

Supreme Duplicators Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-27-1999

Reported in : (1999)(113)ELT138TriDel

Appellant : Supreme Duplicators

Respondent : Commissioner of C. Ex.

Judgement :

1.1 The appellant herein is a manufacturer of stamp pads and stamp pad ink. Besides using the brand name of its own i.e. 'Supreme' on the said goods it is also using the brand name of another person i.e. Delhi Paper Products, a trader in paper and paper products. The brand name of that trader is 'DEEPEE'. Those goods i.e. stamp pads and inks with affixation of brand name of 'DEEPEE' were also supplied to the said Delhi Paper Products.

1.2 The authorities below have held that the goods affixed with the brand name 'DEEPEE' should not have been cleared without payment of duty in view of para 7 of the Notification 175/86-C.E. inasmuch as the brand name belonged to a person who was not eligible for benefit of Notification No. 175/86-C.E., being a trader. A demand of duty of Rs. 1,06,116.23 has been confirmed against the appellant herein by the adjudicating authority, namely Additional Collector of Central Excise.

A penalty of Rs. 10,000/- has also been imposed. Hence this appeal before us.

2. First point raised by the learned Advocate Shri S.P. Bhatnagar for the appellant is that the brand name owner in the present case is a trader and not a manufacturer. The Notification No. 175/86-C.E. being applicable to manufacturers of excisable goods, while using the word 'person' in para 7 thereof in the context of that 'person's ineligibility to the benefit of the notification will mean that the 'person' should be a manufacturer. He, therefore, submits in short that the word 'person' referred to in para 7 of the Notification 175/86-C.E. does not refer to a trader but will refer to a manufacturer who is not eligible for the benefit of said notification.

2.1 Apart from the aforesaid plea the learned Advocate also submits that Shri Mukesh Gupta, partner of the appellant firm has unwittingly stated that the brand name 'DEEPEE' belonged to the other person i.e.

Delhi Paper Products. In fact, he submits that the said brand name insofar as stamp pads and inks which are the goods under consideration are concerned belong to the appellants themselves. Though this plea appears to have been raised in para 7 of the reply to the show cause notice but we note at this stage that no evidence to that effect has been produced by the appellants.

2.2 Yet another point raised by the learned Advocate is that it is the burden of the department to prove that the person whose brand name is affixed is not entitled to the benefit of Notification. For this proposition, learned Advocate relies on Supreme Court's judgment in the case of C.C.E. v. K. Mohan & Co. Exports 811. He, therefore, submits that the impugned order be set aside and the appeal be allowed with consequential relief to the appellants.

3. Opposing the contentions, learned SDR Shri A.K. Agarwal submits that the impugned order very clearly states that the brand name affixed by the appellant on stamp pad and stamp inks belongs to a trader i.e.

Delhi Paper Products. Trader obviously cannot be a person eligible for benefit of Notification No. 175/86-C.E. Therefore, he submits that provisions of para 7 of the Notification will come into play as held by the Tribunal in the case of Thio Pharma v. Collector reported in 1992 (60) E.L.T. 395. He further submits that this judgment has been followed in a good number cases subsequently. It has, therefore, been

more or less a settled proposition. He further submits that the ownership of the brand name of the trader, Delhi Paper Products has been admitted by the appellants' partner Shri Mukesh Gupta in his statement recorded by the authorities at the time of visit of the Central Excise officers to the appellants' factory.

3.1 He, therefore, submits as regards the burden of proof, that the facts are very clear that the trader being a person not eligible for benefit of Notification [175/86] nothing more is required to be proved by the department in terms of para 7 of the notification. He, therefore, prays for dismissing the appeal.

4. We have carefully considered the pleas advanced from both sides. We are of the view that the facts and circumstances of this case are similar to the facts and circumstances of Thio Pharma's case which is in favour of the Revenue. Consequently relying on the said judgment of Tribunal we confirm the amount of duty. However, having regard to the facts and circumstances of the case we reduce the penalty amount to Rs. 5,000/-.

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