

TIn Box Co. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-05-1999

Reported in : (1999)(82)LC816Tri(Delhi)

Judge : P Jain, Vice-, J Balasundaram

Appellant : TIn Box Co.

Respondent : Cce

Judgement :

1.1. The appellants herein have two units. In one unit they are manufacturing lacquered or printed sheets out of metal sheets purchased by them from the market. The process of lacquering and printing is done by them with the aid of power. These sheets so printed and lacquered are sent by them to the other unit i.e. unit no. 2 where metal containers are manufactured out of the said printed and lacquered sheets without the use of power. Revenue alleged in a show cause notice dated 17.3.1989 that the appellants herein were wrongly availing the benefit of Notification 71/83 dated 1.3.1983 and Notification 59/86 dated 10.2.1986 for clearance of metal containers manufactured in their unit no. 2 alleged to have been manufactured without the aid of power although the said metal containers were manufactured from the printed and lacquered sheets in which power was used in unit no. 1.

Consequently, the benefit of the said notification has been denied and a demand of Rs. 19,97,719.00 for the period 1.2.1984 to 31.3.1988 has been confirmed

against the appellants. The plea of limitation taken by the appellants before the adjudicating authority that there was no suppression or wilful mis-statement on their part and therefore, the show cause notice was barred by time, was also rejected by the adjudicating authority. Hence this appeal by the appellants herein.

2. Learned advocate Shri M. Chandrashekharan for the appellants has urged that this precise issue of dutibility of metal containers manufactured in unit no. 2 came to be taken up before the Assistant Collector of Central Excise concerned in the context of notification No. 94/70 dated 1.5.1970. It was held by the Assistant Collector concerned that use of power in lacquering and printing of sheets in unit no. 2 could not be considered to be use of power in manufacture of metal containers in unit no. 2 inasmuch as lacquered and printing sheets manufactured in unit no. 1 could not be treated as specific to the manufacture of metal containers in unit no. 2. In coming to that conclusion the Assistant Collector relied on a circular of the Board dated 18.7.1977 which had held that lacquering and printing of sheets is a tradeable commodity by itself and therefore lacquering and printing of sheets by itself could not be said to be a process in or in relation to the manufacture of metal containers. Learned advocate, Shri Chandrashekharan relies upon this judgment of the Assistant Collector both on merits and also for limitation. He submits that the position of process of manufacture of metal containers continues to be the same and it has not changed even today. Therefore, that judgment would be equally good so far as non-sustainability of demand on merits is concerned. He submits that even if it is assumed that that judgment of the Assistant Collector may be arguable in the light of the subsequent judgments of Supreme Court in the case of Standard Fire Works 28 ELT 556 (SC) : 1987 (11) ECR 358 (SC) : ECR C 1069 SC and Rajasthan State Chemicals 55 ELT 444 (SC) : 1991 (36) ECR 465 (SC), the appellants have a strong case on limitation inasmuch as the department was fully aware of the fact that the lacquered and printed sheets made with the use of power in unit no. 1 were utilised in unit no. 2 for manufacture of metal containers without the aid of power. He, therefore, submits that the allegation of wilful misstatement or suppression of facts or contravention of any rules with an intent to evade payment of duty in the aforesaid facts and circumstances cannot be sustained against the appellants. This specific plea was taken before the adjudicating authority but the said authority

has not discussed it from the angle of limitation. He has taken note of this judgment of the Assistant Collector from a different angle and on different issue which was also involved in that order and further this judgment has been taken note of only in the context of the merits of the demand and not for the issue of limitation. Learned advocate, therefore, submits that in any case, the demand of duty is barred by time since the show cause notice has been issued well beyond the period of six months for the entire period of demand.

3. Opposing the contentions, learned SDR, Shri R.D. Negi submits that it is not denied by the appellants that lacquered and printed sheets in which power was used in unit no. 1 were removed to unit no. 2 and from those sheets metal containers have been manufactured. Therefore, it cannot be denied by the appellants that metal containers manufactured in unit no. 2 were manufactured in relation to which power has been used. He relies on the judgments of the Apex Court as already referred to by the learned advocate and mentioned supra. He also relies on Karnataka High Court's judgment in the case of Deepak Extrusion and Anr. reported in 1988 (34) ELT 432 (Kar.) : 1988 (17) ECR 83 (Kant) in support of the above proposition. On the question of limitation, he reiterates the findings of the lower authorities. He further submits that since the adjudicating authority has not taken cognizance of the judgment of the Assistant Collector, as mentioned above, the case may be remanded for reconsideration of the said plea by the adjudicating authority.

4. We have carefully considered the pleas advanced from both sides. We observe that the appellants herein had taken a very specific plea in para 6 of their reply dated 20.7.1989 to the show cause notice regarding the aforesaid judgment of the Assistant Collector and in the face of the said judgment it was asserted before the adjudicating authority that allegation of mis-statement and suppression of facts and contravention of any rule with an intent to evade payment of duty should not be sustained. We observe from the impugned order that this plea has not been dealt with by the adjudicating authority. In one sentence the adjudicating authority has brushed aside the plea of limitation by holding as follows:- I observe that the party is not selling sheet after painting and lacquering and manufacturing metal containers without the aid of power in the 2nd factory as to look as if no power is

used in whereas the facts are apparently different.

I, therefore, hold that the party suppressed the facts of lacquering and painting of the sheet in their 1st factory with the aid of power from the deptt. with an intent to evade the payment of duty. The extended provisions of Section 11A of the Act are, therefore, invokable.

We observe that the plea that the department was fully aware about the use of power in lacquering and printing sheets and that those sheets were sent to unit no. 2 has not been rebutted by the adjudicating authority. Finding is that the appellant is not selling such lacquered and printed sheets. This finding has no effect on knowledge of the department regarding sending of sheets from 1st unit to 2nd unit.

Consequently, these pleas have to be accepted. As a matter of fact these pleas are also based on the judgment of Assistant Collector which were taken up in appeal by the Revenue and hence they acquired a final character so far as the findings of the adjudicating authority are concerned. We, therefore, find that the appellants have a strong case in so far as the plea of limitation is concerned. Hence we set aside the demand as barred by time inasmuch as the show cause notice is issued well beyond the period of six months from the entire period of demand.

4.1. In view of our aforesaid finding for setting aside the demand of duty, we do not consider it necessary to go into the question of sustainability of demand on merits. In the facts and circumstances of this case penalty of Rs. 50,000/- is not warranted. Consequently, we set aside the same.

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