

Komal Mfg. Chemist Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-03-1997

Reported in : (1998)(74)LC874Tri(Mum.)bai

Judge : R T Lajja, S Kang

Appellant : Komal Mfg. Chemist Ltd.

Respondent : Cce

Judgement :

1. In this appeal filed by M/s. Komal Mfg. Chemist Ltd., the order-in-original dated 4.3.1991 passed by the Additional Collector of Central Excise, Bombay-II, is under challenge. The appellants were engaged in the manufacture of cosmetics and toilet preparations classifiable under item No. 14-F of the erstwhile Central Excise Tariff. They were also engaged in the manufacture of the goods classifiable under Item No. 68 of the said Tariff. The appellants had one unit in Bombay and had another unit in Faridabad, where the goods classifiable under Item No. 68 of the erstwhile Central Excise Tariff were manufactured. The factory at Faridabad was said to be not a factory within the meaning of the factory as defined under Section 2(m) of the Factories Act, 1948. The assessee had contended that the value of the clearances in respect of their factory at Faridabad, should not be taken into account for arriving at the aggregate value of clearances for the purposes of exemption notification No. 80/80-CE dated 19.6.1980. The adjudicating authority had taken a view that as the goods classifiable under Item No. 68 were not the specified goods for the purposes of notification No. 80/80-CE, there was no

question of their exclusion for computing the aggregate value of clearances. The assessee had also raised the plea of exclusion of post manufacturing charges to arrive at the assessable value which had also been negated by the adjudicating authority. On the question of limitation, he agreed with the assessee and held that the demand of Rs. 44,806.31 issued for wrongly availing of exemption under notification No. 80/80-CE dated 19.6.1980 for the period beyond six months from the date of issue of show cause notice, was barred by limitation. He ordered that an amount of Rs. 20,896/- out of the above said demand of Rs. 44,806.31 was liable to be set aside being barred by limitation. The remaining amount of Rs. 23,910.31 which was within the time limit was confirmed. No penalty was imposed.

3. On behalf of the respondents/Revenue, we have heard Shri H.K. Jain, SDR. We have gone through the facts on record and have perused the impugned order-in-original dated 4.3.1991. Under para 2 of notification No. 80/80-CE it had been provided that nothing contained in that notification shall apply to a manufacturer who manufactures excisable goods falling under more than one Item Number of the Tariff and the aggregate value of clearances of all excisable goods by him or on his behalf for home consumption from one or more factories, during the preceding financial year, had exceeded rupees twenty lakhs. The expression used in the notification is 'Excisable Goods'. The goods falling under Item No. 68 were excisable goods. The goods do not cease to be excisable even when they are exempted under any exemption notification. If the goods are described in the Tariff and are covered by the levy, they remained excisable goods unless they are not covered by the tariff description itself.

4. In the case of Tamil Nadu (Madras State) Handloom Weavers Co-op Society Ltd. v. ACCE, Erode 78 ELT Q57 the Madras High Court had held that once the goods are exempted from excise duty, they do not cease to be excisable goods. The character of a product as excisable goods does not depend on the actual levy of duty, but depends on the description as excisable goods in the Tariff. Similar observations have been made by the Tribunal in the case of Wallace Flour Mills Co. Ltd. v. Collector of Central Excise and Aquamed Laboratories v. Collector of Central Excise. In this case the Tribunal was concerned with the similar issue and had held that the goods falling under item No. 68 were not specified in the notification

and they were, therefore, not specified goods for the purposes of notification No. 80/80-CE. Paras 6, 7 & 8 from that decision are extracted below: 6. This submission is again devoid of any force. Explanation V reads as follows: For the purpose of computing the aggregate value of clearances under this notification, the clearances of any specified goods, which are exempted from whole of the duty of excise leviable thereon by any other notification issued under Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 and for the time being in force, shall not be taken into account." 7. The opening paragraph of the notification makes the meaning of the term "specified goods" clear. The term refers to the excisable goods of the description specified in column 3 of the Table annexed to the notification. Goods falling under Item 68 are not specified in the notification. They are, therefore, not "specified goods" for the purpose of the notification. It follows therefore that the value of clearances of such goods could not be excluded but had to be taken into account for the purpose of computing the aggregate value of clearances under the notification.

8. The Counsel further submitted that exempted goods would not come within the meaning of the expression "excisable goods".

This contention, again, is not tenable. It has been held by this Tribunal, following High Court judgments, that excisable goods do not cease to be excisable goods even though they may be fully exempt from duty in terms of notifications issued under Central Excise Rules 8(1) see Tribunal's decision in *Shree Shankar Industries v. Collector of Central Excise, Bombay* 5. In the case of *Vee Kay an Industries v. Collector of Central Excise, Chandigarh*, the Hon'ble Supreme Court had observed that the value of the goods exempted under a notification were not to be excluded from aggregate value of clearances. Para 2 from that decision is extracted below: 2. Shri A.K. Sinha, the learned Counsel for the appellant assailed both the findings and urged that the value of sales of exempted items could not be aggregated with the sale of nuts and bolts to determine if the value of sales exceeded specified limit is concerned. The submission does not appear to have any merit. A notification granting exemption to a particular item does not result in rendering the item as non-excisable. It only enables a manufacturer to claim exemption on conditions mentioned in the notification. Therefore, the submission

that the Tribunal committed any error of law in aggregating the sales of exempted items cannot be accepted.

6. Thus, we find that the view taken by the adjudicating authority at page 6 of his order is in conformity with the view taken by the Apex Court and the Tribunal in the cases referred to above.

7. As regards the post-manufacturing expenses, the adjudicating authority had relied upon the Supreme Court decision in the case of *Bombay Tyre International* 1983 (14) ELT 1896 (SC) : 1983 ECR 1627D (SC) : ECR C 663 SC.8. The adjudicating authority had already agreed with the assessee on the question of limitation. Where the assessments were provisional, he had held that the demand was not time barred. No penalty has been imposed.

9. Taking all the relevant facts and circumstances into account, we find no material to interfere with the view taken by the adjudicating authority. As a result, there is no merit in this appeal and the same is rejected.

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