Jocil Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-1996

Reported in : (1997)(89)ELT99TriDel

Appellant : Jocil Ltd.

Respondent : Collector of Central Excise

Judgement :
1. Appeal No. E/217/95-C arises out of the adjudication order dated 22-11-1994 passed by the Collector of Central Excise, Guntur, by which he has confirmed a differential duty demand of Rs. 43,18,190/- by denying the benefit of concessional rate of duty of 5% ad valorem on soap noodles manufactured by the appellants herein in terms of Notification 12/93-C.E., dated 28-2-1993 holding that the goods attracted 20% ad valorem duty in terms of SI. No. 1 of the Notification as the goods are soap for toilet use. In addition, a penalty of Rs. 4 lakhs has been imposed. In Appeal No. E/1884/95-C, the Commissioner (Appeals) has classified the goods under sub-heading 3401.10 of CETA, 1985 and held that the goods attracted duty @ 20% ad valorem under SI.No. 1 of the Table annexed to Notification 12/93 and set aside the order of the Assistant Commissioner contained in the approval to the Classification list No. 26/93-94.

2. There is no dispute as to the classification of the goods under CETA as both sides join issue with classification under sub-heading 3401.10.

The issue in dispute in the appeals before us is whether the goods are "soap for toilet use" attracting duty @ 20% ad valorem or other soap attracting duty @ 5% ad valorem. The soap noodles in question are manufactured by the process of saponification of oils/fats with caustic soda and lye. Such soap after fitting and conditioning is dried through vacuum dryer and extruded as noodles. Their colour and odour are reminiscent of the oil/fat used for the manufacture of such soap [noodles]. [Soap noodles] require further processing before they become toilet soap. The case of the appellants is that in the form in which soap noodles are presented for assessment and in the form for which the benefit of SI. No. 2 of the Notification is claimed are not soap for toilet use; they have yet to be converted into toilet soap by the process of milling, homogeneous mixing and full saponification, addition of perfumes, etc. Learned Counsel, Shri Asthana refers to the ISI Specification for toilet soap (Page 106 of the paper book) and submits that the description of toilet soap as contained in Clause 3.1.

of IS Specification for toilet soap IS : 2888 -1974 is "toilet soap shall be a high grade, thoroughly saponified, milled soap or homogenized soap or both, white or coloured, perfumed and compressed in the form of firm smooth cakes and shall possess good cleaning and lathering properties." He submits that the goods in question are not useable as bathing soap and requires application of further extensive processes before becoming toilet soap and in connection with as to what is meant by toilet soap, he refers to the decision of the Hon'ble Supreme Court in the case of Oswal Agro Mills Ltd. reported in 1993 (66) E.L.T. 37. In Paragraph 8 of the judgment, the Hon'ble Supreme Court held as follows: "Toilet soap being of everyday household use for the purpose of the bath and having removed its separate identity which it enjoyed preceding amendment and having been not specifically included in "other sorts", it took its shelter in commercial parlance under "household". As stated if anybody goes to the market and asks for toilet soap he must ask only for household bathing purpose and not for industrial or other sorts. Even the people dealing with it would supply it only for household purpose. It may be true that household consists of soap used for cleaning utensils, laundry uses for cleaning soiled clothes and soap toilet is used for bathing but household is compendiously used, toilet soap is used only by the family for bathing purpose. Individual preference or choice or taste of a particular soap for bath is not relevant. The soap 'toilet' would, therefore, fall within the meaning of the word "household" in sub-item (1) of Item 15, of the Schedule. The classification shall accordingly be adopted. The appeals are accordingly allowed." He, therefore, submits that the product in dispute cannot be considered as toilet soap and hence is not covered by SI. No. 1, but comes within the description contained in SI. No. 2 of the Table annexed to the Notification and, therefore, attracts duty at only @ 5% ad valorem. On the aspect of time bar, he submits that the demand is partly barred by limitation as the Show Cause Notice issued is dated 4-2-1994, demanding duty for the period from 1-3-1993 to 7-12-1993 and in the face of the approved classification list for the period in dispute, the appellants cannot be held to be guilty of any suppression or willful misstatement with intent to evade payment of duty so as to attract the extended period of limitation. He relies upon the decisions of the Hon'ble Supreme Court in the cases of Tamil Nadu Housing Board reported in 1994 (74) E.L.T. 9 (SC), Cosmic Dye Chem reported in 1995 (6) RLT 333 (SC) and Pushpam Pharmaceuticals reported in 1995 (78) E.L.T. 401 to support his contention that there has been no suppression or wilful misstatement with intent to evade payment of duty.

