

Collector of Central Excise Vs. K.S.B. Pumps

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-06-1999

Reported in : (2000)LC475Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : K.S.B. Pumps

Judgement :

1. These are eleven appeals preferred by Revenue arising out a common order passed by Collector of Central Excise, Aurangabad involving the issue whether (i) Green sand., (ii) Core sand Resin Bonded core and (iii) Sodium Silicate Bonded coats are excisable goods leviable to duty under Central Excise Act.

2. Briefly stated the facts are that all the respondents are engaged in the manufacture of "Prepared Sand", which is also known as green sand, core sand, sodium silicate bonded coats, depending on the category to which they belong. The prepared sand is used to manufacture sand moulds and cores which are subsequently used in the manufacture of castings.

Show cause notices were issued to the Respondents for demanding duty on the grounds that the impugned products are classifiable under Heading 68.07 of the Schedule to the Central Excise Tariff Act; that benefit of Notification No. 217/86, dated 2-4-1986 is not available as sand moulds are exempted from payment of duty and that the facts were suppressed from the department as neither the activities were declared nor any classification list was filed. The Collector, under

the impugned order dated 29-10-1993, withdrew the notices holding that sands in question are not marketable as they have a short life span. He relied upon the judgment in the case of Ambalal Sarabhai, 1989 (43) E.L.T. 214 (S.C.) and also referred to the Book "Foundry Practice" by N.D. Tetor, Yu. A.Stepanov.³ Shri V.M. Udhoji, Id. DR submitted that sand is a prepared sand which is covered by Heading No. 68.07 of the Tariff; that even Collector has mentioned in the impugned order that the Government Engineering College procure "Green Sands"; that in a highly individualised item which have application generally in foundry, this single confirmation is enough to provide that the item is indeed marketable; that the concept of marketability does not refer to whether item is being marketed or not but the true test lies in whether the item is capable of being marketed. He, further, mentioned that Resin coated sand has been held to be a commercial and marketable commodity by the Tribunal in the case of TELCO Ltd. v. C.C.E., 1990 (50) E.L.T.644 (T); that the process of manufacture in both the cases of prepared sand and resin coated sand is same and its application is also the same in the sense that both are used in the manufacture of castings. He finally submitted that as sand moulds are exempted from payment of duty, benefit of Notification No. 217/86 is not admissible.

4. Shri L.P. Attar, Id. Advocate, on behalf of M/s. K.S.B. Pumps (Appeal No. E/396/95-D). Shri S.K. Jagesha, Id. Consultant, on behalf of M/s. Perfect Circle Victor Ltd. and M/s. Kamanwala Industries Ltd. (E/397/95-D & E/405/95-D), Shri M.R. Sonawane, Excise Executive of M/s.

Continental Casting Co. (E/401/95-D) and Shri V.K. Kelkar, Id.Consultant on behalf of M/s. Business Combine Ltd. appeared for hearing. Shri L.P. Attar, Id. Counsel; submitted that coated sand has not been mentioned anywhere in any headings/sub-headings of the Schedule to the Central Excise Tariff Act and as per Section 2(d) of the Central Excise Act, "Excisable Goods" means goods specified in the Schedule to the Central Excise Tariff Act as being subjected to a duty of excise and includes salt; that accordingly the impugned goods are not excisable goods as these are not specified in the tariff. He relied upon the decision in the case of Finolex Cables Ltd. v. C.C.E., Pune, 1996 (86) E.L.T. 418 (T) in which Tribunal held that waste and scrap of PVC insulated wires and cables are not

excisable goods as they are not specifically mentioned in the tariff. He also relied upon the decision in the case of Kamath Packaging (P) Ltd. v. C.C.E., 1992 (60) E.L.T.666 (T). He also submitted that the Revenue wants to classify the products in question under Heading 68.07 which is not an article of sand but sand itself which is nature's gift to the mankind; that no new article different from raw material emerges by coating; that no process has been prescribed either in Section Note or in Chapter Notes which will amount to manufacture. He relied upon the decision in Tansi Engg.

