Shri Krishna Polyurethane Ind. Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-26-1998

Reported in : (1998)(102)ELT162TriDel

Appellant : Shri Krishna Polyurethane Ind.

Respondent : C.C.E.

Judgement :
1. This is an appeal against the order of Additional Collector of Central Excise, New Delhi, dated 5-6-1991.

2. Ld. Counsel drew attention towards the memo of appeal and the facts of the case as narrated therein and briefly recapitulated them as follows : 3. That the appellants in their only registered small scale Industrial unit and availing benefits under exemption Notification No.175/86-C.E., dated 1-3-1986 as amended, are engaged in the manufacture of furniture and parts thereof wooden as well as those made from polyurethane foam (rigid) falling under sub-heading 9403.00.

4. On 17-10-1988 officers of the Preventive Branch of Central Excise, MOD-I, New Delhi, visited the factory premises of the appellants seized 1,017 pieces of furniture parts, describing the same as 'Articles of Rigid Polyurethane Foam' valued at Rs. 1,45,440.00 and resumed their entire accounts statedly for reason that the said articles of P.U. Foam were being manufactured without obtaining a Central Excise Licence. A statement of one of the Directors of the appellant-company was recorded. A show cause notice C. No. V (39)15/43-CE/89/3877,

dated 23-11-1987 [by mistake shown as 23-11-1987 (It should be 1988)] was issued.

5. The appellants in their reply dated 28-9-1990 to the aforesaid show cause notice, stated, inter alia, that as also mentioned in the statement of one of their Directors recorded on the spot they were manufacturing moulded panels for beds, both single and double, chains/satees and wooden furniture with rigid P.U. Foam frames/moulds mounted thereon, that these moulded panels were nothing but parts of furniture classifiable under Tariff Chapter 94/sub-heading No. 9403.00 meant for 'Other Furniture and parts thereof, that these cannot go out of Chapter 94 and being a SSI unit, the appellants are fully entitled to benefits of exemption Notification No. 175/86-C.E., dated 1-3-1986 as amended, where first clearances of goods upto Rs. 15 lacs value are exempt; That no clock frames, as alleged, had been manufactured in the appellants' factory; That classification of rigid P.U. foam furniture parts under sub-heading No. 3926.10 as 'other articles of plastics and articles of other materials of Heading Nos. 39.01 to 39.14, of polyurethane foam', would be incorrect; That these products were meant for captive consumption only and no clearance of its sale in the open market was effected; That as such, there was no occasion for them to file a classification list, price list etc., or take out L 4 licence; That the invocation of extended period of 5 years under Section 11A of Central Excises and Salt Act, 1944, for the demand of duty was not warranted or justified as they had suppressed nothing from the department with any mens rea, that the provisions of Rule 9 of the Central Excise Rules, 1944, were also not attracted in the case as no clandestine removal of the goods had been undertaken, that their activity of manufacture of parts of furniture was under their bona fide belief that these were classifiable under Chapter 94 of the Central Excise Tariff for which they were eligible for full exemption, that assuming though not admitting that the products under reference fall under Chapter 39 and duty was leviable thereon @ 15% adv. as per Notification No. 54/88-C.E., dated 1-3-1988, they would be entitled to Modvat benefit in r/o duty paid raw materials namely, Polyyol and Isocynate, used in the manufacture of the said rigid P.U. foam mouldings under Rule 57A of Central Excise Rules, and, that in the circumstance no penal action against them could justifiably be taken.

6. The Additional Collector has failed to appreciate that appellants are engaged in the manufacture of only furniture of wooden parts as well as parts moulded from polyurethane foam. P.U. Foam moulded parts are for the exclusive use in the manufacture of furniture and have no alternative use or purpose. As per Chapter Note 2(S) of Chapter 39, 'Articles of Chapter 94 (for e.g. furniture, lamps and light fittings, illuminated signs) are specifically excluded from coverage of Chapter 39. Tariff Heading 94.03/sub-heading No. 9403.00 is meant for other furniture and parts thereof and accordingly parts of furniture, whether made of wood or plastics i.e. would mere appropriately fall under this heading/sub-heading. SSI Notification 175/86, dated 1-3-1986 as amended, is applicable to goods of Chapter 94 of Central Excise Tariff Act, 1985, and the appellants have thus correctly availed the exemption benefit available thereunder. As such, their products viz. parts of furniture made from P.U. Foam (Rigid), are not liable to Excise duty under sub-heading No. 3926.10 read with Notification No. 54/88-C.E., dated 1-3-1988 by which effective rates of duty have been prescribed.

