Customs, Excise and Gold Tribunal - Delhi
Indofab Engineers And Hindustan ... vs C.C.E. on 7 September, 2006
Equivalent citations: 2007 (114) ECC 260, 2007 ECR 260 Tri Delhi
Bench: S Kang, Vice, N T C.N.B.
ORDER C.N.B. Nair, Member (T)

1. M/s Hindustan Lever Ltd. got a factory erected at Orai, Uttar Pradesh by M/s Indofab Engineers, Bombay. The construction was completed by March 1990.

2. Three Show-cause Notices were issued by the Central Excise authorities alleging that the construction of the factory involved manufacture of parts of structures which are liable to central excise duty. Under the impugned order, duty demand of about Rs. 20 lakhs was confirmed and penalties imposed both on Indofab Engineers and Hindustan Lever Ltd.

3. When the matter came up in appeal before this Tribunal it held in favour of the appellants by relying on its order in the case of Elecon Engineering Co. Ltd. v. C.C.E., Chandigarh 1999 (31) RLT 5. Revenue took up that order in appeal before the Supreme Court and the Hon'ble Supreme Court was pleased to allow that appeal and remand the case back to the Tribunal for a fresh decision. These appeals are, thus, before us on remand.

4. We have perused record and heard both sides.

5. The contention of the learned Counsel for the appellants is that the appeals are required to be allowed on the ground of limitation alone. It is being pointed out that the duty demand has been made in the impugned order by invoking the proviso to Section 11A of the Central Excise Act. The submission of the learned Counsel is that the final show cause notice which remains confirmed in the impugned order was issued only on 29.10.1990 by relying on the proviso to Section 11A. It is the learned Counsel's submission that the appellant had not suppressed any facts and had, in fact, supplied the full details of the construction work undertaken by them under statement dated 15th May 1989 of Shri Gyan Anand, Project Manager of M/s Hindustan Lever Ltd. It is being pointed out that the statement had explained that the appellant's activity of construction is not liable to any excise duty in the light of the decisions in the case of Aruna Industries Vishakapatnam and Ors. v. C.C.E. , SAIL v. C.C.E. etc. The contention of the learned Counsel is that (Sic) the proviso to Section 11A is neither sustainable on the facts of the case nor on the legal position. Learned Counsel has also brought to our notice the decision of this Tribunal in the case of Mohindra & Mohindra Ltd. 2006 (201) ELT 27 wherein the Tribunal accepted the submission that in view of the decision in the case of Aruna Industries. SAIL etc. the contention of the assessee that there was no intention to evade payment of duty is to be accepted. The point made is that it is because of a bonafide belief that activity of cutting metal items to size and shaping them does not amount to manufacture that the appellant did not take any excise licence and pay duty, and not because of any intention to evade duty. Reliance has also been placed on the decision of the Tribunal in the case of Punjab Chemiplants Ltd. v. C.C.E., Chandigarh .

6. As against the above contention of the learned Counsel on behalf of the appellant, learned DR would point out that the appellant had not informed about their manufacturing activities and thus, there was suppression of facts. He would also point out that even after the Excise authorities visited the appellant's unit on 29.12.88, the appellant had not furnished them cost data till May 1989 and thus it is the appellant's suppression of facts and non-cooperation which led to the delay in issuing the show cause notice. Leaned DR also would rely on the decision of this Tribunal in the case of Richardson and Cruddas (1972) Ltd. v. C.C.E. in support of the contention that there was no justification for holding that the activities carried out by the appellant were not manufacturing activity. To this, the submission of the learned Counsel for the appellant is that this judgment remains overruled and that a case of conflicting judicial views does not attract suppression of facts with intent to evade payment of duty.

7. The basic facts in the present case are that the revenue authorities were aware of the factory construction as early as December 1988 and the appellant had also furnished cost data and other particulars in May 1989. The construction work was also complete by March 1990. Thus, the information required for issuance of show cause notice was available to the revenue in time. There was no justification for delay in issuing of show cause notice till April 1990 or October 1990.

8. As regards the issue of intent to evade duty, it is noted that in a statement dated 15th May 1989 of Gyan Anand itself, the Project Manager had explained to the revenue that their activity is not a manufacturing activity in the light of the judgment in the case of Aruna Industries Vishakapatnam and Ors. v. C.C.E., Guntur etc. Thus, the appellant was under a bona fide belief that no excise duty was attracted. This Tribunal has accepted the same explanation in the case of Mohindra & Mohindra Ltd. and other decisions. Thus, in the facts of the case, it is not justified to hold that there was deliberate suppression of facts with intent to evade payment of duty. The demand is, therefore, clearly barred by limitation.

9. In the result, the appeals are allowed on the ground of limitation, without going into the merits of the case.

(Dictated and pronounced in open Court)