Collector of Central Excise Vs. Meltex (i) Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Dec-19-1997

Reported in : (1998)(98)ELT412TriDel

Appellant : Collector of Central Excise

Respondent : Meltex (i) Pvt. Ltd.

Judgement :

1. This is an appeal filed by the department against the order of Collector (A), New Delhi dated 19-9-1990.

2. Ld. DR stated that the respondents are engaged in the manufacture of (i) Flexible, metallised plastic film falling under Chapter Heading 3920.36 and (ii) Flexible laminated plastic film falling under Chapter Heading 3920.38. They were paying Central Excise duty and availing exemption Notification No. 53/88. In order to manufacture this product; the party is using plain plastic film falling under Chapter Heading 3920.12. The plastic film which is used as input is being manufactured by M/s. Easter India Ltd., Nainital and is being procured by the respondent directly. Incidentally it may be noted that M/s. Easter India Ltd. who are presumably supplying the bare plastic film are themselves availing the benefit of exemption under the same notification namely Notification 53/88. The gate passes confirming the above situation were shown to the Collector (A) as recorded in his order-in-appeal.-- Sl. No. Heading Descripti- Rate Condition No. /Sub- on of---1 to 34 - - - -35

39.20 Films 25% If produced out of goods falling under (other adv.H. Nos. 30.01 (sic) 39.15 on which the than of re- duty of excise leviable thereon under generated the CESA, 1944 (1 of 1944) or the addl.

cellulose) duty u/s 3 of the Customs Tariff Act, 1975 (51 of 1975), as the case may be The A.C. has confirmed the demand on the ground that the condition precedent for the grant of benefit of the Notification No. 53/88 is that raw materials used as input should fall under Heading 39.01 to 39.15. Since in the present case the input used is plastic film under 3920.12 which is different from the heading referred to in the above notification, this benefit is not admissible. The Collector (A) has set aside the A.C.'s order.

4. With a view to ensuring uniformity in the matter of assessment of plastic films through out the country a circular has been issued by the Board namely 5/89, dated 10-1-1989 which is being followed in the field formations through out this country. In the circumstances by extending the benefit of concessional assessment in the respondent's case by virtue of this appellate order this would amount to discrimination vis-a-vis other manufacturers who are paying duty at statutory rates under Article 14 read with Article 19(1)(g) of Constitution, in respect of parties who are similarly situated as the respondents. The effect of the exemption notification extinguishes as soon as the inputs falling under 39.01 to 39.15 are used in the manufacture of plastic film. This benefit cannot be repeatedly offered to excisable articles of plastic manufactured by using the plastic film which itself has enjoyed the exemption provided in the notification.

5. He further stated that it is well settled that when the language or an act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak of the intention of the legislature and they would rely on the judgment in the case of K.H. Ghole v. Dhadvel, AIR 1957 Bom. 200, 201; Ganga Bux Singh v. Sukhdai-AIR 1959 141, 147.

6. Ld. Counsel stated that they have been paying duty as per approved classification list w.e.f. 1-3-1988 availing the benefit of Notification 53/88 and they had fulfilled the conditions as laid down in the notification. He further stated that the order of the Collector (A) is required to be upheld because the Notification No.

53/88 covers the item in question. It applies to films produced out of duty paid goods and the bare films from which they were made were duty paid. In any eventuality, the Collector had allowed their appeal subject to verification of documents and therefore it was still open to the department to satisfy themselves further in this regard.

7. Furthermore, the Heading 3920 includes both bare as well as lacquered or laminated films and Sr. No. 35 of the Notification 53/88 is more specific with regard to films other than Sr. No. 32(iii) and therefore it is the former which would be preferred.

8. This is without prejudice to their contention that metallising/lacquering/laminating of films does not amount to manufacture and in this connection he would like to cite the Board's letter No. 93/17/83-CX. Ill, dated 7-4-1984 to this effect. Furthermore as per 18th East Regional Tariff-cum-General Conference held on 24/25th of August, 1984 the expression produced out of materials falling under T.I. 15A(i) did not imply that the goods should be produced directly or immediately out of material falling under T.I. 15A(i). Applying the same ratio in this case also the films are ultimately produced from the materials falling under specified tariff headings.

