
(2014) 06 AP CK 0134
In the Andhra Pradesh High Court
Case No : C.E.A. No. 5 of 2005

Commissioner of Central Excise

APPELLANT

Vs

Aruna Straw Boards Pvt. Ltd.

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35-G, 5-A

Citation : (2015) 325 ELT 316 : (2014) 29 GSTR 347

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : V. Gopalakrishna Gochaley, Advocate for the Appellant; C.V. Narasimhan, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.—This appeal u/s 35-G of the Central Excise Act, 1944 (for short the Act) is filed by the Revenue, feeling aggrieved by the order, dated 18.06.2004 passed by the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short the Tribunal).

2. The respondent is a manufacturer of paper and paperboards and the manufactured products are assessed to excise duty. The Central Government issued Notification No.1/93 in exercise of power u/s 5-A of the Act granting exemption upto Rs.30,00,000/- in a financial year in favour of the small scale industries. The respondent is a small scale industry. In the subsequent year, Notification No.22/94 was issued stipulating the concessional duty at 10%, in case paper and paperboards are manufactured, using unconventional raw material.

3. On 01.03.1995, the Government issued Notification No.22/95. This is to the effect that in a given financial year, a manufacturer shall not be entitled to avail the benefit under both the Notifications viz., 1/93 and 22/94. The respondent got clearance of goods manufactured between 15.03.1995 and 31.03.1995. Alleging that the goods were got cleared by availing the benefit under both the Notifications, the Jurisdictional Assistant Commissioner issued a show cause

notice to the respondent. An explanation was submitted by the respondent stating that it did not avail the benefit under both the Notifications simultaneously at any given point of time from 15.03.1995 onwards and that depending upon the circumstances, it availed the benefit either under Notification No.1/93 or 22/94. Satisfied with the explanation offered by the respondent, the Assistant Commissioner passed order, dated 09.02.1996. The Department carried the matter in appeal before the Commissioner of Central Excise (Appeals), Hyderabad. The appeal was allowed through order, dated 17.11.99. Thereupon, the respondent filed a further appeal before the Tribunal and the same was allowed through order, dated 18.06.2004.

4. Learned Standing Counsel for the appellant submits that the appellate Commissioner assigned cogent reasons in support of his conclusions to the effect that the assessee can avail the benefit under one notification or the other and not both. He further submits that the assessing authority as well as the Tribunal have ignored the precedents on the subject and have virtually permitted the assessee to avail the benefit under both the Notifications may be in different periods within the same financial year. He submits that such a course would run contrary to the very spirit of Notification No.22/95.

5. Certain substantial questions of law, as required u/s 35-G of the Act are framed and they are mostly referable to certain precedents. The period in question in the instant case is 15.03.1995 to 31.03.1995. This is obviously subsequent to the publication of Notification No.22/95. The only controversy is as to whether the respondent was entitled to avail the benefit under Notification No.1/93 on the one hand and Notification No.22/94 on the other hand, within the same financial year, even for different periods, by pressing into service one of the notifications. The gist of the contention of the appellant is that once the manufacturer chooses to avail the benefit under one notification in a particular financial year, it shall not be entitled to press into service the other notification, even for part of the period.

6. One fact, which added to the uncertainty or confusion in this regard, is that Notification No.22/95 became operational at the end of the financial year 1994-95. Though the record is not that clear, it appears that for the substantial part of the financial year 1994-95, the respondent availed the benefit under both the notifications till Notification No.22/95 came into force, but with effect from the date on which it came into force, it availed the benefit under only one of the notifications i.e.,22/94.

7. The plea taken by the appellant does not appear to be in accordance with law. The only purpose, which Notification No.22/95 was supposed to serve, was that the manufacturers, be not permitted to avail the benefit of the exemption of Rs.30,00,0000/- under Notification No.1/93 and the concessional duty of 10% under Notification No.22/94 at one and the same point of time. It is not even alleged that the respondent has availed such dual benefit after Notification No.22/95 came into force. In fact, the assessing authority, who issued show

cause notice, examined the record and found that the benefit under Notification No.22/94 alone was utilised for the period in question. The appellate authority however proceeded on the assumption that once the respondent has availed the benefit under Notification No.1/93, for a part of financial year 1994-95, it is not entitled to switch over to the benefit under the other notification. This is not at all evident from either the notification or any decided case. The Tribunal has in fact pointed out that accepting the contention of the Department would amount to giving retrospective effect to Notification No.22/95. We do not find that any substantial question of law arises for consideration.

8. Therefore, the C.E.A. is dismissed.

9. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.