

(2015) 09 AHC CK 0103
In the Allahabad High Court
Case No : Writ Tax No. 1646 of 2011

Accurate Chemicals Industries

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A(1)

Citation : (2015) 324 ELT 453

Hon'ble Judges : Tarun Agarwala and Surya Prakash Kesarwani, JJ.

Bench : Division Bench

Advocate : A.P. Mathur, Counsel, for the Appellant; S.P. Kesarwani, Senior S.C., for the Respondent

Judgement

1. We have heard Sri A.P. Mathur, the learned counsel for the petitioner. For the period 2002 to March, 2006, a notice under the proviso to Section 11A(1) of the Central Excise Act, 1944 was issued.

2. The Tribunal found that the extended period of limitation cannot be invoked in the instant case inasmuch as the Range Officer had scrutinized all the documents, which revealed that the assessee had cleared its MS tanks and radiators and that there was no fraud, collusion, misstatement or suppression of facts. The judgment of the Tribunal [2014 (300) E.L.T. 451 (Tri. - Del.)] was affirmed by the High Court and the show cause notice under the proviso to Section 11A(1) of the Act was set aside. The Division Bench in Commissioner of Central Excise Vs. Accurate Chemical Industries, held:

"Admittedly, a show cause notice was issued on 16 August 2007 beyond the prescribed period of one year but the revenue sought to invoke the extended period of limitation under the proviso to Section 11A(1) of the Act. The Tribunal observed that during the period in question, the assessee had not sold any part of its products to independent buyers and the entire stock was transferred to M/s. Accurate Transformers Limited. Consequently, these clearances were liable to be treated as being made to a related person for its captive use and under Rule 9

read with Rule 8 of the Central Excise Valuation Rules, 2000, the duty was payable on 110%/115% of the cost of production whereas it was paid on a lower value. On the invocation of the extended period of limitation, the Tribunal held that the assessee had duly filed ER-1 returns on a monthly basis. Under the circulars of the Central Board of Excise and Customs, the Range Officer was required to carry out a detailed scrutiny of the ER-1 returns and if this had been done, the short payment would have been detected. There was no evidence of any collusion between the assessee and the jurisdictional Central Excise Officers. The short payment was detected when an audit team visited the premises and examined the records but this, as the Tribunal held, could have been detected even by the jurisdictional Range Officer much earlier. In the circumstances, it was held that there was no suppression of fact or willful misstatement on the part of the assessee and no ground was, therefore, available for invoking the extended period of limitation. In addition, the Tribunal observed that in the present case, the situation was revenue neutral since, in the facts of the case, the entire duty paid by the assessee in respect of the clearances of MS tanks and radiators to its transformer Unit was available to the transformer unit as cenvat credit. In other words, the cenvat credit was available not to a third party buyer of the assessee's manufactured goods but to the assessee itself in its transformer unit. Since the situation was revenue neutral, this was an additional ground which weighed with the Tribunal to hold that the extended period could not be invoked.

Having considered the judgment of the Tribunal, we see no reason to interfere with the finding of fact that if a scrutiny had been made by the Range Officer of the ER-1 returns, that would have revealed that the assessee had cleared its MS tanks and radiators to the owning company for the manufacture of transformers. This indicated that there was no fraud, collusion, misstatement or suppression of facts. Besides, since the situation was revenue neutral, no intent to evade the payment of duty could be ascribed to the assessee. Once there was no intent to evade the payment of duty, the Tribunal was justified in coming to the conclusion that the extended period of limitation under the proviso to Section 11A(1) of the Act would not be attracted. Hence, no substantial question of law arises in the appeal. It is, accordingly, dismissed."

3. Based on the same reasoning, a show cause notice for the period from 1-4-2006 to 31-3-2010 was issued under the proviso to Section 11A(1) on 3-6-2011, which has been questioned in the present writ petition. Having heard the learned counsel for the parties, we are of the opinion that the controversy involved in this case is identical except for the period in question. The decision of the Tribunal as affirmed by this Court, is squarely applicable in this case. Consequently, the show cause notice dated 3-6-2011 cannot be sustained and is quashed. The writ petition is allowed.