Works v. C.C.E., 1996 (88) E.L.T. 407 wherein the Tribunal held that the Section 2(f) of the Act requires specifications not of goods but of process. It requires specification of process as amounting to manufacture." He, further, submitted that the products in question have short shelf life and as such are not marketable; that once the mixing of sand with water and other materials is over, the sand had to be used as early as possible; that after a few hours sand starts harden and becomes unusable; that Department has not adduced any evidence to establish the marketability of the product; that purchase by an Engineering College and that too only once for imparting training cannot be a decisive factor to establish the marketability of the products in question. Reliance was placed on the decision in the case of Moti Laminates Pvt. Ltd. v. C.C.E., 1995 (76) E.L.T. 241 (S.C.) wherein it was held that intermediate goods produced and used for captive consumption are not liable to duty if they are not marketable.

Finally the Id. Advocate submitted that only resin coated sand is capable of being sold; that, however, no duty is payable on such resin coated sand if it is used captively in the manufacture of sand moulds as held in the case of Paranjpe Metal Shapers Ltd. v. C.C.E, Pune., Final Order No. 749-750/97, dated 5-9-1997; that this decision was followed in the case of Mutha Founders Pvt. Ltd. v. C.C.E., Pune Final Order No. E/1133/97-D, 5. M/s. Business Combine Ltd., M/s. Asia Automotive Ltd. and M/s.

Pratisthan Alloy Castings have also mentioned in their cross-objection that decision in TELCO's case, supra, is not applicable in the facts of the present case as the resin coated sand has got a stable shelf life whereas they prepare moulding

sand which has no shelf life.

6. We have gone through the submissions of both the sides. We find that the Collector, in the impugned order has given the ingredients of all the products in question and has also mentioned that they have very short shelf life. No evidence has been brought on record by the Revenue to rebut this findings and to show that the products do have a sufficient reasonable shelf life so as to bring them to the market for being bought and sold. No doubt, it is not necessary that the product is actually sold in the market but it should be capable of being marketable. It was held by the Supreme Court in the case of *Indian Cable Co. Ltd. v. C.C.E.*, 1994 (74) E.L.T. 22 (S.C.) that "Marketability" is a decisive test for durability. It only means "saleable", or "suitable for sale". It need not be in fact, "marketed".

The article should be capable of being sold or being sold, to consumers in the market, as it is without anything more. There is no material or record to show that the impugned goods are something which, as it is, can ordinarily come to the market to be bought and sold. The Id. DR has heavily emphasised that the Government Engineering College had procured green sands, which, according to him is sufficient to prove the marketability of the products in question. We find that the Collector himself had disregarded the procurement of green sand by the College by observing that their "efforts made to locate the seller of such Green Sands failed, as this was a one time operation in past and records were not available with the College authorities. I cannot consider this single instance to be evidence sufficient to indicate in any 'pragmatic manner' the marketability of sand in question of Notices." In absence of any material, we do not find any reason to disagree with the findings of the Collector. The Id. DR has also referred to the decision in TELCO's case. The Tribunal considered the excisability of the resin coated sand which is not similar to the products in question, as observed by the Collector in the impugned order. Again, no material has been brought on record to show that the products in question are, same as resin coated sand. It has been contended by the respondents that no coating is done in the case of green sand and no sooner it is prepared, it starts the reversal journey. We observe from the perusal of decision in TELCO case, that one of the main question involved therein was whether the coating of sand with the resin described as a resin coated sand is

liable to excise duty. This supports the plea of the Respondents that ratio of TELCO's decision is not applicable to the facts of present matters. Further, the Id. Advocate has rightly submitted that even in respect of resin coated sand no duty is payable if it is used captively in the manufacture of sand moulds as held by the Tribunal in the case of Paranjape Metal Shapers Ltd., Final Order No. 749-750/97-D, dated 5-9-1997. This view has also been followed by the Tribunal in Atlas Automotive Components P. Ltd. v. C.C.E., Pune, 1999 (110) E.L.T. 991 (T). In view of these facts and circumstances, all the appeals filed by Revenue are rejected.

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