

L and T Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Feb-26-1999

Reported in : (1999)(83)LC590Tri(Mum.)bai

Judge : J Balasundaram, A T V.K.

Appellant : L and T Ltd.

Respondent : Cce

Judgement :

1. M/s. Larsen & Toubro Ltd. has filed the present appeal being aggrieved by the order dt. 10.7.1991 passed by the Collector (Appeals), Mumbai.

2. Briefly stated the facts are that M/s. Larsen & Toubro Ltd. manufacture Pilfer Proof Caps and avail of Modvat credit of the duty paid on aluminium sheet under Rule 57-A of the Central Excise Rules.

The aluminium sheets were subjected to the processes of printing and lacquering and thereafter punching before converting them into P.P.caps. Certain sheets used to get damaged or defective due to wrong printing or mismatching of the prints or incorrect colouring, etc. The appellants were clearing such damaged/defective sheets as waste and scrap of aluminium on payment of duty in terms of Rule 57-F(4) of the Central Excise Rules. The Range Superintendent demanded differential duty alleging that the goods cleared by them were aluminium sheets and not waste scrap. The Appellants paid the differential duty

and filed three refund claims subsequently. The Assistant Collector rejected all the three claims for refund of duty holding that printing or lacquering on plain aluminium sheets could not be termed as a process of manufacture of P.P. Caps because P.P. Caps could be manufactured by obtaining printed or lacquered aluminium sheets; that if sheets were allowed to be cleared as waste and scrap, the Appellants would be gaining at the cost of the Revenue which is not the intention of the Modvat Rules; that defective/damaged aluminium sheets would under general rules of classification continue to fall under the same sub heading as plain aluminium sheet. On appeal, the Collector (Appeals) confirmed the adjudication order holding that as long as the physical stage of the sheets continued to remain the same, it was classifiable as sheet only; that only physical change in dimension by working on the sheet could change the position by bringing about uneven pieces of aluminium in the form of scrap and waste.

3. Shri N.P. Dhurundhar, Assistant Manager of the Appellants, submitted that as per Note 6(A) to Section XV of the schedule to the Central Excise Tariff Act, waste and scrap means metal waste and scrap from the manufacture or mechanical working of metals and metal goods definitely not usable as such. The very fact that mislacquering or misprinting did take place had been overlooked by the Collector (Appeals). To convert materials into waste and scrap, it is not necessary that every change ought to be physical either in dimension or structures. The authorities have ignored the fact that they procured plain sheets only and what they disposed off was a waste and scrap in view of the fact that the product disposed off by them was not usable as such. He also showed the plain aluminium sheet, good printed and lacquered sheet and defective sheet after printing and lacquering. He relied upon the Trade Notice No. 57/Bombay-III/Plastics/1990 in which it was clarified that the classification of the defective plastic structure sheets/defective plastic pouches, arising in the course of manufacture of printed sheets of plastic and printed pouches and which are definitely not usable for the purpose for which they are meant would merit classification as waste, parings and scrap of plastics and in the light of provision of Rule 57-D, varying of credit will not arise. He contended that on similar analogy, the aluminium sheets which got damaged during printing and lacquering should be classified as waste and scrap.

4. Countering the arguments Shri R.K. Sharma, Ld. SDR reiterated the findings of both the lower authorities and emphasized the fact that the appellants were clearing the sheets describing them as sheets only and not as waste and scrap; that the price charged by them was more than the price at which waste and scrap was sold and that the sheet remained as sheet as it was not cut at all and could be used as aluminium sheet.

In rejoinder, the Ld. Assistant Manager adduced a copy of gate pass dt.

10.9.1987 in which the description of goods, words "Waste and Scrap" was used while clearing the defective aluminium sheets.

5. We have considered the submissions of both the sides. The facts which are not disputed are that the appellants brought duty paid plain aluminium sheets and availed the Modvat credit of the duty paid on such sheets; they did the process of printing/lacquering on these sheets and when they found some defects in printing/lacquering, they had removed these defective printed/lacquered sheets on payment of duty as waste and scrap. We are not convinced by the findings of the adjudicating authority that printing or lacquering cannot be termed as a process of manufacture. The appellants manufacture P and P caps and they have to print the sheets so as to give the desired details such as name/monogram, etc. of their customers and the lacquering is done to provide the required colour and protection of print on the P and P caps. Further it is not necessary that physical change is required to make the aluminium sheet as waste and scrap. If the printing has been done wrongly or there is incorrect colouring or peeling off the colour due to chemical reasons, the appellants have to scrap such a sheet. It is not the case of the Department that the appellants had cleared the inputs as such so as to attract the provisions of Rule 57-F(1)(ii) of the Central Excise Rules (as it stood at the relevant time). The Appellants had worked upon the inputs by way of printing/lacquering and as the process undertaken was not proper, the inputs (aluminium sheet) had been scrapped and such waste and scrap would be considered as waste and scrap arising from the processing of inputs in the manufacture of the final products i.e. Pilfer proof caps and the appellants had rightly discharged the duty on the same under Rule 57F(4) of the Central Excise

Rules (as it existed at the material time). This view is supported by the clarification contained in Bombay Collectorate's Trade Notice No. 57/1990 regarding defective plastic sheets and pouches arising in the course of manufacture of printed sheets and plastic pouches. In view of these facts and circumstances, we allow the appeal filed by the Appellants. The refund of any duty will, however be governed by the decision of the Apex Court in the case of Mafatlal Industries Ltd. v. Union of India

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