

Collector of Central Excise Vs. King Plastics

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-12-1997

Reported in : (1998)(101)ELT647TriDel

Appellant : Collector of Central Excise

Respondent : King Plastics

Judgement :

1. This is a Department's appeal against the order of Commissioner of Central Excise (Judicial), Bombay dated 11-7-1990.

2. Learned Departmental Representative stated that the respondents were engaged in the manufacture of 'Plastics pulverised powder', classifiable under Heading 3901.90, out of duty paid plastic granules and were undertaking colouring of plastic granules on job work basis.

It was noticed that they were not holders of Central Excise licence and were clearing the goods without payment of duty. Hence, a show cause notice was issued and the Collector of Central Excise adjudicated the case. The Collector (A) has, however observed that Chapter Note 6 was to be read in conjunction with Chapter Note 3 and held that no case was made out against the party before 1-3-1988 and dropped the proceedings.

The department has come up in appeal against this order as Chapter Note 6 had been amended and in its amended form, it became applicable notwithstanding

anything contained in Note 3 to this Chapter. Further, this amendment was only clarificatory in nature and therefore, applied to the period before 1-3-1988 as well. In this respect, he would cite the judgment of the Tribunal in the case of Collector of Central Excise, Bombay v. Bright Bros. Ltd. reported in 1996 (84) E.L.T. 83 (Tribunal).

3. Learned Counsel stated that the same basic issue namely, prospective or retrospective application of amendment to Chapter Note 6 is involved in a similar matter in the case of Das & Company v. C.C.E. in Appeal No. E/4095/90-C which has been heard and orders reserved.

4. It is observed that learned Counsel is correct to the extent of pointing out that same basic issue of one primary form to another is also involved in the case of M/s Das & Co. and in that case also, the Tribunal is also required to answer the question as to whether amendment to Chapter Note 6 was only clarificatory in nature or it was prospective (and not retrospective in application) and in view of the difference of opinion, the matter is sought to be referred to a Larger Bench. This matter may also, therefore, be tagged with the case of M/s Das & Co. for being similarly referred to a Larger Bench.

5. I have perused the order recorded by the learned Vice President.

According to me, the issue as to whether conversion of Polyvinyl Alcohol into solution amounts to manufacture, has been decided by the Tribunal's order in the case of Collector of Central Excise, Bombay v. Bright Brothers Ltd. reported in 1996 (84) E.L.T. 83 (T) wherein it has been held that, in view of Note 6 to Chapter 39 of the Schedule to the Central Excise Tariff Act, 1985, conversion of one primary form viz.

granules into another primary form viz. powder shall amount to manufacture. This order of the Tribunal has been followed in the case of Sinter Plast Containers v. Collector of Central Excise reported in 1996 (66) ECR 531. Therefore, in my view, the impugned order requires to be upheld and the assessee's appeal merits rejection, and the necessity to refer the matter to a Larger Bench, does not arise.

6. In view of the difference of opinion between Hon'ble Member (Judicial) and the Vice President, the matter is submitted to Hon'ble President for referring it to a Third Member on the following point :- "Whether the appeal was required to be considered in the light of observations and findings of the Vice President and referred to a Larger Bench or the appeal was required to be rejected and there was no need to refer the matter to a Larger Bench." (Jyoti Balasundaram) (S.K. Bhatnagar) Member (J) Vice President Dated: 22-10-1997 Dated : 22-10-1997 7. I have heard Shri Nitin Mehta, the learned Consultant for the assessee. None appeared for the Revenue despite Court Master informing the concerned DR. Hence, the matter after hearing was reserved for orders.

8. It was submitted that note. 6 of the Chapter 39 does not have retrospective effect but only has effect of prospective nature. In support of this contention several Supreme Court judgments were cited as in the case of Reliance Jute Inds. v. Commissioner of Income Tax - AIR 1980 SC 256, A. V. Fernady v. State of Kerala - AIR 1957 SC 657 at page 662 & 663. It was also argued that their pleas raised during the time of argument and in the cross objections pertaining to the eligibility to SSI exemption Modvat credit and other aspects have not been considered in the case of Bright and Brothers. It was also stated that the order of Hon'ble Vice President to propose the matter to Larger Bench is a correct one. There is no finding on all issues by Hon'ble Member (J).

9. On a careful consideration of the matter, I am inclined to agree with the order proposed by Hon'ble Vice President for referring the matter to the larger bench, as Member (J) has not dealt with other reliefs prayed by parties. The file to be placed before the original bench for passing a majority order.

10. In view of the majority opinion, the matter is submitted to Hon'ble President for reference to a Larger Bench on the following point :- "Whether amendment to Chapter Note 6 was only clarificatory in nature or it was prospective (and not retrospective in application) and consequently whether the impugned order was required to be upheld and the assessee's appeal required to be rejected or the impugned order is required to be set aside and the appeal accepted."