3. Opposing the submissions of the learned Counsel, learned DR, Shri Madan draws our attention first to the notification and undisputed classification of the item under sub-heading 3401.10. He submits that the expression "soap for toilet use" contained in SI. No. 1 of the Table annexed to the Notification means any soap that goes further for toilet use, since sub-heading 3401.10 covers soap in any form and, therefore, since soap noodles in this case are further converted into toilet soap either by the appellants themselves or by M/s. Calcutta Chemicals to whom part of the soap noodles are cleared, all the soap noodles are covered by the expression "soap for toilet vise." He seeks to distinguish the judgment of the Supreme Court on two counts : one, the Supreme Court was discussing the meaning of the expression toilet soap while in the present case the phrase to be interpreted was "soap for toilet use" and secondly, the judgment of the Supreme Court was rendered in the context of the old Tariff while the present case relates to the new Tariff. On time bar, he submits that it is very clear from the order of the adjudicating authority that the appellants changed the description of the product w.e.f. the introduction of the Notification 12/93 which amends Notification 39/87 i.e.

in the earlier classification list, they had described their goods as toilet soap noodles (in the Classification List dated 6-11-1992), while in the Classification List effective from 28-2-1993; the goods were declared as "soap in the form of other soaps (not for toilet use)". He submits that this change in description was done deliberately by the appellants in order to avail of the benefit of concessional rate of 5% duty available to goods covered by the description contained in SI. No. 2 of the Table annexed to the Notification. Due to this, the Department has rightly invoked the extended period of limitation.

4. We have carefully considered the submissions of both sides. We find that the basis for holding that the goods are covered by SI. No. 1 of the Table annexed to the Notification is set out in Paragraph 7 of the order of the Collector which is as follows : "7. (i) Soap in any form falls under Chapter sub-heading No. 3401.10. Therefore, soap in noodle form is also soap. As far as effective rate is concerned, soap for toilet use whether or not containing medicament or disinfectants attracts 20% ad valorem under Notification No. 39/87 as amended by Notification No. 12/93, dated 28-2-1993, while other soaps attract 5% ad valorem till the issue of Notification No. 12/94-C.E., dated 1-3-1994 when the rate of duty on other soaps was enhanced to 10% ad valorem.

(ii) By virtue of the agreement entered into with M/s. Calcutta Chemicals Company Limited, Calcutta, the raw materials received, specifications prescribed and the soap noodles manufactured clearly indicate that the soap noodles ultimately were used in manufacture of toilet soaps at Calcutta. Thus, the soap manufactured by the assessees (soap noodles) is for toilet use attracting 20% ad valorem under Notification No. 12/93 as amended. Whether the noodles can be used as such as toilet soap or not is neither material nor relevant for the assessment. The product manufactured by the assessees is nothing but toilet soap although in noodle form requiring further addition of perfume, etc.

(iii) The fact that the assessee declared the disputed product as soap noodles for toilet use before issue of Notification No. 12/93 and changed the description thereafter to 'other soap' clearly indicates the intention to evade the payment of appropriate duty by wilful mis-statement of facts. Therefore, there is enough justification for invoking the proviso to Section 11A of Central Excises and Salt Act, 1944, and for imposition of penalty under Rule 173Q of the Central Excise Rules, 1944. Therefore, the assessees argument that the Department has to bear the consequence of the approval of the classification list by the Assistant Collector is not legally.correct.

(iv) The assessee attempt to plead that the product manufactured by them does not satisfy the description of the toilet soap in the Harmonized System of Nomenclature is also not acceptable for the reason that the Notification is not in respect of toilet soap but in respect of soap (in all forms) for toilet use. The use may be immediate or subsequent.

4.1 The adjudicating authority has held that the soap noodles manufactured are for toilet use because in terms of the agreement entered into with M/s. Calcutta Chemicals Company Ltd. the raw materials received, specifications prescribed and the soap noodles manufactured clearly indicate that the soap noodles ultimately were used in the manufacture of toilet soap. We agree with the learned Counsel that what is relevant is the stage of the goods at the time of presentation for assessment. The goods as they are cleared are not "soap for toilet use" and it is only after they are further processed, they will become toilet soap and are hence not covered by the description at SI. No. 1 of the Table annexed to the Notification but are covered by the description contained in SI. No. 2 thereof. We, therefore, hold that the goods attract duty @ 5% ad valorem. On the question of the demand being partly barred by limitation, since we have already held on merits that the appellants are entitled to the benefit of Notification 12/93 at SI. No. 2 of the Notification and noting that the classification list describing the goods as 'soap in the form of other soap (not for toilet use)' was finally approved, we do not consider it necessary to record a separate finding on the argument regarding limitation. The duty demand and penalty are set aside and the order of the adjudicating authority is modified to the above extent.

The impugned Order-in-Appeal No. E/217/95-C is modified to the above extent. The impugned Order in E/1884/95-C is set aside since we hold that the goods attract duty @ 5% ad valorem and not @ 20% ad valorem.

The appeals are disposed of in the above terms.