

(2015) 04 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No. 7357 of 2004.

Phaarmasia Ltd. - Appellant @HASH Commissioner of C. Ex., Hyderabad

Date of Decision : 22-04-2015

Acts Referred:

Citation : (2015) 319 ELT 360 : (2015) 16 SCC 663

Hon'ble Judges : A.K. Sikri and Rohinton Fali Nariman, JJ.

Bench : Division Bench

Advocate : S/Shri M.P. Devanath, Vivek Sharma, L. Charanaya, Aditya Bhattacharya, R. Ramachandran, Hemant Bajaj, Ambarish Pandey, Rajesh Kumar, Anandh K.S. Vasudevan and Ms. Disha Jain, Advocates, for the Appellants; S/ Shri A.K. Sanghi, Sr. Advocate, T.M. Singh, Ritesh Kumar and B. Krishna Prasad, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. The appellant herein is aggrieved by the orders dated 16-7-2004 [2004 (173) E.L.T. 481 (Tribunal)] passed by Customs, Excise and Service Tax Appellate Tribunal (hereinafter referred to as "CESTAT") whereby the appeal of the appellant against the order of the Commissioner of Central Excise has been dismissed. The appellant had been doing the job work for M/s. Procter & Gamble Hygiene & Healthcare Limited (hereinafter referred to as P&G).

2. The agreement in this behalf was signed between P&G and the appellant in December, 1994, for the manufacture of various goods such as Vicks Action 500, Vicks Vaporub Super Balm, Ultra Clearasil and Mediker on job work basis. Raw material for this purpose was to be supplied by the P&G. The appellant had been filing price declarations under Rule 173C of the Central Excise Rules for the said goods declaring the assessable value based on cost of raw materials supplied by P&G along with processing/conversion charges received from P&G. At the end of each accounting year on finalisation of cost sheet for each of the products by P&G, the appellant was adopting the revised prices as calculated from cost sheet and discharging its duty liability accordingly. The Department undertook the scrutiny of cost sheet and noticed that the appellant was not taking into

consideration the "other works overhead" element in arriving at the assessable value though according to the Department, it formed part of the costing element of "conversion cost" shown in the costing report. This resulted in issuance of show cause notice dated 30-7-2001 demanding an amount of Rs. 45,50,625/- as differential duty for period July, 1996 to September, 2000. Penalty of equivalent amount was also proposed therein. The appellant filed detailed reply to the same. The Commissioner adjudicated the said show cause notice and passed Order-in-Original dated 26-2-2002 demanding differential duty of Rs. 28,15,489/- along with penalty of Rs. 27,45,561/- under Section 11AC of the Central Excise Act, 1944. A further penalty of Rs. 2 lakhs under Rule 173Q of the Central Excise Rules was also imposed. Challenging that order, the appellant filed appeal before the CESTAT, Bangalore, which has been dismissed by the CESTAT vide orders dated 16-10-2004, however, penalty of Rs. 2 lakhs imposed under Rule 173Q of the Rules has been set aside.

3. In this appeal preferred against the order of the CESTAT, learned Counsel for the appellant submitted that he was not questioning the order on merit insofar as it holds that the "other works overhead" should have been calculated in the cost which was to be calculated by the appellant for payment of Excise duty. However, he submitted that the Department could not invoke the extended period of limitation and if that is impermissible, demand for the period July, 1995 to June, 2000, would be time-barred. Therefore, the only question to be determined is as to whether extended period of limitation as per proviso to Section 11AC of the Central Excise Act could be invoked by the Department or not.

4. It is not in dispute that the appellant had not included the cost of "other works overhead" in arriving at the assessable value though it forms part of the costing element of "conversion cost" shown in the costing report. The argument by the learned Counsel for the appellant, however, was that there was no intentional omission/suppression on its part inasmuch as the differential duty was paid on the basis of average cost of raw material as intimated by P&G in their cost audit report and therefore, the appellant acted bona fide in relying upon the said report and recalculating the differential duty based thereupon.

5. This plea may appear to be convincing in the first brush. However, when we see the facts in entirety, it loses its sheen. No doubt, the cost audit report was supplied by the P&G. However, based thereupon, it is the appellant which had worked out the final costing and it is the chartered accountant of the appellant which had prepared the said costing and submitted to the Department. Therefore, the appellant cannot feign ignorance or be pretentious about its innocence in allegedly acting upon the cost audit report as supplied by P&G. This aspect has been dealt with succinctly by the Commissioner in his order in the following terms :-

"14. With regard to invoking of proviso to such Section (1) of Section 11A the department contention was that the assesseees have not submitted the details of differential duty particulars though the cost audit reports were prepared for the

years 98-99 and 99-2000 and Sri Bhaskar Rao in this statement dated 21-6-2001 stated that they have not received the costing details. The assessee in their reply submitted that they have received the costing details only on 21-6-2001 and they handed over the same to one of the anti-evasion officer, who was present in the factory and this fact was not known to Shri Bhaskar Rao and there was no suppression of facts of no mala fide intention as alleged in the show cause notice. This contention is not acceptable and it is clearly an afterthought since the element of other work over head was not made known to the department and the same was not included in the assessable value of the goods and the differential duty was not paid at the end of each accounting year. Hence, the assessee has suppressed the facts and contravened the provisions of the Central Excise Act and the rules made thereunder with intent to evade payment of duty. Therefore, and the rules made thereunder, with intent to evade payment of duty. Therefore, I hold that the invoking of proviso to Section 11A(1) of the Act is justified in this case."

6. We find that the aforesaid analysis is in consonance with the documents appearing on record through which we were taken by the learned Senior Counsel appearing for the Revenue. We, thus, find no merit in this appeal which is, accordingly, dismissed.