

Commissioner of Central Excise Vs. Camlin Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-15-1999

Reported in : (1999)LC118Tri(Mum.)bai

Appellant : Commissioner of Central Excise

Respondent : Camlin Ltd.

Judgement :

1. This appeal from Revenue was argued by Shri K. M. Patwari the Id.JDR. Respondents did not appear but made written submissions referring to the cross objection earlier filed.

2. The respondents manufactured colours. They sought permission under Rule 173H to receive certain defective colours for reprocessing. In their letter dated 1-9-1993, they narrated the process for removal of defects. The permission was granted vide letter dated 3-9-1993 subject to the condition that the goods should not be subjected to any process amounting to manufacture. The defective goods were received, subjected to the described process and cleared without payment of duty. Later, on 27-6-1994, a show cause notice was issued seeking to charge duty amounting to Rs. 114.70 on the ground that the goods were subjected to process amounting to manufacture and therefore the provisions of Rule 173H were not attracted. The Assistant Collector cited the process undertaken by the assessee and observed that the process amounted to re-manufacture. In doing so he held that the cited judgment in the case of Collector of Customs v. J.G. Glass Ltd. 1988 (37) E.L.T. 248 was not applicable and was distinguishable on facts. He confirmed

the demand.

Assessee then filed an appeal. The Collector (Appeals) cited the Judgment in the case of J.G. Glass Ltd. and allowed the appeal.

3. In the present appeal from Revenue, reliance is placed on the Tribunal's earlier Judgment in the case of Sriram Pistons & Rings Ltd. v. Collector of Central Excise, 1983 E.L.T. 1927 (T). In the judgment it was held the process of remaking should fall short of manufacture.

4. I have carefully perused the orders of the Assistant Collector and of the Collector (Appeals) and also the cross objections and the written submissions of the assessee.

5. In the case of Sriram Pistons the Tribunal held that removal of defects by re-melting and re-making of pistons amounted to manufacture and therefore fell out the purview of Rule 173 H. This judgment was not cited before the Tribunal in the case of J.G. Glass Ltd., 1988 (37) E.L.T. 248. In this case the Tribunal held that there was an ambiguity in the structure of the Rule 173H. The Tribunal observed that the Rule permitted "re-making" but did not permit "re-manufacturing". The Tribunal held that the two terms were synonymous or identical. On this count the Tribunal observed that there was ambiguity and therefore the benefit must go to the assessee. This Judgment was followed in the later judgment in the case of Sterlite Industries Ltd. v. Collector of Central Excise, 1995 (75) E.L.T. 823. The Judgment of the Tribunal in the case of Collector of Central Excise v. Kama Industries, 1992 (42) E.C.R. 522 is not relevant to the present dispute.

6. In the case of J.G. Glass Ltd. as also Sterlite Industries, the process involved in remaking of the defective goods which could be termed as manufacture. The process involved in the case of Sriram Pistons also amounted to remelting and re-manufacture. However, in the latter two cases the Tribunal has gone clearly on the ground of an ambiguity in the structure of the contested rule. The Ld. Collector in his order has also stressed this very point.

7. In the present case although the process of remaking was almost identical to the process of manufacture, it did not involve the degree of processing which was before the Tribunal in the two cited cases. On this ground I find that the Collector was correct in applying the ratio to the present proceedings. The benefit would continue to be given to the assessee until the existing ambiguity in the said rule is resolved.

8. On this ground I see no infirmity in the impugned order and therefore dismiss this appeal.

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