Collector of Central Excise, Madras

Vs

Arason & Company

Civil Appeal No. 4171 of 1986

(CJI A. M. Ahmadi, S. P. Kurdukar JJ)

20.03.1997

JUDGMENT

AHMADI, C.J. –

1. This appeal by the Collector, Central Excise, Madras, is directed against the judgment and order of the Customs, Excise and Gold (Control) Appellate Tribunal ("the Tribunal" for short) dated 8-7-1986, whereby it affirmed the order dated 1-8-1981 of the Appellate Collector of Central Excise, Madras, granting refund of excise duty to the respondent-assessee in reversal of the order passed by the Assistant Collector of Central Excise, Tirunelveli on 27-2-1981. Briefly stated the facts are as under.

2. The respondent manufactured Trailers and Steel Furniture liable to payment of excise duty under Tariff Item No. 34(III) and Tariff Item No. 40 respectively. The respondent was clearing the goods after payment of duty without claiming exemption under Notification dated 1-3-1978 as amended subsequently by Notification No. 80 of 1980 dated 19-6-1980. Para 2 of the said notification which is relevant for our purpose reads thus :

> "(2) Nothing contained in this notification shall apply to a manufacturer -
>
> (i) if the aggregate value of clearances of each serial no. of the specified goods, if any by him or on his behalf for home consumption from one or more factories, during the preceding financial year, had exceeded rupees fifteen lakhs.
>
> (ii) who manufactures excisable goods falling under more than one item number of the said first schedule and the aggregate value of clearances of all excisable goods by him or on his behalf for home consumption, from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs."

The respondent claimed refund of duty paid during the period from 1-4-1980 to 30-9-1980 amounting to Rs. 65,285.68 on the plea that the aggregate value of the clearances of both the excisable items did not exceed Rs. 20 lakhs during the previous financial year. The Assistant Collector found that during the year 1979-80, the assessee had cleared Trailers worth Rs. 19,32,960 and Steel Furniture worth Rs. 1032 aggregating to Rs. 19,33,992 i.e., less than Rs. 20 lakhs. Since the aggregate value exceeded Rs. 15 lakhs, in view of the proviso (sic) to para 2(i) of the notification, the Assistant Collector held that the assessee was not eligible for exemption and rejected the claim for refund. The assessee preferred an appeal. The Appellate Collector reversed the view of the Assistant Collector and held that as the aggregate value did not exceed Rs. 20 lakhs, the

assessee was entitled to the benefit of exemption under the afore-mentioned notification and ordered refund. The Tribunal affirmed this view in the Revenue's appeal to that body. Hence this appeal.

3. Para 1 of the notification refers to specified goods, i.e., goods specified in column 3 of the table annexed to the notification. Para 2 extracted earlier sets out the conditions for the grant of exemption. Both the Trailers and Steel Furniture being specified goods, the assessee contends that as the value of the Trailers and the Steel Furniture did not exceed Rs. 20 lakhs, sub-para (ii) of para 2 of the notification was attracted and hence he was entitled for refund. The Revenue's contention is that since the maximum limit of Rs. 15 lakhs set out in sub-para (i) of para 2 was crossed in the previous year, there was no question of granting refund to the assessee. It was contended before the Tribunal that sub-paras (i) and (ii) had to be read together but the Tribunal felt that even if they were so read, it is clear that sub-para (i) fixes the limit of Rs. 15 lakhs for one single item of specified goods while sub-para (ii) fixes the limit of Rs. 20 lakhs where the clearance is for both specified and unspecified goods. This is the controversy.

4. Para 2(i) speaks of aggregate value of clearances of "each serial number of the specified goods" whereas para 2(ii) speaks of "excisable goods" falling under more than one item. It is thus clear that clause (i) is confined to "specified goods" whereas clause (ii) refers to "excisable goods". Now all specified goods may be excisable too, but if one were to read clause (ii) as independent of clause (i) it would create an anomalous situation, in that, a manufacturer who is not eligible for exemption under clause (i) as the aggregate value exceeds Rs. 15 lakhs can still hop on to clause (ii) and contend that since the aggregate value of the specified goods which are excisable does not exceed Rs. 20 lakhs, he would still be entitled to exemption. Such an interpretation would render clause (i) redundant. We are, therefore, of the opinion that if the goods, i.e., all items fall within the expression "specified goods" the case would be covered by clause (i), as in the present case, and not clause (ii).

5. Accordingly, the appeal is allowed and the impugned orders of the authorities below holding that the case falls in clause (ii) are set aside. There will be no order as to costs.