7. It is incorrect to suggest that the appellants suppressed anything from the department with the intent to evade excise duty. They acted in the bona fide belief that their products are covered under Chapter 94 of the Central Excise Tariff and being a duly registered SSI unit their clearances upto first Rs. 15 lacs were fully exempt in terms of Notification No. 175/86-C.E., dated 1-3-1986.

8. In the above stated circumstances the extended period of five years under Section 11A of the Central Excises and Salt Act, 1944, is not attracted for any demand of duty. He further stated that without prejudice to the foregoing the adjudicating authority has failed to consider that assuming though not admitting that the furniture parts made from Rigid P.U. Foam are covered by sub-heading No. 3926.10 as held, the facility of Modvat credit in lieu of excise duty already paid on input raw materials viz. polyol and Isocyanate, would be available under Rule 57A of CESA, 1944 and the same is leviable on mere procedural lapses, especially when duty is demanded on the end products. In this regard, reliance is placed on CEGAT's decision in the case of Maschmeijer Aromatics (I) Ltd, v. CCE, Madras reported in 1990 (46) E.L.T. 395 (Tribunal). The impugned order imposing heavy fine and penalty besides the demand of excise duty is otherwise too harsh

and unjustified while the very issue of classification of the goods is still in dispute.

9. Ld. DR drew attention towards the order-in-original and in particular to the findings of the Collector and briefly recapitulated the same and stated that the contentions of the party are not sustainable as the articles of rigid PU foam were sold in the market and as such. They are goods rightly classifiable under Chapter sub-heading No. 3926.10 of the Schedule to the Central Excise Tariff Act, 1985 and are chargeable to Central Excise duty @ 15% adv. BED and SED @ 5% on BED under Notification No. 54/88, dated 1-3-1988 from the date when the goods were brought in the Central Excise net i.e. on 1-3-1988. The party was required to pay duty w.e.f. 1-3-1988 after complying with the provisions under CESA, 1944 and rules made thereunder as the articles of rigid PU foam were not specified in Notification No. 175/86, dated 1-3-1986 (as amended) for SSI benefits.

The benefits of Notification No. 217/86-C.E., dated 1-3-1986 as amended are also not applicable in their case as the goods i.e. articles of PU foam were used in the goods which were cleared without payment of Central Excise duty. Party's plea that in case the duty is demanded from them, the facility of Modvat should be allowed to them is also not tenable as the party could not follow the statutory provisions under the Central Excise Rules, 1944. It is also found that party had suppressed the fact of manufacture and clearance from the department with intent to evade payment of duty of excise and the extended time limit of five years is applicable in this case.

10. At this stage, the ld. Counsel dropped the points regarding classification and eligibility to Notification No. 175/86 but pressed the issue of Modvat and penalty.

11. We have considered the above submissions. We observe that while narrating the facts the ld. Addl. Collector has referred inter alia to moulded articles of rigid PU foam meant for beds, sette, chair etc. as well as mirrors, door decorators, wooden furnitures and wall clock frames and Headings 3926.10,9403.00 and 9112.00. However, in the operative portion of the order the Collector has confined only to the articles of rigid PU foams considered as classifiable under 3926.10; and during the course of hearing the ld. Counsel has also dropped the dispute w.r.t. Chapter 39. Both the sides have not referred to articles classifiable under

other headings. In view of the above position we take it that at this stage there was no dispute regarding classification in r/o any of the articles regarding which originally the show cause notice was issued and therefore the Collector's order regarding classification of PU foam articles under 3926.10 stands. The ld. Counsel has also dropped the point regarding notification.

Consequentially duty liability on manufactured articles of PU foam also gets confirmed subject to our observations indicated below including those regarding Modvat.

12. (We may also observe en passe that the seizure memo includes a reference to both semi-finished and finished articles; and, although no reference to the same has been made by either side we would like to mention that since in the normal course, the tax is on fully manufactured articles it is not clear why the semi-finished articles were in the first place seized and what happened to them thereafter. It is also not clear why the Collector has not referred to articles of material other than PU foam and articles which were of a very different type such as mirrors and wall clock frames etc., in the operative portion of his order but we are not labouring these points futher in the abovesaid circumstances).

13. In respect of fully manufactured articles held as liable to duty as above the ld. Counsel's request for allowing consideration of Modvat benefit, if any, due is required to be duly taken note of and the proper officer is directed to consider this aspect keeping in view a series of Tribunal's orders that minor procedural infractions, if any, should not come in the way of a substantial benefit if otherwise due.

Further looking to the totality of facts and circumstances the redemption fine is reduced to Rs. 1,000/- and the penalty is set aside.