

Regency Printers Vs. Commissioner of C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Nov-04-1996

Reported in : (1997)(92)ELT654Tri(Chennai)

Appellant : Regency Printers

Respondent : Commissioner of C.E.

Advocate for Pet/Ap. : Shri. G. Sampath

Judgement :

1. These appeals arise out of the same facts and are therefore taken up together for disposal by this common order. The facts of the case are that on scrutiny of the records, the department noticed that appellants Vijai Industries obtained raw material like paper boards etc. from ITC Ltd. for cutting, slitting and printing of the matter as specified by ITC and collected Rs. 10/- per 1000 slides made by them. They have also in turn supplied paper boards for conversion into slides to M/s. Vijai Industries Unit II M/s. Regency Printers, M/s. Rajhans Enterprises and received back for supply to M/s. FTC Bangalore. The case of the department is that Vijai Industries appeared to be liable to pay duty of Rs. 16,67,721.69 and SED of Rs. 82,843.99 for the period 1/88 to 3/90. This duty amount of Rs. 16,99,548 was paid by M/s. Vijaya Industries. Even before the proceedings started as per their letter dated 23-3-1990 (filed in page 101 of the paper book), the relevant portion of which is reproduced below, M/s Vijai Industries have paid the sum of Rs. 16,99,538.00 : "However, we do not want to give room for any lapses based on interpretation on our part nor we are declined to pay the legitimate taxes due to the

Government. With the cooperation of our customer, we have now paid under protest a duty of Rs. 16,99,538 for the period from Jan. 1988 to 7-3-1990 (Paid TR 6 (Original) challan No. 1/90, dated 22-3-1990 enclosed). This is without prejudice to all our contentions mentioned above. We have voluntarily paid the duty to demonstrate and satisfy you of our bona fides.

We are also of the view that slides would fall under 4819.19 for which the tariff rate is "Nil" We request you kindly to give your considered order on the issues raised above. Till such time, kindly treat the payment made as "Under protest" as per Rule 233B of the Central Excise Rules, 1944".

A sum of Rs. 16,99,538/ is now demanded against those job workers. A sum of Rs. 3,71,033.78 is demanded from Vijai Industries and another sum of Rs. 1,12,99,482.05 is demanded from Regency Printers and Rs. 1,24,579.57 from Rajhans Enterprises. Total of these three sums comes to Rs. 16,99,538 which was already deposited by appellants Vijai Industries on 22-3-1990-in respect of the same goods which have been already charged to duty.

2. Shri G. Sampath, learned Counsel for the appellants contended before us that in terms of the advice given by him to the appellants M/s.

Vijai Industries they had already deposited the above said duty amount in terms of their letter dated 23-3-1990 and they have no objection for this being appropriated towards duty in terms of the impugned order in respect of the three units. He contended that this amount was paid under protest pending the outcome of the appeals in respect of the very same goods which have been held to be dutiable in the hands of the three appellants. He also stated that the appellants will not press their refund claim for Rs. 13,28,503 which was filed before the final order and which is now pending in terms of the adjudication order passed as the benefit of Notification 175/86 has been allowed to the appellants by the lower authority in the case of Vijai Industries. He also stated that the only order which he wants in this case is that the above said deposit may be appropriated towards the respective duty due against the three appellants as this amount was paid more in the nature of deposits, pending the outcome of the proceedings and was in respect of the very same goods.

3. Shri Arulsamy, the learned DR stated that the job workers are the manufacturers and therefore the duty is rightly demanded from them and Vijai Industries at liberty to claim refund as per law. However, on query from the Bench he stated that the above said three duty demanded against the appellants amounted to Rs. 16,99,538/- only. He stated that this was paid before the issue of show cause notice and in respect of the impugned order, the respective manufacturers have to pay the duty.

4. We have considered the submissions made by both the sides. It is seen that as per law, the manufacturer has to pay the duty and the job worker is the manufacturer. In this case as per the advice given by the Counsel, the appellants even prior to the issue of show cause notice had already deposited the duty demanded in respect of the goods, which have been held to be dutiable in the case of the three appellants. The amount was paid under protest pending the outcome of proceeding as could be seen from the portion of the letter extracted above. When there was no demand at that time and when the appellants M/s. Vijai Industries are agreeable for appropriation of the above amount towards the respective appellants, and when they have also made it clear that they are not pressing the refund claim filed before the lower authority pending finalisation of the adjudication order, we find force in the contention of the learned Counsel that this amount already paid can be appropriated towards duty as demanded in terms of the impugned order.

Accordingly we hold that the above said amount should be appropriated against the above three appellants which we hold is the due amount and which is not contested before us. This is subject to the condition that the appellants will not press their refund claim which is pending before the AC. In the case of Vijai Industries and Rajhans Enterprises, the confiscation of the goods for the reasons set out in the order of the lower authority, is upheld. As regards penalty, while we hold that the appellants are liable to penalty in the facts and circumstances of the case we observe that the appellants since they had already paid the duty amount before the issue of show cause notice itself and also at the tariff rate, we hold ends of justice would be served if the penalty is reduced in each case as under:1.

M/s. Vijay Industries Unit I. : Rs. 10,000/- (Rupees Ten thousand)2.

Regency Printers : Rs. 25,000/- (Rs. Twenty five thousand)3.

M/s. Rajhans Enterprises : Rs. 2,000/- (Rs. Two thousand)

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