(2003) 01 SC CK 0102

In the Supreme Court Of India

Case No : Civil Appeals No. 4986 Of 2001 With No. 4103 Of 2000

Bharat Electronics Limited APPELLANT

Vs

Commissioner of C. Ex., Meerut RESPONDENT

Date of Decision : 29-01-2003

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

Citation : (2004) 165 ELT 485 : (2005) 10 SCC 651

Hon'ble Judges : M. B. Shah, J;Arun Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. CA 4986/2001. Heard the learned counsel for the parties.

2. M/s. Bharat Electronics Limited, a Central Govt. Undertaking has filed this appeal against the judgment and order dated 28-12-1999 passed in Appeal No. E/798/95-NB by the Customs, Excise and Gold Control Appellate Tribunal (CEGAT) New Delhi (for short 'the Tribunal') confirming the order passed by the Collector of Central Excise, Meerut whereby he determined the differential duty of Rs. 24,44,011.89 recoverable u/s 11A{1) of the Central Excise and Salt Act, 1944 read with Rule 98(5) of the Central Excise Rules, 1944. However, he has not imposed any penalty on the appellant as it was a government undertaking.

3. Learned counsel for the appellant submitted that initiation of proceedings under 1st proviso to Section 11A of the Act was wholly unjustified because the appellant submitted classification list on 10-3-1989 wherein it has disclosed the description which is Reproduced herein below :-

Sl. No. Full description of the each item of the goods produced manufactured or warehoused including specifications (etc.) size no. of counts (Horse) power sort No. etc. as the case may be together with the description would appear in the invoice.

Chapter Heading and subheading No. of the schedule is the Central Excise Tariff Act, 1985 (5 of 1986) under which the goods fall.

1. 2.

3.

1. Parts suitable for use solely or principally with the apparatus of heading No. 85.25 to 85.28 (i) ANPRC A8A (ii) ANPRC A9A (iii) ANPRC A10 Heading Sub-Heading

85.29 8525.00

2. Transmission Apparatus for Radio Tele-phone/Radio-Telegraphy, Radio Broadcasting or Television (i) ULSB (ii) RRD 85.25 8525.00

3. Radio Frequency Transformers 85.04 8504.00

4. Parts suitable for use solely or principally with the apparatus of heading Nos. 85.25 to 85.28 PCM-MUX 85.29 8529.00

5. Radar Apparatus Radio Navigational aid apparatus and Radio Remote Control Apparatus BEST MK I with Accessories 85.26 8526.00

4. That classification list was approved by the Department by order dated 10-3-1989 w.e.f. 1-3-1989.

5. Thereafter in the adjudication proceedings it was held that approval of the classification list was for the part of the item namely PCM MUX and not for the entire apparatus of PCM MUX. Therefore, there was intentional suppression on the part of the appellant and hence notice issued under 1st proviso to Section 11A(1) was justified. The Tribunal also arrived at the same conclusion. Hence, this appeal.

6. The learned counsel appearing on behalf of the appellant submitted that the entire approach of the Tribunal is erroneous. Appellant is a Central Government Undertaking and no inference can be drawn that appellant intended to evade duty by misdeclaration of the items produced by it. As there was some mistake, it was corrected as soon as the attention of the appellant was drawn. With regard to the application of proviso to Section 11A(1), this Court in Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore, held thus:-

"It is settled law that for invoking the extended period of limitation duty should not have been paid, short levied or short paid or erroneously refunded because of either fraud, collusion, wilful mis-statement, suppression of fact or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/ or take out a licence which is not due to any fraud, collusion or wilful statement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."

7. From the law laid down by this Court it is apparent that there is no question of application of extended period of limitation as per the 1st proviso to Section 11A(1) of the Act as it would be difficult to draw any inference that there was an intention on the part of the appellant to evade excise duty.

8. Hence, this appeal is allowed, impugned order passed by the Tribunal confirming the order passed by the Collector is set aside. There shall be no order as to costs.

9. Civil Appeal No. 4103/2000. In view of the amended Section 11A of the Central Excise Act, 1944 and the judgment rendered by this Court in Easland Combines, Coimbatore Vs. The Collector of Central Excise, Coimbatore, , the impugned order passed by the Tribunal requires to be set aside.

10. In the result, appeal is allowed. Impugned order dated 23-2-2000 passed in Final Order No. 278/2000 Reported in 2002 (147) E.L.T. 1029 (Tribunal). in Appeal No. E/2019/97 by the Tribunal confirming the order of the Commissioner (Appeals) is set aside: The order dated 16-2-1994 passed by the Asstt. Collector of Central Excise (Divn. I), Vishakhapatnam is confirmed. There shall be no order as to costs.