

Collector of Central Excise, Hyderabad

Vs

M/S. Chemphar Drugs and Liniments, Hyderabad

Civil Appeal No. 1632 of 1988

(S. Ranganathan, Sabyasachi Mukharji JJ)

14.02.1989

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This appeal is under Section 35-L(b) of the Central Excises and Salt Act, 1944 (hereinafter called 'the Act') against the order dated 8th January, 1988 passed by the Customs, Excise & Gold (Control) Appellate Tribunal. The issue involved in this appeal was whether in the facts and the circumstances of the case, the Tribunal was legally justified in restricting the demand of duty to six months prior to the date of issue of show cause notice, particularly in a case where longer period was invoked on the ground of suppression of information in the declaration furnished by the respondent.
2. The respondent manufactured patent and proprietary (P&P) medicines falling under T.I. 14-E and also pharmacopeian preparations falling under T.I. 68 of the Central Excise Tariff of an aggregate value of Rs. 20,59,338.60 and cleared during the period of 1.4.1979 or 31.3.1980, the same without payment of duty, availing the benefit of exemption Notification No. 80/80.
3. Under the provisions of sub-clause (ii) of clause 2 of Notification No. 80/80 dated 19th June, 1980 and sub-clause (iii) of clause (a) of Notification No. 71/78 dated 1.3.1978 the manufacturer would not be eligible for exemption under the two notifications in respect of clearances of patent or proprietary medicines from 1st April, 1980 since the notification would not apply to a manufacturer who manufactures excisable goods falling under more than one item of the 1st Schedule of the Act, and the aggregate value of the clearances of all such excisable goods by the manufacturer or on his behalf are cleared for home consumption from one or more factories during the preceding financial year had exceeded Rs. 20 lakhs.
4. The factory had cleared during the period from 1st April, 1980 to 29th October, 1980 (P&P) medicines falling under T.I. 14-E valued at Rs. 4,32,050.09. The central excise duty payable on the goods removed was Rs. 55,802.01. The respondent filed a declaration for exemption under Notification No. 71/78 dated 1.3.1978, and furnished particulars of only the value of P&P medicines manufactured and cleared by it during the preceding financial year i.e. 1979-80, and the respondent did not furnish the particulars of the value of the goods cleared under T.I 68 during the financial year 1979-80. It was noticed that the manufacturer did not file any declaration under Notification No. 111/78 dated 9.5.1978 claiming exemption from the licensing control.
5. However, on 30th July, 1980 the firm filed a classification list in respect of P&P medicines claiming exemption under Notification No. 80/80. A show cause notice was issued to the respondent who was asked to explain as to why excise duty in respect of Patent & Proprietary medicines

manufactured and cleared by it should not be demanded under proviso (a) to Rule 10(1) of the Central Excise Rules and why penalty should not be imposed on it under Rule 173-Q of the Central Excise Rules, 1944 for having cleared the goods without payment of duty in contravention of Rule 173-Q(a) and (d) of the Central Excise Rules.

6. After submission of the reply by the respondents, the Collector of Central Excise held the respondents to be ineligible for the benefit of the two notifications and therefore duty was demanded from them in respect of the goods cleared by them for the period 1.4.1980 to 29.10.1980. The Collector was of the view that in view of the respondent's failure to reveal the correct position, they were liable. The Collector was of the view that the time limit under Rule 10(Section 11-A) would run for 5 years. The relevant portion of Section 11-A of the Act is as follows :

11-A. Recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. - (1) When any duty to excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, a Central Excise Officer may, within six months from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful misstatement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, (as if for the words "Central Excise Officer", the words "Collector of Central Excise", and) for the words "six months", the words "five years" were substituted".

7. The respondents filed an appeal before the Tribunal. The Tribunal considered the matter and noted that the appellant's case was that the demand for duty for the period beyond six months was time-barred; and the respondent's case was that the demand for the period beyond 6 months from the receipt of show cause notice, was time barred inasmuch as there was no suppression or misstatement of facts by the appellant with a view to evade payment of duty. In support of its claim the respondent produced classification list approved by the authorities during the period 1978-79, and also produced extracts from the survey register showing that the officers had been visiting its factory from time to time and also taking note of the previous goods manufactured by the respondent. The plea of the revenue was that there was suppression and/or mis-declaration and/or wrong information furnished in the declaration itself. The Tribunal noted the facts as follows :

We observe it is not denied by the revenue that the appellants had been submitted their classification lists from time to time showing the various products manufactured by them including those falling under T.I 14-E and 68 also these containing alcohol. The officers who visited the factory as seen from the survey register at the factory also took note of the various products being manufactured by the appellants. It cannot be said that the appellants had held back any information in regard to the range and the nature of the goods manufactured by them. The appellants have maintained that the value of the exempted goods under T.I. 68 and also value of medicines containing alcohol, according to their interpretation, were not required to be included for the purpose of reckoning of the total excisable goods cleared by

them. There is nothing on record to show that the appellants non-bona fide held back information about the total value of the goods cleared by them with a view to evade payment of duty. Their explanation that it was only on the basis of their interpretation that the value of the exempted goods were not required to be included that they did not include the value of the exempted goods which they manufactured at the relevant time and falling under T.I. 68 is acceptable in the facts of that case. The departmental authorities were in full knowledge of the facts about manufacture of all the goods manufactured by them when the declarations were filed by the appellants. That they did not include the value of the product other than those falling under T.I. 14-E manufactured by the appellants has to be taken to be within the knowledge of the authorities. They could have taken corrective action in time. We therefore, find there was no warrant in invoking longer time limit beyond six months available for raising the demand. So far as the demand for the period within six months reckoned from the date of receipt of the show cause notice is concerned, we observe that the appellants' case is that value of the goods under T.I. 68 was not required to be included but the revenue's plea is that only value of the specified goods under Notification No. 71/78 and 80/80 was not required to be excluded."

8. On the aforesaid view the Tribunal came to the conclusion that the demand raised on this for a period beyond 6 months was not maintainable.
9. Aggrieved thereby, the revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or willful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or willful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that the explanation was plausible, and also noted that the Department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under T.I. 14-E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence.
10. In that view of the matter and in view of the requirements of Section 11-A of the Act, the claim had to be limited for (sic to) a period of six months as a Tribunal did. We are, therefore, of the opinion that the Tribunal was right in its conclusion. The appeal therefor fails and is dismissed.
11. In the facts and the circumstances of the case, the parties will pay and bear their own costs.

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