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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-16-1999

Reported in : (1999)(83)LC278Tri(Delhi)

Judge : A Unni, a T V.K.

Appellant : Anupam Products Ltd.

Respondent : Cce

Judgement :

1. The issue involved in the appeal filed by M/s. Anupam Products Ltd., is whether the demand of duty can be made against the manufacturer who had supplied the goods on the basis of CT-2 certificate.

2. Shri M.A. Rangaswamy, ld. Advocate, submitted that the appellants manufactured Tin Containers which were supplied by them and availing total exemption from payment of duty under Notification No. 181/88 dated 13.5.1988 on production of CT-2 Certificate by the recipients of goods viz., M/s. Himachal Milk Products (P) Ltd. Subsequently, the Department found that M/s. Himachal Milk Products (P) Ltd. was not eligible for L-6 licence as they were filling up the Tin Containers with partly skimmed milk powder, a product which was not mentioned in the Notification. The ld. Counsel further submitted that the Department had demanded the duty from them holding that the condition as specified in the notification was not complied with and accordingly the liability for paying duty demanded was correctly passed on to the appellants as the manufacturers. He

also mentioned that the liability of duty is on the recipient of the goods and not on the manufacturer as after the clearance of the goods, he does not exercise any control over the goods. There is nothing mentioned in the Section 11A of the Central Excise Act that the duty short levied or not levied can be demanded only from the manufacturer alone. In support of his submissions, he relied upon the decision in the case of M/s. Bajaj Auto Ltd. Pune v.CCE Pune , in which it was held that the buyer is also answerable for duty where exemption is wrongly availed of. It was held by the Tribunal that "the gratuity achieves completion only by the use of the goods, and use is beyond the manufacturer's power". Since it is the buyer's use that consumates the exemption process, it is in the fitness of the things that he should also be one who must ultimately answer for the duty. The reliance was also placed on the decision in the case of CCE Madras v. Madras Radiators and Pressings Ltd. in which it was held that the responsibility for the duty of the goods so cleared under concession following the procedure under Chapter X is transferred from the manufacturing factory to the applicant-buyer-factory and this is a very wise provision. "The seller would have no control over the disposal of the goods he sells, and this would place him in jeopardy against which one can see little or no remedy or redress". Ld. Counsel also mentioned that the product - whole milk powder - merely because of the addition of sugar in it, it does not cease to be whole milk powder. The recipient was thus only filling up whole milk powder in the Tin Containers and the benefit was rightly availed under the notification.

3. Countering the arguments, the Ld. DR Shri S. Nunthuk submitted that 'partly skimmed milk powder' was filled in the Tin Containers by the recipients instead of 'whole milk powder, skimmed milk powder and milk powder ; that as per the decision of the Punjab and Haryana High Court in the case of Food Specialties Ltd. v. Union of India 'partly skimmed milk powder' is different from 'skimmed milk powder' and was classified under sub-heading 0401.19 and not under sub-heading 0401.13. He, further, submitted that as the condition of the Notification No. 181/88 was not complied with, the benefit of Notification was not available. He also mentioned that it has also been held by the Supreme Court and Tribunal in various decisions that the burden to satisfy the condition of the notification is on the person who is claiming the benefit of the notification. He specifically referred to the

Supreme Court's decision in the case of Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner .

4. We have considered the submissions of both the sides. The Notification No. 181/88 provides nil rate of duty in respect of tin containers if these are intended to be used for packing the goods as specified in the notification and subject to the condition that procedure set out in Chapter X of the Central Excise Rules is followed if use of the metal containers is otherwise than in the factory of production. It is not the case of the Department that the appellants have been supplying the goods by availing this exemption without obtaining CT-2 certificate from the recipients of the goods. They have received an order for metal containers of whole milk product. In addition, CT-2 certificate which is issued by the Excise Authorities was also received by them. Hence, they had removed the goods on the basis of CT-2 certificate. The demand of duty cannot be made from them as they have no control over the goods which was after clearance was in the possession of the recipient. Rule 196 of the Central Excise Rules clearly provides that if any excisable goods obtained under Rule 192 are not used for the purpose and the manner stated in the application for L6 licence, the recipient of the goods is liable to pay the duty.

The recipient M/s. Himachal Milk Products (P) Ltd., have not utilised the containers for filling up the products specified in the notification and as per the provisions of Rule 196 which falls in Chapter X of the Central Excise Rules, the duty liability is upon them and not on the manufacturer. The view is supported by the decision in the case of CCE Madras v. Madras Radiators & Pressings Ltd., referred to above. The finding of the Commissioner (Appeals) that it was not a case of mis-use of the Chapter X procedure but a case where the condition, subject to which benefit of the notification was extended, was not complied with, is not correct. Once the recipient has obtained L6 licence and does not use the goods for the intended purpose, the duty liability is squarely upon him and not on the manufacturer who had cleared the goods on the strength of CT-2 certificate. We therefore allow the appeal and set aside the impugned order.