Commissioner of Central Excise, Jaipur Vs Electro Mechanical Engg. Corpn. etc.

Court: Supreme Court of India

Date of Decision: July 31, 2008

Acts Referred: Central Excise Rules, 1944 â€" Rule 173Q(1), 209A
Central Excises and Salt Act, 1944 â€" Section 11A(1), 11A(2), 11AB, 11AC, 35L

Citation: (2008) 133 ECC 1 : (2008) 159 ECR 1 : (2008) 229 ELT 321

Hon'ble Judges: V. S. Sirpurkar, J; Ashok Bhan, J

Bench: Division Bench

Advocate: I. Venkatanarayana, Rashmi Malhotra and Shailender Sethi, for P. Parmeswaran, for the Appellant; S. K. Bagaria Poli Kataki, Mohit D. Ram for Meenakshi Arora, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. Respondent in C.A. No. 163 of 2003, viz., M/s. Electro Mechanical Engineering Corporation (for short, "M/s. EMEC") was engaged in the

manufacture of iron and steel structure, steel doors, windows and structure etc. and is holder of Central Excise Registration No. 18/Alw-

1/CH.73/94.

2. On a surprise visit undertaken by the officers of the Central Excise Division, Alwar, it was found that M/s. EMEC had floated two front units,

viz., M/s. Cold Steel Corporation and M/s. Super Steel Corporation in order to fraudulently avail the benefit of SSI exemption under Notification

No. 1/93-CE dated 28th February 1993 which exempted clearances of specified goods from payment of duty and concessional duty in the case

of certain SSI units.

3. Since, according to the Revenue, floating of two front units by M/s. EMEC had resulted in short payment of duty, show cause notices were

issued on 01st June 2000 to all the respondent-companies alleging that M/s. EMEC deliberately and wilfully suppressed the facts regarding its

relationship with M/s. Cold Steel Corporation and M/s. Super Steel Corporation and demanding duty amounting to Rs. 23,04,034/- for the period

from 1.5.1995 to 31.3.2000 invoking extended period of limitation under the proviso to Section 11A(1) of the Central Excise Act (for short, "the

Act"). They were also asked to show cause as to why penalty should not be imposed on them and interest u/s 11A(2) be not recovered and as to

why the SSI exemption available under the aforementioned notification amended from time to time be not denied to them.

4. The respondent-companies submitted their reply on 07th December 2000 stating that all the three units were in existence and were independent

of each other. Each of the units was separately registered with the various Central and State departments and there was no flow back of money

from one unit to another and that they had not suppressed any facts from the Department. It was also submitted that the respondent in C.A. No.

166 of 2003 is the proprietor of M/s. EMEC and was partner in the other two firms which were undertaking their business independently.

5. The Commissioner, vide order dated 2.2.2001, held that all the units were working as a single unit and imposed a duty of Rs. 22,36,534/- after

denying the benefit of SSI exemption to the respondents. He also imposed a penalty of like amount u/s 11AC, penalty of Rs. 10,00,000/- on firm

under Rule 173Q(1) and apart from imposing individual penalty of Rs. 5,00,000/- on the proprietor of M/s. EMEC under Rule 209A, ordered

recovery of interest u/s 11AB.

6. The Commissioner passed the said order on the ground, inter alia, that all the three units had a common office and had some common

employees and came to the conclusion that all the three firms were separate only on paper and not in reality.

7. Respondents carried the matter in appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, ("the Tribunal"). The Tribunal, after

hearing the parties, held that the respondents (appellants before the Tribunal) had disclosed all the material facts, as regards their constitution and

functioning, at the time of their respective registration and it could not be said that they had suppressed any material facts from the Department and

that there was no tangible evidence to show that there was any financial flow back from one unit to another which is most essential for clubbing the

clearances of the units. The Tribunal, relying upon a judgment of the Rajasthan High Court in the case of Renu Tandon v. Union of India 66 (ELT)

375 held that because there were some common employees, the value of the clearances of two units cannot be clubbed unless there is evidence to

prove that there was mutuality of business interest and the units were having financial flow back. Insofar as the invocation of extended period of

limitation is concerned, the Tribunal held that once it is held that no material facts were suppressed from the Department, the extended period of

limitation could not be invoked.

8. Being aggrieved, the Department has filed the present appeals u/s 35L of the Central Excise Act, 1944.

9. It is pertinent to note here that M/s. EMEC came into existence in the year 1985. However, M/s. Cold Steel Corporation came into existence in

November 1990 and M/s. Super Steel Corporation came into existence in July 1996. Respondent in C.A. No. 166 of 2003 is the proprietor of

M/s. EMEC only and was a director in the remaining two units.

10. The case of the Department is that these firms have been clubbed together as certain employees of the three firms were common or that their

premises were adjoining each other. The Tribunal, while setting aside the order of the Commissioner, has held that there is no evidence on record

to prove that there was mutuality of business interest or there was flow back of funds from one unit to another. The finding recorded by the

Tribunal, being a finding of fact, does not call for any interference.

11. As noted earlier, on the question of invocation of extended period of limitation, the Tribunal has held that the demand of duty was for the

period from 1.5.1995 to 31.3.2000 whereas show cause notice was served only on 1.6.2000. The Tribunal has held that since there was no wilful

or deliberate suppression of any material facts, extended period of limitation could not be invoked.

12. We agree with the finding recorded by the Tribunal that there was no deliberate or wilful suppression of any material facts by the respondents

from the Department. Hence, the extended period of limitation could not be invoked. But, since the show cause notice was served on 1.6.2000,

the period from 1.5.1995 to 31.5.1999 being beyond the period of limitation of one year from the date of service of notice, as prescribed by the

Statute. Insofar as the period from 1.6.1999 to 31.3.2000 is concerned, issuance of show cause notice was within limitation. However, the

Tribunal has excluded the entire period. In our view, the period from 1.6.1999 to 31.3.2000 was within limitation, but, since we have upheld the

order of the Tribunal on merits, this issue becomes academic in nature.

13. In view of the above discussion, the appeals are dismissed. No costs.