

Jayashree Insulators Vs. Collector of Central Excise

Jayashree Insulators Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/14613

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-06-1998

Reported in : (1999)(63)ECC206

Appellant : Jayashree Insulators

Respondent : Collector of Central Excise

Judgement :

1. In all these appeals, common question of law and facts are involved, hence they are all taken up together for disposal as per law.

(i) with regard to exisability and dutiability of felspar powder obtained by the process of grinding/crushing the felspar lumps into felspar powder and about its classification under Chapter Heading 2505.00.

(iv) as to whether the penalty is imposable in the facts and circumstances of the case.

3. The appellants are engaged in the manufacture of insulators and bushings falling under Chapter Heading No. 85.46 of the Central Excise Tariff Act. One of the raw materials used is felspar powder which is a mineral and is used along with other minerals to manufacture the resultant product. The appellants were issued with show cause notice dated 22-2-1990, wherein it has been alleged that during the course of checking the records the intelligence department found that during the course of manufacture of electrical insulators the material viz.

felspar powder was being used and that the contention of the department was that the said material fell under Chapter Heading 2505.00. It was further alleged that on enquiry it was found that the appellants were supplying raw materials to M/s. Panchmahal Stone Milling Industries, Godhra and M/s. Sreenathji Mineral Industries, Godhra for crushing into felspar powder and that the said powder has been received by them without payment of Central Excise duty and the goods had been utilised by them in the manufacture of electrical insulators without discharging the duty liability by the said two other concerns mentioned above.

Thus, the demands were raised on the basis of clearance of felspar powder said to have been manufactured without obtaining any licence during the period Feb., 1985 to 29-8-1989.

4. It was contended by the appellants that conversion of felspar lumps into powder form does not amount to manufacture within Section 2(f) of the Act and that the conversion was done on job work order by the other two independent manufacturers and the transactions between the appellants and the job workers was on principal to principal basis based on purely commercial consideration and a detailed job order specifying the quantity, rate of job work etc. were set out in the agreement. It was also contended that the demands were time barred and there were no deliberate attempt with an intention to evade payment of duty. It was also contended that the job workers were small scale industries registered as such and were eligible for small scale exemption available under Notification No. 175/86-C.E., dated 1-3-1986 and there is no liability on the part of the job worker to pay any excise duty on the felspar powder in question. It was also contended that the felspar powder is consumed by the appellants in the manufacture of insulators and bushings and the final product i.e. the insulators and bushings fell under Heading 85.46, which is covered under Modvat scheme. Hence, under the Modvat scheme, under Rule 57F the job worker is also entitled to claim full exemption from the payment of excise duty on the felspar powder, under the provisions of Rule 57F(2), as the raw material and the final product are both covered under the Modvat scheme. It was also pointed out that under the provisions of Notification No. 214/86-C.E., dated 1-3-1986, the job workers are exempted from payment of excise duty, when such goods are used by other manufacturers and the final

product is also covered under the Modvat scheme. They also submitted that no penalty is liable, as there was no contravention of any provisions. Further all these pleas were rejected by the Additional Collector in the impugned order and hence the conversion of felspar lumps into powder amounted to manufacture in terms of Note 2 of Chapter 25. He has also held that the clearances of all the three parties are required to be clubbed and that they were not entitled for the benefit of Notification No. 175/86, dated 1-3-1986. He held that M/s. Jayashree Insulators, Kalol are the manufacturers within the meaning of statutory definition of Section 2(f) of Central Excises & Salt Act, 1944 and the product what manufactured through job worker which is classifiable and chargeable to duty under sub-heading No.2505.00 is leviable to be paid by M/s. Jayashree Insulators. In that view of the matter, he confirmed the duty for the period Feb., 1985 to 29th August, 1989 under Rule 9(2) of Central Excise Rules, 1944 read with Proviso to Sub-section (1) of Section 11A of the Act. He also ordered for confiscation of 166.66 MT of felspar powder valued at Rs. 2,18,491.26 and further granting them redemption on payment of redemption fine of Rs. 25,000/-. He imposed penalty of Rs. 10,000/- on M/s. Jayashree Insulators, Kalol. He has also imposed penalty of Rs. 10,000/- on the either of two job workers M/s. Panchmahal Stone Milling Industries and M/s. Shrinathji Mineral Industries.

