Cosmic Dye Chemical vs Collector Of Central Excise, Bombay on 6 September, 1994

Equivalent citations: 1994(48)ECC55, 1995(75)ELT721(SC), (1995)6SCC117, [1994]95STC604(SC), AIRONLINE 1994 SC 514

Bench: B.P. Jeevan Reddy, S.C. Sen, K.S. Paripoornan

ORDER

1. The appellant is engaged in the manufacturing of two kinds of dyes. One is called the Rapidogens and the other Naphthol ASG. So far as Rapidogens is concerned, it was held exempt from duty totally by virtue of Notification No. 180/61 dated November 23, 1961. Naphthol ASG was, of course, not exempt from duty under the said notification. In the case of this product, the appellant claimed the benefit of another exemption Notification being Notification No. 71/78 dated March 1, 1978. This notification provided that if the total production of excisable goods in a factory does not exceed Rs. 13.75 lacs in the preceding financial year, then clearances up to five lacs will be exempt from duty. In his declaration filed for the purpose of claiming the benefit of Notification No. 71/78, the appellant stated that the excisable goods manufactured by him during the year 1977-78 (previous financial year) was Rs. 3,25,200 only. On the basis of the said declaration, benefit of Notification No. 71/78 was extended to him.

2. On November 19, 1981, the Assistant Collector issued a notice to the appellant calling upon him to show cause as to why he should not be deprived of the benefit of Notification No. 71/78 inasmuch as he had obtained the said benefit on the basis of a false declaration to the effect that his production of excisable goods was not in excess of Rs. 15 lacs. It was alleged that value of Rapidogens and Naphthol ASG manufactured by the appellant was in excess of Rs. 15 lacs. The appellant submitted his explanation wherein he submitted that he was under the bona fide impression that inasmuch as Rapidogens was exempt from duty by virtue of Notification No. 180/61, value of Rapidogens manufactured by him need not be included in the declaration filed by him for the purpose of Notification No. 71/78. This explanation was rejected and the Assistant Collector revoked the benefit of the said notification and levied the appropriate duty. It may be mentioned that the period for which the duty was so levied is the period commencing from April 1, 1978 and ending with October 23, 1978, i.e., for a period more than six months anterior to the notice. This could be done only if the appellant's case fell within the proviso to Section 11-A. Otherwise not.

3. The Collector dismissed the appeal preferred by the appellant. His further appeal to the Tribunal also failed. The Tribunal, inter alia, adopted the following reasoning while dismissing the appeal :

> While misstatement or suppression of facts, per se, attract the larger period of limitation, contravention of rules without the requisite intent does not. Once this is so, it is obvious that, regardless of intent, a mere suppression of facts or misstatement in the information statutorily required to be supplied to the excise

authorities attract the larger period of limitation. The intent is immaterial in so far as fraud, misstatement or suppression of facts are concerned.

(Emphasis added)

4. In the facts and circumstances of the case, we cannot but hold that there has been a misstatement, in so far as there has been a failure to include the quantity of Rapidogens manufactured during the relevant period in the statement furnished along with the classification list as well as the declaration appended there to. The requirements of the notification in question are unambiguous and there is no warrant or scope for bona fide misconstruction.

5. While it may be that the relevant information in regard to the manufacture of Rapidogens had been, on other occasions, supplied and was in the possession of excise authorities in answer to various queries and in the shape of gate passes, when it came to making a statement for the purpose of availing of the notification in question, the fact remains that the appellant had failed and neglected to furnish the requisite information and thereby was guilty of a mis-statement.

6. In short, the Tribunal was of the opinion that so far as fraud, suppression or misstatement of fact in the information statutorily required to be supplied to the excise authorities is concerned, question of intent is immaterial.

7. The main limb of Section 11-A provides limitation of six months. In cases, where the duty is not levied or paid or short-levied or short-paid or erroneously refunded, it can be recovered by the appropriate officer within six months from the relevant date. (The expression "relevant date" is defined in the section itself.) But the said period of six months gets extended to five years where such non-levy, short levy, etc., is "by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of this Act or of the rules with intent to evade payment of duty....

8. Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words. So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to Section 11-A. Misstatement or suppression of fact must be wilful.

9. Now coming to the facts of this case, the appellant's case is that he thought bona fide that he need not include the value of the Rapidogens in his declaration for the reason that the said product was fully exempt from duty under Notification No. 180/61 dated November 23, 1961. Certain facts are brought to our notice in support of this plea. It is also brought to our notice that on the date of filing of his declaration, two High Courts had taken the view that the goods exempted from duty are not includible within the definition of "excisable goods" as defined in Clause (d) of Section 2. No doubt,

two other High Courts had taken a contrary view. The appellant's factory is in the State of Maharashtra and the Bombay High Court had not taken a view one way or the other. In all the circumstances, the appellant says, he was under the bona fide impression that he need not mention the value of the Rapidogens manufactured by him in his declarations.

10. In the above circumstances and because the facts establish that the misstatement of facts in the declaration filed by the appellant-or the suppression of facts therein, as the case may be-cannot be called wilful, the appeal is allowed. No order as to costs.

11. Though certain other grounds were raised in the appeal memo, the learned Counsel for the appellant has chosen not to press them and hence, need not be dealt with.