging of the batteries.

He has pleaded that the show cause notice dated 20-10-1986 was received by them on 25-10-1986 demanding duty for the period 1-4-1981 to 30-9-1985. He pleaded that the demand is clearly beyond the period of six months and inasmuch as there was no intention on the part of the appellants to suppress any fact, the longer period of limitation could not have been invoked. In this connection, he referred us to the findings of the learned lower authority in para 8 of his order which reproduced below :- "The next argument is that there is no suppression of facts since they were producing all the relevant documents for verification at their office. This argument is untenable since it is the responsibility of the assessee especially working under self removal procedure to declare full and correct particulars before the department rather than ask the department to ascertain the correctness of the information furnished by them later. In view of the above position the assessee have failed to declare the full and correct particulars of their selling prices and all other charges collected by them in the price lists and thus have suppressed true facts from the department. Hence, the invoking of Section 11A for demanding duty due for enlarged period in the show cause notice is well justified".

3. He pleaded that no basis has been laid in the order of the learned lower authority for holding the charge of suppression of facts against the appellants. All that the learned lower authority has stated was that the appellants are working under the Self Removal Procedure and it was therefore its responsibility to furnish the information to them. He pleaded that the appellants had no intention to hold back the information. There is not even a shred of evidence by way of any statement or any document to say that the appellants had held back any information from the authorities consciously with the intention to evade payment of duty. On merits also, he has pleaded that dry batteries have been held to be excisable goods and cleared as such from the factory after assessment of the same under the specific tariff heading. The addition of the sulphuric acid he pleaded does not change the character of the battery as such and once the dry battery has been assessed, it cannot be said that by virtue of addition of sulphuric

acid a different category of goods has emerged.

4. The learned DR pleaded that it was the duty of the appellants to come forward with information in regard to the charging of some of the batteries at their depots and since the appellants had made additional recoveries as cost of the charging the same should be included in the assessable value. He has pleaded that charging of the battery is an operation to make the battery functional and therefore the character of the goods by charging of the battery had undergone a change. As regards limitation, he has pleaded admittedly the appellants have not come on records that some additional recoveries had been made by them towards the charging of the batteries and therefore the longer period of limitation could be invoked.

5. We have considered the pleas made by both sides. We observe that the appellants have a large turn over of over Rs. 77 crores and it is not in dispute that most of the batteries cleared by them barring a small percentage, which is less than 1%, in the dry state and the same have been assessed as such. All these dry batteries would also [have] been charged at some stage in the market stream before they reached the ultimate consumers. There is no averment from the revenue that further duty was being recovered by reason of charging wherever charging was done. A demand, however has been raised on the appellants for the reason that charging was done at their depots before the goods were ultimately sold by them to the dealers. The fact that the batteries were being cleared in the dry state was well within the knowledge of the authorities and they had been assessing the same in that form and recovering duties only chargeable on the sale price or the price arrived at under Section 4(1)(a) in respect of the same. It is reasonable to infer that the authorities were aware that before the batteries ultimately reached the hands of the consumers the same got charged at some stage and they did not feel it necessary to call for any information regarding the stage in the market stream where they were charged and the charges recovered in respect of the same. This would only go to show that the authorities were satisfied that the duty due on the goods had been recovered. It is not beyond doubt and contention whether further duty could be charged after clearance of the goods in the dry state from the factory. There is no evidence to say that the appellants had

withheld any information with intention to evade payment of duty or the appellants were actuated by any mala fides. In the facts and circumstances and in the absence of any evidence regarding suppression, we hold that this [is] a fit case where the benefit of doubt should have been given to the appellants and the longer period of limitation should not have been invoked. We, therefore, hold that in regard to limitation, the appellants succeed.

In this view of the matter, we allow the appeal of the appellant with consequential relief. Since one of the issues in this appeal is in regard to limitation and appeal has been allowed on that ground, we are not going into the merits of the case.

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