5. We have heard Shri M.A. Rangaswamy, the learned Advocate for the appellants and Shri A.K. Madan, the learned DR for the Revenue.

7. The learned Advocate submitted that the issue pertaining to conversion of felspar lumps into powder was considered by the Tribunal in large number of judgments and it was held that crushing of stones into chips powder amounted to manufacture. He submits that he is not particular in contesting this issue in view of the large number of judgment of the Tribunal as well as Larger Bench of the M.P. High Court rendered in the case of Kher Stone Crusher v. G.M. District Industries Centre, as reported in 1992 (61) E.L.T. 586, S.N. Sunderson (Minerals) Ltd. v. Suptd. (Preventive), Central Excise, as reported in 1995 (75) E.L.T. 273 and that of Larger Bench judgment of the Tribunal rendered in the case of Raymond Cement Works v. Collector of Central Excise, as reported in 1995 (76) E.L.T. 340. However, he submits that the question of clubbing the clearances of independent

manufacturers with the clearance of the appellants does not arise as the department has not shown that M/s. Panchmahal Stone Milling Industries and M/s. Shrinathji Mineral Industries are dummy units of M/s. Jayashree Insulators. He pointed out that the department itself has accepted them as a job workers and hence the question of clubbing their clearances does not arise, as the transaction was on the basis of principal to principal basis. He also pointed out that in the case of S.N. Sunderson (Minerals) Ltd. the High Court had taken a view that in view of two school of thoughts on the aspect of manufacture there was bonafide belief on the part of the manufacturers with regard to non-dutiability of the item and hence invoking of larger period and imposition of penalty in such circumstances, did not arise. As regards the aspect that job worker is an independent manufacturer, the learned Advocate relied on the judgment rendered in the case of Fusion Polymers Ltd. v. Collector of Central Excise, as reported in 1991 (56) E.L.T. 665. He also relied on several judgments to support his view on non-invokation of larger period and non-imposition of penalty in this matter.

8. The learned DR submitted that M/s. Panchmahal Stone Milling Industries and M/s. Shrinathji Mineral Industries are hired labourers and hence job work carried out by them was required to be considered as having been manufactured by M/s. Jayashree Insulators alone. He justified the invokation of larger period as well as imposition of penalty.

9. On a careful consideration of the matter, we are of the considered opinion that the issue pertaining to the manufacture has been considered by the Larger Bench judgment of the Tribunal rendered in the case of Raymond Cement Works which has been followed in the earlier judgment of the Tribunal rendered in the case of Ajanta Marble & Chemical Industries v. Collector of Central Excise, as reported in 1991 (53) E.L.T. 457 and another judgment of the Tribunal rendered in the case Collector of Central Excise v. Deen Fertilizers & Minerals, Dehra Dun and Anr. as reported in 1991 (17) ETR 505. The Larger Bench also overruled the judgment of the Tribunal rendered in the case of SAIL v. Collector of Central Excise, as reported in 1991 (17) ETR 535 in view of the judgment of the M.P. High Court. There was a single Bench judgment of the M.P. High Court and also Division Bench judgment of the same High Court on this issue hence the matter was

referred to the Larger Bench. The Larger Bench in the case of Kher Stone Crusher (supra) of the M.P. High Court held that the item is to be regarded as goods and it is excisable and dutiable. Relying on the Supreme Court's judgment, the Larger Bench of the High Court held that conversion of lime stones into chips and powders amounted to manufacture. In view of these citations, the aspect pertaining to manufacture has to be held in favour of the Revenue.

10. As regards the invocation of larger period, the Division Bench of the M.P. High Court in the case of S.N. Sanderson (Minerals) Ltd. held that in view of the conflict of decisions on this aspect the manufacturers holding bona fide belief with regard to non-excisability is required to be accepted and hence larger period and penalty cannot be imposed. In that view of the matter, respectfully following the Division Bench and Larger Bench's judgment of the M.P. High Court, the contention of the appellants that they held bona fide belief is required to be accepted and therefore, larger period cannot be extended in the present case and hence as a consequence penalty cannot be imposed.

