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Commissioner of Central Excise Vs. Sikka Paper Mills Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-29-1999

Reported in : (1999)(65)ECC427

Appellant : Commissioner of Central Excise

Respondent : Sikka Paper Mills Limited

Judgement :

1. The Revenue has filed this appeal against the order-in- original passed by the Collector of Central Excise, Meerut.

2. In the impugned order the Collector of Central Excise held that the Kraft Paper manufactured by the respondents contains more than 75% of bagasse pulp in total quantity of pulp. Hence the respondents are entitled for Notification No. 48/89-C.E., dated 1-3-1989.

3. The brief facts of the case are that the respondents are engaged in the manufacture of kraft paper and were availing exemption of payment of Central Excise duty under Notification No. 48/89-C.E. on the ground that kraft paper manufactured by them was made out of pulp containing more than 75% bagasse pulp. A show cause notice was issued to the appellant for denial of the benefit of the notification on the ground that the pulp used in the manufacture of kraft paper contains less than 75% of bagasse pulp. The Collector of Central Excise in the impugned order dropped the proceedings.

5. The contention of the Revenue is that the Respondents were adopting reverse calculation for arriving at percentage of bagasse pulp to show the bagasse pulp is in excess of 75% by weight of the pulp. They relied upon the Trade Notice No. 7/8 issued by the Central Excise Collectorate, Meerut which lays down that percentage of bagasse would be determined on the basis of pulp alone. The Revenue also pleaded that some inadmissible deductions from the total weight of paper on ground of moistures and other additives were allowed.

6. The Notification No. 48/89-C.E. dated 1-3-1989 grants full exemption from the payment of Excise duty to Kraft paper containing not less than 75% by weight made from bagasse. The learned Collector of Central Excise in the impugned order held as under :- "In view of the above discussions, particularly keeping in view that the bagasse from sources other than Sugar Mills contain lesser moisture, though the percentage and source of procurement could not be substantiated by the party and the same has also not been supported with evidence in the Show Cause Notice, I agree that the Kraft paper contain moisture and some of the additives. I am inclined to give the allowance of 8% as on average by weight out of the total weight of kraft paper as follows: On the above basis the calculation of percentage of bagasse pulp in total weight kraft pulp has been worked out below :----------Year Kraft Paper Kraft Pulp after Bagasse Bagasse %in %of Bagasse Pulp giving Benefit @ Consumed Pulp(r) 29% in Kraft Paper 8%----------87-88 1789-004 1645.88 4292.227 1244-746 75.62%88-89 2836-969 2610.01 6784-239 1967-429 75.38%89-90 2735-186 2516.37 6566.863 1904-390 75.68%90-91 2894.99 2894.99 7946-990 2304-627 79.60%---------- Thus the percentage of bagasse pulp in total quantity of pulp used in the manufacture of paper by weight exceeds 75% during the period covered under Show Cause Notice and in view of this the demand of Rs. 53.09, 785.18 (Rs. 50,63,174.60 towards BED and Rs. 2,46,610.58 as SED) is not sustainable." 7. The Revenue is not disputing the above mentioned figures taken into consideration by the learned Collector. The Trade notice issued by the Meerut Collectorate prescribed that the percentage of bagasse shall be determined on the basis of pulp alone and not on

the weight of paper which includes other additives.

8. For arriving at the percentage bagasse in the pulp, the learned Collector in the impugned order allowed only 8% deductions towards moistures and additives and reel core weight in the paper. The Revenue had not produced any evidence on record to show that this deduction was not rightly allowed. The Revenue has also not been disputing the fact that the weight of the paper contains moisture, additives and reel core weight.

9. In view of the above discussions, we do not find any evidence on record to rebut the finding of fact arrived at by the learned Collector in the impugned order. Hence the appeal filed by the Revenue is rejected.

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