

Sundram Electronics Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-28-1998

Reported in : (1998)(104)ELT378TriDel

Appellant : Sundram Electronics

Respondent : Collector of Central Excise

Judgement :

1. In this case, a demand of Rs. 6,75,124.22 has been confirmed against the appellants as duty short paid on clearances of metallised plastic films during the period from 22-7-1987 to 31-3-1990, holding that the appellants who are a registered SSI Unit were not eligible to the benefit of concessional rate of duty in terms of Notification No.269/86, dated 24-4-1986 and Notification No. 53/88, dated 1-3-1988 for the reason that the bare films on which the appellants carried out metallising were not produced out of goods falling under specified Chapter sub-headings in the notifications viz. CET sub-headings 3901 to 3915 on which duty had already been paid. In addition a penalty of Rs. 50,000/- has been imposed for contravention of the relevant rules. The extended period of limitation has been invoked by the adjudicating authority.

2. Learned Counsel mainly contends that the process of metallising does not amount to manufacture and that the extended period of limitation is not available to the Department since the appellants had all along been filing RT 12 returns along with the Bills of Entry in which the description of the imported films was clearly given, indicating their classification as under subheading 3920.32 and,

therefore, it cannot be said that the appellants were guilty of mis-statement or suppression with intent to evade payment of duty since the Department knew all along that the films that were being imported did not fall under sub-headings 3901 to 3915.

3. Learned SDR, Shri Madan submits that the process of metallising amounts to manufacture since the metallised film has different name, character and use and is a distinct excisable commodity different from the original bare plastic films on which the process of metallising was carried out. On time bar, he reiterates the findings contained in paragraph 15 of the impugned order, highlighting the fact that the appellants had deliberately mis-stated in their classification list, which is the relevant document for considering the extension of the benefit of the Notification Nos. 269/86 and 53/88, that the metallised films were being produced out of duty paid goods falling under sub-headings 3901 to 3915, while the appellants all along knew that the bare films fell under sub-heading 3920.

4. We have carefully considered the submissions of both sides. While it is true that the appellants had stated in their classification lists that the metallised films are being produced out of duty paid goods falling under CET sub-heading 39.01 to 39.15, when they knew that the films instead fell under CET sub-heading 39.20, it is also true that the description of the imported films indicating their classification under sub-heading 3920.32 were being regularly filed along with RT 12 returns by the appellants for the purpose of availment of credit of countervailing duty on paid imported goods. Therefore, the fact that the imported bare films fell for classification under sub-heading 3920.32 of the Schedule to the CETA, 1985 was well within the knowledge of the Department. It has been held by the Hon'ble Supreme Court in the case of Pushpam Pharmaceuticals Co. Ltd. v. CCE, Bombay reported in 1995 (78) E.L.T. 401 (S.C.) that "where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression". Further we find that it is only in January, 1989 that the CBEC clarified that "metallised films manufactured in India from out of duty paid imported bare plastic films should also be charged to Central Excise duty @ 35% ad valorem and not at the concessional rate of duty @ 25% ad valorem because such metallised films cannot be stated to have been

manufactured from out of Central Excise duty or CVD paid plastic raw materials of Headings 39.01 to 39.15". Therefore, the contention of the appellants that there was room for doubt in the matter and that prior to the Circular of January, 1989 the Department was also entertaining the view, adopted by the appellants viz. that the metallised films made out of duty paid imported bare films were entitled to the benefit of concessional rate of duty under Notifications 269/86 and 53/88, is well founded. For the above reasons, we hold that the appellants are not guilty of suppression or mis-statement with intent to evade payment of duty and hence the extended period of limitation is not available to the Department in this case.

5. In view of the above, we set aside the impugned order and allow the appeal without going into the merits of the matter.

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