Trupti Multi Services Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-23-1998

Reported in : (1998)(102)ELT700TriDel

Appellant : Trupti Multi Services

Respondent : Collector of Central Excise

Judgement :

1. This appeal arises from the Order-in-Appeal passed by the Collector of Customs and Central Excise (Appeals), Pune dated 27-7-1990. The question raised in the appeal is in relation to paragraph 7 of Notification No. 175/86.

2. Appellants are manufacturers of cylindrical blocks falling under Heading 8409.00 of the Central Excise Tariff Act. On a visit to the factory of the appellants by the Central Excise Officers, it was found that the appellants were manufacturing cylindrical blocks and packing them in cartons having brand name of two different manufacturers and clearing the same without payment of duty. The Department alleged that since the appellants were packing the cylindrical blocks manufactured by them in cartons having brand name of other parties and the said parties were not eligible for the exemption under Notification 175/86, the appellants were not eligible for the exemption under Notification 175/86 as amended. The show cause notice alleged that after amendment of Notification 175/86 by Notification No. 223/87, dated 22-9-1987, SSI Exemptions in respect of specified goods affixed with the brand name/trade name of a person who is not eligible for the exemption under Notification 175/86, were not eligible for SSI Exemption. A demand of duty

was accordingly worked out. The Assistant Collector who adjudicated the matter held that since the goods were sold in the market in the name of the brand name owners and the Bills/Invoices were issued by that name, it was proved beyond doubt that the goods were sold under the brand name of other persons and, therefore, the appellants were not eligible for claiming benefits of Notification 175/86. In appeal, the Collector (Appeals) rejected the asessee's contention that for denying the benefit of exemption Notification 175/86, the brand name should have been affixed on the goods themselves. Collector (Appeals) observed that in some cases the manufactured goods can be so small that a brand name cannot be affixed on the goods. He also rejected the appellants' further contention that they were not packing cylindrical blocks into the cardboard boxes but were putting the cylindrical blocks into cardboard blocks at Satara though the cylindrical blocks were actually manufactured in the Bombay unit. Further, since the appellants had failed to prove that the brand name owners were also a small scale manufacturer entitled to the benefit of Notification 175/86, they could not be allowed to avail the benefit of the said notification.

3. When the matter was called none appeared for the appellants. It is, however, seen that appellants had by letter dated 25-2-1998 requested for decision of the matter on the basis of available records and merits of the case.

4. We have heard learned JDR in the matter and proceed to dispose of the case as under: The learned JDR submitted that in terms of Notification 175/86 no manufacturer who affixes the brand name of another person, who is not entitled to the benefit of small scale exemption under the said notification would be eligible for the exemption under Notification No. 175/86. He submitted that it was not in dispute in the present case that the appellants have not been able to show that the brand name owners were eligible for the benefit of the said exemption notification. He also reiterated the findings of the authorities below and pleaded for rejection of the appeal.

5. We have considered the submissions and have perused the records.

Paragraph 7 of Notification 175/86 which is relevant for deciding the issue at the relevant time read as follows :- "7. The exemption contained in this notification

shall not apply to the specified goods where a manufacturer affixes the specified goods with the brand name or trade name (registered or not) of another person who is not eligible for the grant of exemption under this notification: Provided that nothing contained in this paragraph shall be applicable in respect of the specified goods cleared for home consumption before the 1st day of October, 1987".

The appellants have contended that paragraph 7 was not attracted in their case since the brand name of the brand name holder has not been affixed on the cylindrical blocks manufactured by the appellants. The brand name was affixed only in the cartons which were used for packing cylindrical blocks. They have submitted that it is the well-settled legal position in all fiscal matters that a notification should be interpreted strictly in terms of the language employed and no condition which is not contained in the notification should be read into it when the meaning of the words is clear. They have relied on the following decisions in support: (b) German Remedies Ltd. v. CCE, Bombay 1987 (28) E.L.T. 144 (Tribunal) We observe from the impugned order that the Collector (Appeals) had himself seen the finished goods before passing the impugned order. He has observed that there was enough room for the manufacturer to put his brand name on the finished goods. He had observed that the practice followed by the appellants 1* appears to be that they were putting the brand name on the container rather than on the finished goods themselves. This was largely a matter of practice followed by different manufacturers. We find that these observations have force. The mere fact that the brand name is affixed on the container rather than on the goods themselves will not make paragraph 7 of Notification No. 175/86 inapplicable. The expression that the exemption will not apply to "the specified goods where a manufacturer affixes the specified goods with the brand name or trade name of another person..." cannot be interpreted to mean that the affixing of the brand name has to be directly on the finished goods in all cases. A brand name is meant for relating the product with the name of the owner of the brand. It is not necessary in all cases that this can be achieved only by affixing the trade name, logo or brand name on the finished product itself. In cases where the finished goods are of such a nature that it is not possible to affix or display in a suitable manner the trade name, logo or the brand name, the purpose can be achieved by displaying the brand name in the packing material. We are, therefore,

in agreement with the contention of the Departmental Representative that the mere fact that the brand name has been affixed in the container and not in the finished goods itself will not make paragraph 7 inapplicable in the facts of the present case. We also find merit in the Departmental Representative's contention that it is for the appellants to show that the brand name owner was eligible for the exemption under Notification No. 175/86. As regards the case law cited by the Appellants, we find that the issue relating to affixing of brand name, etc. on container does not appear to have been dealt with in the said orders.

6. In the above circumstances and in view of the discussion in the preceding paragraphs, we find no merit in the present appeal and the same is dismissed.