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B.S. Patel Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-21-1999

Reported in : (1999)(113)ELT166TriDel

Appellant : B.S. Patel

Respondent : Collector of Central Excise

Judgement :

1. In this appeal, filed by M/s. B.S. Patel, Yeotmal, the matter relates to the classification of goods, which were sold under the brand name of (1) Chetan Pandharpuri Zarda; and (2) Chetan Lawangi Zarda.

Before 1-3-1986, the appellants were paying central excise duty on these products as branded chewing tobacco. On introduction of the new Central Excise Tariff, they pleaded that the goods did not attract duty under Heading 2404.41 on the ground that the goods remained as unmanufactured tobacco even when they were repacked. The Collector of Central Excise (Appeals), Bombay observed that as declared by them in their application for L-4 Licence, they were using katha and chuna as raw materials with tobacco in the preparation of their products and as the goods were then packed and name printed, they were covered by Heading No. 24.04 of the new Central Excise Tariff.

3. We have heard Shri A.K. Agarwal, ld. SDR and perused the records. We find that on introduction of the new Central Excise Tariff, the appellants were paying central excise duty and subsequently had filed a refund claim of Rs. 37,170.90 for

the period 19-2-1987 to 23-6-1987.

The main ground of filing of the refund claim was that the goods cleared by them would continue to remain as un-manufactured tobacco.

The claim was not substantiated. A show cause notice was issued and the matter was decided by the Assistant Collector of Central Excise, who observed that the assessee had filed refund claim on 28-7-1987 when the goods had already been passed for consumption and it was not possible to ascertain as what processes had been undertaken by the asses-see. He referred to the L-4 application which clearly stated that the assessee was using katha and chuna as the raw materials in the product, which was packed and sold under a brand name. He also observed that a test report with regard to the goods subsequently produced, could not justify the refund claim.

4. There is no dispute that the goods were sold under the brand name (1) Chetan Pandharpuri Zarda; and (2) Chetan Lawangi Zarda. The central excise duty was paid on the branded chewing tobacco before the introduction of the new Central Excise Tariff. There is nothing on record to show that the process of manufacture has undergone a change with reference to the goods which were liable to pay duty prior to the introduction of the new Tariff and has become non-dutiable goods.

5. We also take note of the fact that the appellants paid central excise duty without any protest and that test report of the products for the subsequent period, could not be automatically applied to the earlier period. In the facts and circumstances of the case, no evidence has been placed before us to disturb the findings of the lower authorities. We do not find any merit in this appeal and the same is rejected.

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