Customs, Excise and Gold Tribunal - Delhi
Mittal Pipe Manufacturing Co. vs Commissioner Of C. Ex. on 18 March, 2002
Equivalent citations: 2002 ECR 137 Tri Delhi, 2002 (146) ELT 624 Tri Del
Bench: S T G.R., P Bajaj
ORDER P.S. Bajaj, Member (J)

1. The above captioned appeals have been preferred against the common Order-in-original dated 20-5-94 vide which the Collector had confirmed duty demand of Rs. 47,78,107.71 and imposed penalty of Rs. 10,00,000/- against the appellant No. 1 Company and also imposed penalty of Rs. 1,00,000/- each on other appellants under Rule 209A of the Rules.

2. The appellants received orders from the defence authorities for the supply of complete fabricated buildings. They received supply order from 203 Engineer Regiment vide supply order dated 23-4-88, for the supply of 8 pre-fabricated steel helicopter hangars of the size of 18 mts. x 16.5 mts. suitable to accommodate two 'Chhetah' Helicopters. Similarly, as per supply order dated 1-8-87, they received order for supply of 50 pre-fabricated tubular shelters with outside rlading including roofing as per specification, detailed in that order itself. During the year 1985-86, they cleared excisable goods under Tariff item 68 of the then existing Tariff. They were not eligible for SSI exemption under notification No. 77/85 and as such, were liable to pay duty of Rs. 12,76,802.95 during the year 1985-86. Similarly, during the year 86-87, they cleared pre-fabricated buildings falling under sub-heading 94.06 of the new Tariff valued at Rs. 67,74,207/- and after allowing exemption under notification No. 175/86, dated 1-3-86, they were liable to pay duty of Rs. 2,63,710.35. Likewise, during the year 87-88, they were liable to pay duty of Rs. 16,71,898.75 and of Rs. 99,47,274/- for the year 88-89, for having cleared the pre-fabricated buildings to the defence authorities without discharging the duty liability. They were, accordingly, served with show cause notice for payment of duty, in all of Rs. 47,78,107.71 and penalty was also proposed to be imposed on them. They, in reply, to that notice a plea that they only supplied steel structures and not pre-fabricated buildings to the defence authorities and that the demand was time barred. They also averred that some of the items supplied by them were bought out items and not manufactured by them and as such, the same could not be included while calculating duty liability in respect of the goods cleared by them from the factory premises. But the Collector did not accept their version and passed the impugned order.

3. We have heard both the sides and gone through the record.

4. The main contention raised by the Counsel is that the goods supplied by the appellants to the army authorities were not pre-fabricated buildings, but only steel structures which included boughtout items also. But this contention of the counsel cannot be accepted. From the recprd, it is quite evident that the appellants received supply orders from the defence authorities not for supplying steel structures but for the complete pre-fabricated buildings. Therefore, it can be safely concluded that the goods supplied by them were pre-fabricated buildings and not steel structures, especially when there is nothing on record to suggest that there had been any variation in the supply orders at any stage regarding supply of goods. Even the sale invoices produced by the appellants, for the year 85-86, showed that the goods supplied were pre-fabricated buildings/shelters, which were

under the old tariff classifiable under item 68. It is only after the introduction of new tariff that the appellants in order to deceive the excise authorities started giving mis-description of the goods, as steel structures and components, with a view to take out the classification of the goods from heading 94.06 of the CETA. This was deliberate and intentional act on their part with a view to avoid payment of duty. It is also clear from the record that during the investigation the statement of D.K. Mittal, partner of the Company was also recorded wherein he did not dispute that orders received by the company were for supply of pre-fabricated buildings and supply was made accordingly. The contention of the counsel that pre-fabricated buildings were not supplied as such, but the components were supplied which included even boughtout items and as such, in view of Note 4 to Chapter 94, it could not be said that the appellants cleared pre-fabricated buildings and not the steel structures, cannot be accepted, being wholly misconceived. Note 4 to Chapter 94 only sets out that for the purpose of heading 94.06, expression pre-fabricated buildings means buildings which are finished in the factory or put up as elements, cleared together, to be assembled on site, such as housing or work site accommodation, offices, schools, shops, shed, garages or similar buildings. In other words, clearance of pre-fabricated buildings could be in knocked down condition and assembled at the site of building etc. But it cannot be interpreted from reading of this note that by an element of pre-fabricated, buildings should be supplied at the same time. Besides this, in the instant case, admittedly the orders received by the appellants from the defence authorities were for the supply of complete prefabricated buildings and supply was accordingly made by them as even not disputed by Shri D.K. Mittal, appellant-partner of the company. The fact that flooring was not supplied by the appellants is immaterial and could not lead to conclusion that pre-fabricated buildings were not supplied but only components or steel structures. The boughtout items were admittedly first received by the appellants at their factory premises with invoices in their own names and thereafter, they supplied to the defence authorities along with other items constituting complete prefabricated buildings. Therefore, the goods supplied by them were classifiable under sub-heading 94.06 of the CETA as pre-fabricated buildings.

