(2014) 10 AP CK 0136

In the Andhra Pradesh High Court

Case No : Central Excise Appeal No. 122 of 2006

Commissioner of Cus. and C. Ex. APPELLANT

Vs

Rakshak Farm Aids Pvt. Ltd. RESPONDENT

Date of Decision : 13-10-2014

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

Citation : (2015) 320 ELT 546

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

Bench : Division Bench

Advocate : K. Manamadha Rao, for the Appellant; O. Swroop for V.J. Sankaram, for the Respondent

Judgement

L.N. Reddy, J.?The respondent is a manufacturer of disinfectants that are mostly used in poultry industry. One of the products manufactured by it is "Virkon-S". The respondent claimed the status of small scale industry as well as the benefit of exemption of Excise duty in terms of Central Excise Tariff Notification No. 1/93-C.E., dated 28-2-1993, which provides for exemption in respect of the products manufactured by small scale industries. The product manufactured by the respondent was cleared during the period from August 2000 to December 2001. Thereafter, the concerned assessing authority recorded the statement of the Managing Director of the respondent-company, regarding the basis pleaded for classification of the product. That was followed by a show cause notice dated 19-7-2002 demanding a differential duty of Rs. 2,00,730/- covering the period referred to above. The explanation submitted by the respondent was found not satisfactory. The Additional Commissioner passed an order dated 29-12-2003, imposing penalty of Rs. 5,000/- and dropping the further proceedings. The appellant filed an appeal before the Commissioner feeling aggrieved by the order, dated 29-12-2003. The appeal was allowed by the Commissioner on 29-4-2005, confirming the demand. Hence, the respondent filed Appeal No. E/843/2005 before the Customs, Excise and Service Tax Appellate Tribunal, Bangalore (for short ''the Tribunal'')- Through its order, dated 2-2-2006, the Tribunal allowed the appeal by following the judgment of the Supreme Court in Collector of C. Ex. Vs. Vikshara Trading and Invest. P. Ltd., . Not satisfied with the outcome of the appeal, the Department filed this appeal under Section 35G of the Central Excise Act (for short ''the Act'').

2. Heard learned Counsel for the appellant and learned Counsel for the respondent.

3. The controversy in this appeal is as to whether the respondent was entitled to the benefit under the notification, dated 28-2-1993. It manufactured a product by name "Virkon-S" and its claim for the benefit of exemption under the notification was allowed for the period from August 2000 to December 2001. It is at a later point of time, obviously by exercising power under Section 11A of the Act, that the Additional Commissioner reopened the matter by issuing a show cause notice. That was preceded by recording a statement by the Managing Director of the respondent-company.

4. The basis for reopening of the proceedings was that the disinfectant was sold with the brand name "Virkon-S", which in turn is the one owned by M/s. Antec International, United Kingdom. The plea of the respondent was that though it has adopted the brand name, it has manufactured the product on its own accord. The Additional Commissioner as well as the appellate authority took the view that the notification does not apply to cases, where the specified goods are applied the brand name or trade name of another product. Clause (4) of the notification reads as under:

"4. The exemption contained in this notification shall not apply to the specified goods, bearing a brand name or trade name (registered or not) of another person."

5. The Clause is silent as to whether mere use of brand name or trade name would disentitle an assessee to claim exemption or whether Clause (4) would apply only where the products manufactured by another are sold by such assessee. Obviously realising the complexity involved in the issue, the Government clarified this aspect by adding Explanation X, which reads:

"Explanation. - For the purpose of this notification, where the specified goods manufactured by a manufacturer, bear a brand name or trade name (registered or not) of another manufacturer or trader, such specified goods shall not, merely by reason of that fact, be deemed to have been manufactured by such other manufacturer or trader."

6. From this, it becomes clear that as long as an assessee has manufactured the goods, the mere fact that he used the trade or brand name of another individual does not make any difference. This may take in its fold the case of assignment of the trade mark. Even otherwise what becomes essential is the activity of manufacture of the product, than mere usage of brand name.

7. In the instant case, the respondent clearly pleaded that it has the proper

assignment to use the brand name. The fact that it has got the assignment from the UK company was made clear in the returns of classification. The authority, who processed them was satisfied about this. There must be clinching evidence for reopening the case under Section 11A of the Act. The mere fact that a different view is possible on the same set of facts cannot be a ground to exercise power under that provision. There is no dispute that it has manufactured the product by itself. The Tribunal followed the judgment of the Supreme Court and we do not find any basis to interfere with the same.

8. Therefore, the appeal is dismissed. The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.