
(2014) 02 AHC CK 0218

In the Allahabad High Court

Case No : Central Excise Appeal No. 34 of 2014

Commissioner of Central Excise

APPELLANT

Vs

Accurate Chemical Industries

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

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

Citation : (2014) 310 ELT 441 : (2014) 48 GST 223 : (2014) 26 GSTR 23

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Ashok Singh, Senior Standing Counsel, Advocate for the Appellant

Judgement

1. This appeal by the Revenue arises from a judgment of the Customs, Excise and Service Tax Appellate Tribunal dated July 16, 2013 (Accurate Chemical Industries v. CCE [2014] 26 GSTR 14 (Trib.-Delhi)). The Revenue has framed the following question of law:

Whether the Hon'ble CESTAT taking into consideration facts and circumstances of the case, was justified in holding that the extended period of limitation is not invocable and as such, the entire duty demanded is time barred and whether the penal provisions of section 11AC also would not be applicable in the present case?

2. The issue before the Commissioner, Central Excise, Noida and in appeal before the Tribunal was whether the extended period of limitation u/s 11A(1) of the, Central Excise, Act, 1944 (in short the "Act") was attracted.

3. The assessee is owned by a company called M/s. Accurate Transformers Ltd. The assessee manufactures MS tanks and radiators for transformers. The owning company manufactures transformers. During the period from 2002-03 to 2005-06, the assessee cleared MS tanks and radiators to its own unit. The Commissioner upheld a duty demand of Rs. 1.59 crores short-paid on clearances of MS tanks, radiators and other accessories during the period from 2002-03 to 2005-06.

4. Admittedly, a show-cause notice was issued on August 16, 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 per cent./115 per cent 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.