9. Ld. DR stated that the deptt.'s appeal itself is based inter alia on a circular of the Board issued w.r.t. the new tariff and this very notification and is for the guidance of the field formations and the trade and has binding effect and therefore the Central Excise officers cannot disregard the Board's instructions. In this connection he would like to cite 1991 (51) E.L.T. 265 and 1996 (87) E.L.T. 19 (S.C.).

It is also his submission that as per decision in Someshwar Sehakari Sakhar Karkhana Ltd. and Ors. - 1988 (34) E.L.T. 522 (Bom.) the words and expressions occuring in the notification are to be interpreted in the context in which they occur keeping in view the scheme and object of the notification and actual process of manufacture. It was his further submission that as per judgment reported in 1995 (77) E.L.T.474 (S.C.) the notifications are to be construed strictly and a liberal construction which enlarges the scope was not permissible. Furthermore, even in case of doubt the benefit of doubt should go to State as per 1994 (73) E.L.T. 769.

10. We have considered the above submissions. We observe that the products in question were produced out of duty paid films falling under Heading 39.20 but the exemption in terms of Sr. No. 35 of the notification was available only to films (other than those of regenerated cellulose) classifiable under 39.20 if they are produced out of goods falling under Heading 39.01 to 39.15 on which Central Excise duty/CVD had been paid. Evidently therefore the prescribed condition is not satisfied (Heading 39.20 being not a specified heading for the input).

11. The contention that the input (the bare films) although falling under 39.20 were in turn themselves made out of goods falling under 39.01 to 39.15 is not acceptable because there is nothing to indicate (in the column prescribing conditions) that the intention was to cover even the raw materials out of which inputs themselves were made.

12. Ld. Counsel has referred to some circulars and decisions pertaining to the old Tariff but their ratio can be applied only if it could be shown that in the relevant notification which was applicable (w.r.t.

the new Tariff) either there was an explicit provision to that effect or the same intention could be inferred by necessary implication or otherwise.

13. On the contrary the department's contention that the inputs had themselves already availed the benefit of this notification strengthens their case as there was nothing to show that the intention was to grant the benefit to inputs as well as outputs simultaneously or concurrently i.e. at the same time for the items in question.

14. Insofar as the alternative prayer for considering whether any process of manufacture is involved in converting the plain plastic films into flexible metallised plastic films or laminated plastic films on the ground that all of them fall under Heading 39.20 is concerned, while it is true that 39.20 covers plain plastic films as well as lacquered or metallised or laminated films it is noteworthy that they fall under separate sub-headings. Furthermore it is a well settled point of law by now

that two items falling under the same heading may also attract excise duty if in the process of or as a result of production or conversion of one [form] into another a new product known to the market emerges. Hence the mere fact that both input and output are classifiable under the same heading does not make any difference in this respect. Furthermore, the respondents have not filed any evidence in support of their contention that no manufacture is involved or no new product emerges. Whereas in the tariff they are recognised as distinct items classifiable under different sub-headings.

15. Ld. DR's argument that the departmental authority are bound by Board's instructions is also now a settled point of law but once one side cites one instruction of the Board and the second side another instruction, we have to see which is the more appropriate one; And in the present case we find that it is the DR's citation of Circular No.5/89, dated 10-1-1989 (F. No. 83/50/88-CX. III) which is relevant and applicable to the facts of the present case in as much as it has been issued w.r.t. the tariff items and the notification in question as they stood during the relevant period. This circular shows that metallised plastic films are manufactured in India out of indigenous or imported bare plastic films, and such metallised films cannot be stated to have been manufactured from out of Central Excise duty or CVD paid plastic raw materials of Heading Nos. 39.01 to 39.15; and this only supports the view which we have taken above.

16. In view of the above position, the impugned order is set aside and the appeal of the department is accepted.