

Customs, Excise and Gold Tribunal - Tamil Nadu

Commissioner Of Central Excise vs Kerala State Electronics ... on 9 February, 1998

Equivalent citations: 1998 (60) ECC 679

Bench: T Nambiar, A T V.K.

ORDER T.P. Nambiar, Member

1. This is an appeal filed by the department against the orders passed by the Collector wherein he held that the longer period under proviso to Section 11A is not applicable to the facts of this case. The department, in the grounds of appeal, has stated as follows:

The Collector has come to a specific finding that the assessee has been filing RT 12 returns every month alongwith copies of Sectional Debit Advices. These SDAs clearly show that it was only internal document on the basis of which M/s. Keltron Controls transfer certain amount to the assessee and that it was not a sales invoice. After having obtained permission to pay duty under Rule 173C(ii) *ibid* based on the invoice price or prices declared in the gate passes or delivery challans, but choosing to pay duty on the values appearing on the SDA's is clearly an attempt to evade payment of duty by contravening Rule 173C(ii) *ibid*. The Central Excise duty under proviso to Section 11A of the Act is demandable and liable to be confirmed not only for suppression or mis-statement of facts but also for contravention of Rules with intent to evade payment of duty. Therefore, the duty should have been confirmed for the full period and penalty imposed.

It is therefore prayed that the Hon'ble Tribunal may be pleased to determine the following points arising out of the said Order:

(a) Whether after taking into consideration the facts stated above read with the facts given in the Show Cause Notice, the Order of the Collector is a legally correct or proper order.

2. The respondent is absent. They have stated that they are arranging to engage an advocate.

3. We are of the view that no such time as pleaded need be granted. When the case was posted for hearing it was expected of them to take steps to represent them. They have not done so. Hence we heard the Ld. JDR Shri Ravinder Saroop.

4. He stated that the appellants were not furnishing the invoices alongwith RT 12 returns. It was pointed out that the department was under the impression that whatever is mentioned in the Sectional Debit Advice was the correct price. It was therefore pointed out that when subsequently it was found that the same was not correct price the longer time is in view of the final invoice issued by the party's divisional office. He pointed out that there is a suppression with an intent to evade payment of duty. He also pointed out that from page 3 of the order, it can be inferred that the invoices were not produced alongwith RT 12 returns.

5. We have considered the submissions. We find that under Rule 173C(ii) it was permissible to produce the Sectional Debit Advice also. But, it is not clear from the order as to whether any invoice was produced alongwith RT 12 returns. This is a basic factor which is required to be looked into and

more particularly in view of the fact that the respondents were operating under Rule 173C(ii) of the Central Excise Rules, 1944. It is only after these facts are assessed, it should be found out as to whether there was any suppression of a material fact from the knowledge of the department in order to evade payment of duty. Therefore, all these facts are required to be looked into and thereafter a finding should be given in this regard.

6. Even otherwise it should be found out as to which period this plea of limitation will extend and whether it extends to the whole demand or a part period also is to be ascertained. Such demand also covers other aspects which are not agitated by the department. In this view of the matter, it is necessary to find out as to which period this plea of limitation is confined and what will be the duty amount in this regard. These are all facts which should be taken into account and such facts are not available in the impugned order and no record also is produced before us to find out these facts. In the above circumstances, the appeal is allowed by remand to the Ld. Adjudicating authority with a direction to de novo adjudicate on this point of limitation vis-in-vis 173C(ii) procedure and to decide the matter after granting a personal hearing to the respondents. Since other matters dealt with in the impugned order are not challenged, the adjudicating officer need not consider the same.

Pronounced and dictated in the open court.