5. In an identical case [National Steel Industries v. CCE, Chandigarh--1999 (111) EX.T. 90], with similar facts as narrated above, wherein also same plea was raised by the assessee as putforth by the appellants, discussed above, for the classification of the goods that although the orders with them was for supply of pre-fabricated buildings and steel tubular shelters, but they supplied only steel structures which included boughtout items and as such, the goods were not classifiable under sub-heading 94.06 of the CETA, in the light of Note 4 to Chapter 94. But this plea of the assessee was not accepted and the Tribunal observed that the goods cleared by the assessee were classifiable under heading 94.06 of the CETA and that the pre-fabricated buildings could be assembled on the ground without separate floorings. The present case stands fully covered by the ratio of the law laid down in that case.

6. Another argument pressed into service by the counsel is that the demand is time barred as the Central Excise department knew what was being supplied by the appellants to the defence authorities and even approved their classification lists from time to time under the erstwhile tariff as well as under the new tariff. But this contention of the counsel cannot be accepted being devoid of law. The suppression of material facts by the appellants is writ at large on the record. They, during the period when erstwhile tariff was in force, described in some invoices the goods as pre-fabricated

buildings. But in other invoices as well as after enforcement of the new tariff, they deliberately made misdescription of the goods supplied to the defence authorities, in their classification lists as well as in the invoices by describing the same as steel structures and components. Therefore, following the ratio of law laid down in Nizam Sugar Factory v. CCE, Hyderabad--1999 (114) E-L.T. 429. In our view, extended period of limitation had been rightly invoked against the appellants. In this context, reference may also be made to National Steel Industries case (supra), wherein also plea of limitation was raised in the similar set of circumstances but the same was negatived by the Tribunal.

7. Another argument advanced by the counsel is that there had been violation of rules of natural justice as the appellants were not provided an opportunity to cross-examine the concerned officers of the defence authorities and this has resulted in miscarriage of justice. But in our view, this argument of the counsel also cannot prevail keeping in view the facts and circumstances of the case. The perusal of the record shows that earlier the case was remanded vide order dated 22-12-92 by the Tribunal for allowing the appellants an appropriate opportunity of cross-examining the concerned witnesses. The adjudicating authority thereafter, as is evident from the impugned order itself, sent number of letters to the concerned officers for putting up appearance for cross-examination but they could not be made available by the defence authorities due to unavoidable cause. Moreover, the entire case has been built against the appellants on the strength of documentary evidence. No uncross-examined statement of any witness had been used against them by the adjudicating authority. The adjudicating authority has relied upon the supply orders and other documentary evidence brought on record before him. The statement of the witnesses, even otherwise, if had been recorded, could not be of much aid to the appellants in the face of overwhelming documentary evidence against them to establish that the goods supplied by them were complete pre-fabricated buildings and not steel structures and parts. In our view, taking into consideration the facts and circumstances of the case, we do not find any violation of rules of natural justice or any prejudice having been caused to the appellants in presenting their case before the adjudicating authority.

8. In view of the discussions made above, we do not find any illegality or legal infirmity in the impugned order of the Collector so far as it relates to the confirmation of duty is concerned. However, regarding imposition of penalty, the order requires modification, as before the remand of the case by the Tribunal on earlier occasion, penalty imposed on the appellant company was only Rs. 2,00,000/- but after the remand, the Collector raised it to Rs. 10,00,000/-. This, however, in our view, could not legally be done by him. Therefore, the penalty imposed on the appellant No. 1 is reduced to Rs. 2,00,000/- but penalty of Rs. 1,00,000/- each on other appellants is maintained. The appeals of the appellants except for this modification, are ordered to be dismissed.