
(2015) 07 SC CK 0136
In the Supreme Court Of India
Case No : Civil Appeal No. 2264 of 2004

Blue Star Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Central Excise Tariff Act, 1985 — Section 11A

Citation : (2015) 322 ELT 820

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Advocate : Ravinder Narain, Ajay Aggarwal, Mallika Joshi, Sheevani, Ruchika Singh and Rajan Narain, for the Appellant; K. Radhakrishna, Sr. Adv., B. Sunita Rao, R.K. Verma and B. Krishna Prasad, Advocates for the Respondent

Final Decision : Disposed Of

Judgement

1. Vide show cause notice 31-7-1986 issued by the Respondent/Revenue the Revenue sought to levy duty on "walk-in cooler". The period covered was July 1981 to 7-2-1986. At the relevant time the limitation provided Under Section 11A was six months. On that reckoning the period covered in the show cause notice, except six days of period prior 1986, was beyond the period of limitation. For this reason, in the show cause notice, the Revenue invoked the provision of proviso to Section 11A in order to take the advantage of extended period of limitation contained therein. A Walk-in cooler consists of an insulated room with a door. A cooling unit is fixed on the top panel of this enclosure and cool air is blown in to maintain low temperature therein. This cooling room consists of an enclosure made of insulated panels which are brought to the site of the customer and are put together along with strips and joining material to make the enclosure air tight. The top panel which is sent to the supplier of the cooling unit, is received after the cooling unit is affixed thereon and the top panel with the cooling unit affixed thereon is put on top of the enclosure for sealing the top. The door is also fixed and the entire enclosure is made air tight. The cool air is blown

in from the top through the cooling unit. The entire assembly of the insulating panels together with the cooling unit, which are set up at the site of the customer, is described as a Walk-in cooler.

2. The question on merits was as to whether the part of walk-in coolers were covered by Item No. 29A of the Tariff Entry under the Central Excise Tariff Act, 1985. This Entry reads as under:

"29A: REFRIGERATING AND AIR-CONDITIONING APPLIANCES AND MACHINERY, ALL SORTS AND PARTS THEREOF -

1. Refrigerators and other refrigerating appliances which are ordinarily sold or offered for sale as ready assembled units, such as ice makers, bottle coolers, display cabinets and water coolers. 20% ad valorem.

2. Air-conditioners and other air-conditioning appliances, which are ordinarily sold or offered for sale as ready assembled units, including package type air-conditioner and evaporative type of coolers. 20% ad valorem.

3. Parts of refrigerating and air-conditioning appliances and machinery, all sorts. 30% ad valorem."

3. This issue had come up for determination at different levels. Earlier the opinion of the High Courts, in this behalf, was that even the parts of Walk-in coolers would not be covered by the entry "parts of the appliances and material of class".... Refrigerator and air conditioned appliances. One such judgment in the case of Mother India Refrigeration Industries P. Ltd. Vs. Superintendent of Central Excise and Others, (1980) 6 ELT 600 was rendered by Allahabad High Court. This judgment is dated 4-11-1978. The aforesaid view was reiterated by the Allahabad High Court itself in another judgment which was rendered on 27-11-1984 [Gopal Cold Storage and Ice Factory Vs. Union of India (UOI) and Others, (1986) 9 ECC 305 : (1985) 21 ELT 692]. As on the date of show cause notice, the aforesaid view was the prevailing view. However, this Court in the case of Frick India Ltd. Vs. Union of India (UOI) and Others, AIR 1990 SC 689 : AIR 1989 SC 689 : (1990) 29 ECR 145 : (1990) 1 SCC 400 overruled the aforesaid decision and held that the parts of the Walk-in coolers would be exigible to excise duty as they would be covered under Item No. 29A.

4. Having regard to the aforesaid judgment of this Court in Frick India case, Mr. Ravinder Narain, Learned Counsel appearing for the Appellant did not press his case on merits. He confined his submission to the invocation of larger period of limitation by the Department. His submission in this behalf was that there was no misrepresentation, mis-declaration or suppression of any material facts which could have allowed the Department to take the aid of the said proviso to Section 11A of the Act. In order to buttress this submission, he referred to the judgment of the Bombay High Court in the case of Assessee itself which is known as Blue Star Ltd. Vs. Union of India and another, (1989) 25 ECR 69 : (1980) 6 ELT 280 . In this case the question that had arisen for consideration pertained to these

very goods, namely, Walk-in cooler. The question was as to whether they could be treated as ready assembled refrigeration unit so as to be covered under sub-heading 1 or 2 of Item No. 29A. The question was answered in favour of the Assessee. However, he has referred to this judgment from altogether different purpose. He pointed out the discussion in this case amply demonstrates that all the relevant facts had been taken note of, which included the facts about the assembling of the aforesaid units allegedly at the place of the Assessee, dismantling them and then assembling again at the place of the buyer. It is thus argued that there was no suppression and every nuance was within the knowledge of the Department.

5. On a reading of this judgment we find that all the facts which are on the basis of suppression is alleged now, were known to the Revenue. It would be of interest to point out that it was argued by the Revenue itself (though was not accepted) that the Assessee is first assembling the Walk-in coolers at its factory and thereafter this elaborate process is represented on the customers site. This argument of the Revenue itself would disclose that the Revenue had known all the relevant facts. Therefore, it could not be a case of suppression or mis-declaration at all.

6. Further as pointed out above, many High Courts had taken the view that the tax on Walk-in coolers would not be covered by Item No. 29A(3). If the Assessee acted on the basis of the said position in law which was prevailing at that time (though overruled subsequently) it would show that the action of the Assessee was bona fide.

7. From the aforesaid, in our view, the Revenue could not have invoked the provisions of the proviso Under Section 11A of the Act.

8. As mentioned above, otherwise the period of limitation was six months and therefore the show cause notice which covered the period of limitation was July 1981 to 7-2-1986 was time-barred. The Revenue shall be entitled to recover the duties only for the period 2-2-1986 to 7-2-1986. The duty shall be recalculated on that basis and the excess amount, if any, paid by the Assessee shall be refunded within a period of two months from the date of the redetermined of the calculations. The appeal is allowed to the aforesaid extent.