SUPREME COURT OF INDIA

Usha Rectifier Corpn. (I) Ltd.

Vs.

Commissioner of Central Excise, New Delhi

C.A.No.6866 of 2000

(Dr.Mukundakam Sharma and Anil R.Dave,JJ.,)

13.01.2011

JUDGMET

Dr.Mukundakam Sharma, J.,

1.By this judgment and order we propose to dispose of the appeal which is filed by the appellant herein being aggrieved by the judgments and orders passed by the authorities including the Customs, Excise & Gold [Control] Appellate Tribunal [for short 'CEGAT'] demanding duty of Rs. 4,92,566.28 from the appellant on the plant and machinery including testing equipments manufactured by them.

2. The appellant herein is a manufacturer of electronic transformers, semi¬conductor devices and other electrical and electronics equipments. During the course of such manufacture the appellant also manufactured machinery in the nature of testing equipments to test the final products of the assessee company costing Rs. 31,27,405/- as per Note 6 of the Schedule 'Q' page 15 of the balance sheet for the year ending December, 1987. The aforesaid position was further reiterated in the Director's report appearing at page no. 2 of the Annual Report for the year ending December, 1988.

3. A show cause notice was issued to the appellant directing them to show cause as to why central excise duty should not be levied on it along with interest and penalty. The appellant submitted its reply to the aforesaid show cause notice wherein they took a stand that no manufacture of plant and machinery of the nature alleged had taken place during the year to warrant levy of central excise duty. It was further stated that for research and development wing of the company and to carry out trials, experiments and for undertaking development job based on the latest technology available worldwide or through their own resources it had bought out items, parts, components, etc., and for that purpose such items were assembled in the factory. It was also stated that after research is so done, and if it was not successful, the same was disassembled. It was contended that the job that was carried out in that process was purely for research and developmental works and it was not manufacture of testing equipments. In the said reply it was also stated that project to develop the aforesaid testing equipment for use within the factory was undertaken to avoid importing of such equipment

from the developed countries with a view to save foreign exchange but since the project failed, no serious effort had since been made to complete the manufacture of the said testing equipments. It was further contended that under Section 3 of the Central Excises and Salt Act, 1944 the imposition of excise duty is on the act of manufacture or production and when there is no manufacture or production, there cannot be any duty so leviable, particularly, when the aforesaid processed material was not marketable.

4. The Additional Collector, Central Excise under order-in-original No. 6/92-93 dated 27.5.1992 after consideration of the contentions confirmed the demand of duty amounting to Rs. 4,92,566.28 and imposed a penalty of Rs. 50,000/- holding that in view of the documentary evidence and the balance sheet it had been proved beyond doubt that they had manufactured plant and machinery/testing equipments worth Rs. 31.26 lacs. Being aggrieved by the said order, an appeal was filed before the Collector (Appeals), who dismissed the said appeal. Still aggrieved, the appellant filed an appeal before the CEGAT which was also rejected after hearing the counsel appearing for the parties and after extensively going through various facets arising in the case. Thereafter, the appellant has filed the present appeal on which we have heard the learned counsel appearing for the parties.

5. It was submitted by the counsel appearing for the appellant that the appellant have their own research and development wing in which trials and experiments are undertaken from time to time for the developmental jobs based on latest technology and that during the course of such trials and experiments they bought out various parts and components which were assembled by them and that after the research is done the same were disassembled and, therefore, such research and development process undertaken by them cannot be said to be manufacturing process by any stretch of imagination. It was also submitted by the counsel that the aforesaid equipments were not taken out from the factory premises of the appellant and rather they were dismantled and, therefore, the respondent acted illegally in levying tax on the said goods. He also submitted that the department was also not entitled to invoke the extended period of limitation inasmuch as there was no cause for invoking the provision of extended limitation.

6. The aforesaid submissions of the counsel appearing for the appellant were however refuted by the counsel appearing for the respondent. We have very carefully scrutinized the records and examined the submissions of the counsel appearing for the parties in the light of the said records.

7. The demand for payment of central excise duty in the present case appears to have been made on the basis of statement made by the appellants in their balance sheet to the effect that there is an addition to plant and machinery including testing equipments worth Rs. 31.26 lacs which have been made in the company by capitalisation of the expenditure on (i) raw material, (ii) stores and spares and (iii) salary/wages and other benefits. The aforesaid statement and details were mentioned in Schedule 'Q' appended to notice of balance sheet and profit and loss account of the appellant for the year ending December, 1987. Serial No. 6 of the said Schedule reads as follows: -

"Addition to plant and machinery includes testing equipments worth Rs. 31.26 lakhs fabricated in the company by capitalisation of following expenditure:-

Raw material Rs. 26.31 lakhs,

Stores and spares Rs. 0.02 lakh, and (iii) Salary/wages and other benefits Rs. 4.93 lakhs (On the basis of estimated time spent)"

8. The aforesaid position is further corroborated by the Director's report appearing at page no. 2 of the Annual Report for the year ending December, 1988, wherein it was mentioned that during the year the company developed a large number of testing equipments on its own for using the same for the testing of semi¬conductors. Once the appellant has themselves made admission in their own balance sheet, which was not rebutted and was further substantiated in the Director's report, the appellant now cannot turn around and make submissions which are contrary to their own admissions. (See: Calcutta Electric Supply Corpn. v. CWT1, para 8). Moreover, they have also clearly taken a stand in their reply to the aforesaid show cause notice that they bought various parts and components to develop the testing equipments for use within the factory and that such steps were undertaken to avoid importing of such equipments from the developed countries with a view to save foreign exchange.

5. From the aforesaid own admission of the appellant and from the facts brought out from the records it is clearly proved and established that the appellant had manufactured machines in the nature of testing equipments worth Rs. 31.26 lacs to test the final products manufactured by them.

6. Even if such equipments were used for captive consumption and within the factory premises, considering the fact that they are saleable and marketable, we are of the view that duty was payable on the said goods. The fact that the equipments were marketable and saleable is also an admitted position as the appellant has admitted it in their reply to the show cause notice that they had undertaken such manufacturing process of the testing equipments to avoid importing of such equipments from the developed countries with a view to save foreign exchange. Such a statement confirms the position that such testing equipments were saleable and marketable.

7. The provision of Explanations to Rule 9 and 49 of the Central Excise Rules are very clear as it provides that for the purpose of the said rules excisable goods manufactured and consumed or utilized as such would be deemed to have been removed from the premises immediately for such consumption or utilization. Therefore, the contention that no such duty could be levied unless it is shown that they were taken out from the factory premises is without any merit.

8. Submission was also made regarding use of the extended period limitation contending inter alia that such extended period of limitation could not have been used by the respondent. The aforesaid contention is also found to be without any merit as the appellant has not

obtained L-4 licence nor they had disclosed the fact of manufacturing of the aforesaid goods to the department. The aforesaid knowledge of manufacture came to be acquired by the department only subsequently and in view of non-disclosure of such information by the appellant and suppression of relevant facts, the extended period of limitation was rightly invoked by the department.

9. Consequently, we find no merit in this appeal, which is dismissed without any order as to costs.

[1] *(1972) 3 SCC 0222*