Therefore, the demands beyond the period of 6 months and imposition of penalty on all the three parties is required to be set aside.

11. The other contentions raised by the appellants are that the appellants are independent manufacturers and that the relationship between M/s. Jayashree Insulators is that all the two other manufacturers is on the basis of principal to principal and hence the clearances cannot be clubbed. There is merit in the submissions, in view of the fact that the department has not shown that the other two industries are dummy units of M/s. Jayashree Insulators. It is admitted that the other two units are carrying on work what was the ground taken by the Revenue is that the other two units are hired labourers of M/s.

Jayashree Insulators. The findings on record does not disclose that M/s. Panchmahal Stone Milling Industries and M/s. Shrinathji Mineral Industries are hired labourers, as they are independent manufacturers and the agreement clearly discloses that arrangement is that of principal to principal basis. This aspect has been gone into in the case of Fusion Polymers and it has been clearly held that the job workers, who carries out the work on the basis of material supplied by the

principal manufacturer is an independent manufacturer and that supplier of the raw material cannot be held to be a manufacturer. In that view of the matter, the finding given by the Additional Collector that the two units are hired labourers is required to be set aside. In that view of the matter, the impugned orders are set aside and the appeals allowed.

11. With due respects to the Hon'ble Judicial Member, my views and orders are as follows :- 12. I observe that the conversion of felspar lumps into powder by grinding/crushing is the basic issue which is required to be considered in the context of Section 2(f) of the Central Excise Act and Chapter Note 2 of Chapter 25 of the Tariff. These provisions have been interpreted by the Tribunal in its Order in the case of SAIL reported in 1991 (54) E.L.T. 414; And in my opinion it is incorrect to say that this order of the Tribunal has been over-ruled by M.P. High Court in the case of Kher Stone Crusher or a Larger Bench of the Tribunal. The judgment of the M.P. High Court in the above case has been passed with reference to the Sales Tax Act and the Hon'ble Court had come to the conclusion in the facts and circumstances of the case before them that conversion of boulders or stone into 'gitti' amounts to manufacture as there is transformation of the stone and a new different commercial article is produced. It has nowhere referred to or mentioned the Tribunal's Order in SAIL case (supra). In the SAIL case on the one hand, Section 2(f) and Chapter Note of the Chapter had been referred to, on the other hand, it was emphasised that the department had not produced any evidence that distinct commercial commodity known to the market had come into existence. In fact coming into existence or otherwise of a new product was considered crucial and this aspect has been cited approvingly by two of the three Members [M(T) as well as the V.P). In their portion of the order in the case of Raymond Cement Works and the Majority Opinion had not over-ruled the ratio of the SAIL case.

In fact, the final order passed on the basis of Majority Opinion is in respect of time bar and penalty only. The fact that in Chapter 25 grinding and crushing has not been indicated as a process amounting to manufacture and that coming into existence of a new commodity was crucial has not been disputed by anybody and has not been overruled by any Bench of the Tribunal.

13. Even otherwise, it is well-settled that a process can be considered as a manufacturing process only if it gives rise to a new product or commodity known to the market and it is an important principle laid down by the Hon'ble Supreme Court which is being followed by all the Benches. Whether grinding/crushing has resulted in the production of a new commodity or not is a question of fact and the position varies from case to case. (For example, in the case of crushing/grinding of soap-stone, the process results in production of telcom powder, a commodity well-known to the trade in the market, hence a manufacture is involved). Therefore, what is required to be seen in this particular case is whether by crushing/grinding of felspar, a new product known to the market and traded as such had come into existence. In this respect, I find that the Department has not produced any evidence to this effect and, therefore, its case has remained un-substantiated.

14. Further, in so far as the question of clubbing the three appellants is concerned, there is no evidence to show that the transactions were not on principal to principal basis and, therefore, the appellants' contentions have to be given due weightage; even otherwise there is nothing to doubt their bona fides in the circumstances of these cases.

Therefore, irrespective of our decision on merits, the demands are also barred by time and the penalty is not imposable.

15. In view of the above discussion, I hold that the impugned orders are required to be set aside and the appeals allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com