
(2023) 08 CESTAT CK 0033

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.40032 Of 2014

M/s.Sri Saraswathi Propeller Works

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 18-08-2023

Acts Referred:

Central Excise Rules, 2002 — Rule 25

Citation : (2023) 08 CESTAT CK 0033

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : S. Venkatachalam, Anandalakshmi Ganeshram

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that appellant M/s.Sri Saraswathi Propeller Works, Tuticorin is engaged in the manufacture and fabrication of spares/parts for heavy equipments falling under Chapter 73 and 84 of CETA 1985. They were also undertaking repair and reconditioning of the spares/parts for heavy equipments. Based on intelligence that the appellant has indulged in evasion of central excise duty on goods manufactured/fabricated, the officers of DGCEI, Madurai visited the premises of the appellant. It was noticed that the value of the goods cleared by the appellant for the year 2006-07 exceeded the exemption limit of Rs. 1 crore available for SSI units. Appellant had neither obtained central excise registration nor had they paid central excise duty in respect of the clearances effected over and above Rs.1 crore exemption limit. The officers seized the records under a mahazar for verification. Statements were also recorded. It appeared that the appellant has manufactured goods without properly accounting for them and also cleared them without payment of central excise duty and thereby suppressed the fact of the manufacture and clearance with intention to evade payment of duty. Show cause notice dt. 22.10.2010 was issued for the

period 2005-06 to 2007-08 proposing to demand the duty along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and imposed equal penalty besides imposing penalty under Rule 25 of Central Excise Rules, 2002. Aggrieved by such order, the appellant is now before the Tribunal.

2. The Ld. Counsel Sri S. Venkatachalam appeared and argued for the appellant. It is submitted by the learned counsel that after receiving the show cause notice on 04.03.2011, the appellant had requested the department to supply all the relied upon documents in order to facilitate the appellant to file reply to the SCN. However, the department did not respond to the request made by the appellant. The Ld. Counsel adverted to the acknowledgement dt. 04.03.2011 issued by the appellant to the department while receiving the SCN. In the said acknowledgement the appellant has stated that they have received photocopies of records listed in Annexure-A. However, the department has relied upon various bills and invoices to quantify the duty amount and the details of these documents is shown as Annexure-B. The appellant has not been given any of these documents given in Annexure-B. So also, the details of the documents relied by the department to quantify the duty with regard to the materials supplied to Tuticorin Thermal Power Station, Tuticorin, details of materials supplied to Ennore Thermal Power Station, Chennai etc. has not been supplied to the appellant. For this reason, the appellant could not defend the case properly and file a detailed reply. A letter dt. 30.03.2011 was issued requesting for relied upon documents to which the department did not respond. The appellant again submitted a letter dt.24.06.2011 requesting to send the copies of purchase bills relied by the department. Later, a reminder was also issued on 23.12.2013 by the appellant requesting the department to furnish the relied upon documents. However, the department has not supplied the documents as requested by the appellant. The appellant thus could not defend the matter.

3. On merits also, the appellant has a good case for the reason that appellant has done most of the fabrication work at the site of the customer. It is settled law that an item embedded on earth cannot be called as 'excisable goods' and accordingly no duty is required to be paid on the same. The drawings / photographs of the items would make it clear that the fabricated items are embedded to earth and are not excisable goods. The items are customer and location specific and it cannot be marketed and is of no use to any other person.

4. The department has to prove the marketability of the goods to demand excise duty. There are several decisions which have held that the steel structures which are part of permanent civil construction and are not designed as goods, are not leviable to central excise duty. The issue of excisability of fabricated items embedded to the earth has been conclusively settled by CBEC vide its circular F.No.58/1/2002 dt. 15.01.2002. The original authority has not considered any of these aspects.

5. The Ld. Counsel submitted that the appellant has a good case on limitation

also. There is much delay in issuing the SCN after the visit and seizure of the documents. It is stressed by the learned counsel that the appellant was handicapped due to non-availability of the documents and has not been able to put forward proper defence in the case. Ld. Counsel prayed that the appellant may be given one more opportunity to defend the case.

6. Ld. A.R Ms. Anandalakshmi Ganeshram supported the findings in the impugned order. It is submitted by the Ld.A.R that the proprietor of the appellant firm had appeared for personal hearing and submitted that he is ready to pay the duty. There is clear admission on the part of the appellant and therefore the order passed by the Commissioner is legal and proper.

7. Heard both sides.

8. The Ld. Counsel has asserted that they have not received the entire relied upon documents. The acknowledgement issued by the appellant while receiving the show cause notice reads as under :

"Date : 4/3/2011

To

The Assistant Director,

Directorate General of Central Excise Intelligence,

Madurai Regional Unit, Madurai

ACKNOWLEDGEMENT

This is to acknowledge the receipt of the Show Cause Notice No.63/2010-CHZU dated 22-12-2010 in F.No.INV/DGCEI/CHZU/09/10/CE issued by the Additional Director General, Directorate General of Central Excise, Tirunelveli Commissionerate, with the photo copies of records relied upon as listed in the Annexure-A to the said Show Cause Notice today i.e. On.

For SRI SARASWATHI PROPELLER WORKS

Sd/-

PROPRIETOR

4/3/2011"

9. It can be seen from the above acknowledgement that the appellant has received only documents listed in Annexure-A. The details of the invoices / bills on which the quantification of the duty is done is contained in Annexure-B. The Department ought to have given the copies of such invoices or bills which have been seized and used to derive the quantum of duty. It is also pointed out by the learned counsel that during the relevant period there was circular issued by the Board which explained that certain fabrications done at the customer site and embedded to the earth are not excisable goods and therefore not exigible to

duty. The appellant has produced the copies of letters dt. 30.03.2011, 24.06.2011 and 23.12.2013. In these letters, the appellant has requested the department to furnish the relied upon documents. The relevant contents of the letters dt. 24.06.2011 and 23.12.2013 reads as under :

24-06-2011

...

"Regarding to this show cause notice, Already, we had requested to the Assistant Director of Central Excise, Intelligence, Regional Unit, MADURAI 14 to supply the copies of certain documents recovered from our factory. We have not received those copies yet now. We are writing another reminder letter to them. After the receiving of those copies of documents we will be able to process this case and reply the notice.

Therefore, we humbly request your esteemed attention please grant me an additional time of 2 months of time for preparing and submitting the reply."

23-12-2013

...

"On receipt of the Show Cause Notice dated 22-12-2010 received on 04-03-2011 we have requested for the supply of relied upon documents vide our letter dtd 30-03-2011, addressed to the Commissioner, Tirunelveli, dtd. 24-06-2011, addressed to the Assistant Director of Central Excise Excise Appeal No.40032 of 2014 Intelligence, Regional Unit, at Madurai 14 & Addressed to the Commissioner of Central Excise, Tirunelveli 7, dtd. on 24-06-2011. But, we have not received the relied upon documents even today.

As we indent to file Appeal against the Commissioner Order in honourable Tribunal, we require the relied upon documents urgently."

10. On going through the facts and records, we find that the appellant has not been supplied with necessary documents. In such circumstances, the matter requires to be remanded to the adjudicating authority who is directed to furnish the relied upon document to the appellant and also give an opportunity of hearing to the appellant with sufficient chance for adducing any further evidence.

11. In the result, the impugned order is set aside. Appeal is allowed by way of remand to the adjudicating authority with aforesaid directions.