(2015) 08 MAD CK 0061

In the Madras High Court

Case No : C.M.A. No. 2884 of 2006 and M.P. No. 1 of 2006

Aidees Electronics (P.) Ltd. — APPELLANT

Vs

Customs Excise & Service Tax Appellate Tribunal — RESPONDENT

Date of Decision : 13-08-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 35G

Citation : (2015) 325 ELT 336 : (2015) 52 GST 226

Hon'ble Judges : V. Ramasubramanian and K.B.K. Vasuki, JJ.

Bench : Division Bench

Advocate : T. Ramesh, for the Appellant; K. Mohanamurali, for the Respondent

Judgement

V. Ramasubramanian, J.—This appeal is filed by the assessee under section 35G of the Central Excise Act, 1944. Heard Mr. T. Ramesh, Learned Counsel for the Appellant and Mr. N. Mohanamurali, Learned Standing Panel Counsel for the respondent.

2. The appellant is a Small Scale Industry. They are manufacturing linear measuring instruments falling under the heading 84.66 of the Central Excise Tariff Act.

3. It appears that the appellant entered into a "Technical Licence Agreement" on 14.1.1992 with a Company by name "Newall Measurement Systems" incorporated in the United Kingdom, for the manufacture, use and sale of linear measuring instruments. On the basis of the said agreement, the appellant applied to the Department and obtained a registration certificate on 22.11.1995, in terms of Rules 174 and 192 of the Central Excise Rules, 1944.

4. It appears that a letter was sent way back on 25.1.1996 to the appellant calling upon them to pay full rate of duty, on the ground that the appellant was not entitled to the benefit of Notification 1 of 1993, dated 28.2.1993. However, the appellant gave a reply dated 30.1.1996, served on the Department on 13.2.1996, to the effect that the equipments manufactured by them carried their

brand name "Aidees Newall" and that this brand name is not that of anybody else so as deprive him of the benefit of the notification.

5. After two years of the submission of the said reply, the Commissioner of Central Excise issued a show cause notice dated 5.3.1998 contending that the brand name "Newall" belonged to a third party and that therefore, the benefit of the notification was not available. The appellant gave a reply, which was not accepted and an order of adjudication was passed on 11.8.1998. The order of adjudication was set aside by the first appellate authority on merits on 29.12.1998. Though the appellant had raised the question of limitation, the first appellate authority did not go into the question of limitation. This was in view of the fact that the first appellate authority accepted the contention that the brand name "Aidees Newall" belongs to the appellant.

6. However, the Department filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, as against the order of the first appellate authority. The Tribunal allowed the appeal of the Department by order dated 22.6.2006. Therefore, the appellant has come up with the above appeal raising the following questions of law:

"(a) In the facts and circumstances of the case, whether the first respondent was correct in passing the final order without hearing the appellant?

(b) In the facts and circumstances of the case, whether, the addition of the name of the foreign collaborator to the name of the appellant would mean, use of the Trade Mark of another person, so as to deny the benefit of SSI notification?

(c) In the facts and circumstances, whether the entire demand is barred by limitation?

(d) In the facts and circumstances where the issue involved in the present case is interpretation of notification, whether it is correct to allege suppression with intent to evade payment of duty?

(e) In the facts and circumstances where the department had full knowledge about the manufacture of the goods under the licence of the foreign collaborator and use the name of such foreign collaborator, whether allegation of suppression with intent to evade payment of duty can be alleged in the present case?"

7. Though this court has framed five questions of law, all of them could be grouped into two questions viz., (a) as to whether a person, who uses the brand name of a collaborator alongwith his own name lawfully after entering into a licence agreement with the collaborator could be deprived of the notification; (b) as to whether the show cause notice was issued beyond the period of limitation.

8. We wish to take up the question of limitation first which was framed as question (c) at the time of admission of this appeal.

9. Section 11A prescribes two different periods of limitation. The first is a period of one year and the second is a period of five years. In cases where, the duty of

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excise has not been levied or paid or has been short levied or short paid or erroneously refunded, on account of any fraud or collusion or willful misstatement or suppression of facts or contravention of the provisions of the Act or the Rules, the period of limitation for the issue of a show cause notice is five years. But, in all other cases, the period of limitation is one year as seen from clause (a) of sub-section 1 of section 11A.

10. In the case on hand, the registration of the Company with the Central Excise Department happened on 22.11.1995. The registration was in respect of the goods described as "Aidees Newall linearing measuring instruments" as seen from the registration certificate.

11. Within a couple of months from the date of issue of the registration certificate, the Superintendent of Central Excise called upon the appellant to pay duty on the ground that the appellant was not entitled to the benefit of the notification, vide his notice dated 25.1.1996. The appellant submitted a reply dated 30.1.1996 served on the Department on 13.2.1996. The show cause notice was issued two years thereafter viz., on 5.3.1998.

12. In the show cause notice, the only allegation made against the appellant was that they had contravened the provisions of the Acts and the Rules. The original authority, in response to the defence relating to limitation, came to the conclusion in para 15 and 16 of the order that the case would fall under the category of suppression of facts with intent to evade payment of duty.

13. Further, the first appellate authority set aside the finding not only on the basis of the registration certificate but also on the basis of the statement made by the Chairman of the appellant. The relevant portion of para 3 of the order of the first appellate authority requires reproduction. Hence, it is reproduced as fallows:--

"I have carefully considered the facts of the case and the submissions of the appellants. I find that the allegation of suppression is not sustainable in view of the fact that all material facts including copy of the technical collaborating agreement and the facts with regard to use of trade marks were disclosed to the department by their Chairman in his statement dated 25.11.95 which was recorded even before the issuance of the registration certificate."

14. As against this portion of the order of the first appellate authority that there was no suppression, the Tribunal did not record any finding. As a matter of fact, the Tribunal appears to have taken up the appeal after seven years and disposed it of at one stroke. The positive case of the appellant is that they were not put on notice of the date of hearing. We are not going into the said question. However, it is seen from the order of the Tribunal that the finding of the first appellate authority to the effect that there was no suppression of fact, has not been interfered with. If the original authority had invoked the enhanced period of limitation on only one particular ground viz., suppression of fact and the appellate authority had set aside that finding, the larger period of limitation was

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not available to the Department themselves in view of the fact that the Tribunal did not interfere with the finding of the first appellate authority relating to the only basis on which the enhanced period of limitation was taken recourse to by the Department. In view of the above, we answer question ''c'' with regard to limitation in favour of the assessee. Consequently, there is no necessity to answer the other questions. The civil miscellaneous appeal is disposed of. No costs. The connected miscellaneous petition is closed.

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