Super Polyfabriks Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-13-1999

Reported in : (1999)(114)ELT1019TriDel

Appellant : Super Polyfabriks Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The above two appeals were heard together since the issues raised were common in both the appeals. They are being disposed of by this common order. We have heard Shri G. Shiv Das and Shri M.P. Devnath, Advocates for the appellants and Shri Sumit K. Das, ld. JDR for the respondent Collector.

2. Brief facts are : M/s. Super Poly Fabrics Ltd. as well as M/s. Fine Fabricators are manufacturers of HDPE bags and sacks falling under Chapter Heading 39 of the Central Excise Tariff Act, 1985. They paid Central Excise duty at the time of clearance of bags and sacks. They also availed the benefit of SSI exemption Notification No. 1/93.

3. According to the Appellants, M/s. Fine Fabricators (FF for short) send HDPE granules to M/s. Super Poly Fabrics Ltd. (SPF for short) for the manufacture of fabrics on job work basis in terms of Notification No. 83/94 and 84/94-CE as per declaration filed by them. SPF in turn convert the granules into fabrics and send them back to FF who thereafter manufacture sacks out of the said fabrics. According to the appellants, during the manufacture of sacks, strips emerged at

the intermediate stage as an inevitable consequence.

4. The Department by show cause notice dated 31-12-1994 issued to both the appellants proposed to demand a duty of Rs. 2,23,173.50 for the period 27-6-1994 to 31-8-1994 on the ground that the plastic granules supplied by FF to SPF are first converted by SPF to plastic strips by extrusion process and then plastic fabrics are woven out of the strips.

Since during the manufacturing process of plastic fabrics out of HDPE granules, a different and distinct commercially known item as 'plastic strip' independently classifiable under sub-heading 3920.32 comes into existence, which is not specified under Notification No. 1/93, therefore, duty was liable to be paid on plastic strips. The matter was adjudicated by the Additional Collector resulting in the order dated 24-6-1996 confirming the demand of duty on SPF and imposing a penalty of Rs. 30,000/- on them. A penalty of Rs. 20,000/- was also imposed on FF. The Commissioner (Appeals) confirmed the said orders of the Additional Collector. The present appeals filed by the assessees challenge the said order.

5. Impugned order is the common Order-in-Appeal dated 31-10-1997 passed by the Commissioner (Appeals) confirming the orders of the Additional Collector.

6. It has been argued on behalf of the appellants that Notification No.1/93 read with Notification No. 83/94 contemplated charging to duty of final products cleared by the manufacturers availing the benefit of Notification No. 1/93 after they cross clearances of value of Rs. 30 lakhs. Goods cleared at the earlier stages are not to be taken into account for purposes of considering availability of exemption below the said limit. Reliance was placed on the Tribunal's decision in Dukart and Company v. C.C.E., 1987 (29) E.L.T. 446 delivered in the context of Notification No. 80/80 and Explanation (vi) to the said Notification.

The majority decision in the said judgment had taken the view that while granting exemption to small scale manufacturers based on value of clearance, the intention was that the specified goods used for further manufacture of specified goods within the factory of production of inputs shall not be taken into account. Ld. Counsel contended that by implication this meant extension of exemption to the

inputs captively consumed in the manufacture of the finished product. The appellants contend that even under Notification No. 1/93, what is contemplated is the manufacture and clearance of the final product specified in the Notification and the undertaking of processes necessary for the manufacture of the final product within the same factory. Clearances of goods for captive consumption were not be taken into account for computing Rs. 30 lakhs limit. When for the first time Notification No.83/94 was introduced enabling the assessee availing the benefit of Notification No. 1/93 to get the goods manufactured on job work basis, according to the appellants, the idea was to extend the facility of exemption for and captive consumption available to a manufacturer, to the premises of the job worker. In other words, Notification No. 1/93 continued to exclude the clearances made under the said Notification while computing the exemption limit of Rs. 30 lakhs. The appellants have contended that Notification No. 1/93 read with Notification No.83/94 contemplates charging of duty on the final products cleared by the manufacturer availing Notification 1/93 only after he crosses the limit of Rs. 30 lakhs. It is argued that the goods at the earlier stages are not to be taken into account. Further, Notification No.83/94 when it states that excisable goods in the factory of the job workers has to be specified in Notification No. 1/93, it apparently refers to the goods cleared from the job workers' premises to the supplier of raw material as would be evident from condition (a) which requires the specified goods to be used in the factory of the suppliers of the raw material. It is urged that expression 'job work' in Notification 83/94 encompasses the entire set of processes starting from work on the raw materials to the manufacture of the finished articles. Appellants argue that the expression 'specified goods' vis-a-vis the definition of job work is used only to refer to those goods that are cleared from the job worker's premises and does not refer to the goods that emerged at the intermediate stage as a matter of technological necessity. The appellants claim that if a different interpretation is given to the notifications it would result in nullifying the effect of the Notifications. According to appellants, any interpretation of a notification going against the intention of the legislature is not permissible, as held by the Apex Court in Jain Engineering case reported in 1987 (32) E.L.T. 3 (S.C), 1999(108) E.L.T.9. Ld. Counsel has urged that in the facts of the two appeals, the entire activity undertaken by SPF was in the nature of job work only.

The exemption for the removal of the granules without payment of duty is permitted under Notification No. 84/ 94 where the supplier gives an undertaking that the specified goods manufactured on job work would be used in the manufacture of specified goods cleared under Notification No. 1/93. It is argued that even as per the notice of demand, there was no proposal to deny the benefit of Notification No. 84/94 to FF. This clearly showed that for the purpose of Notification No. 84/94, the Revenue considers the fabrics cleared by SPF to be the specified goods.

Since in respect of Notification No. 84/94, Revenue has taken such a stand, it cannot contend that for purposes of another Notification, namely, 83/94, the definition of the specified goods would apply to tapes/strips also. In either case, the demand can be made only against the supplier of the granules and if the Department considers strips as dutiable products, the same has been consumed not in the manufacture of sacks, but in the manufacture of fabrics which are not covered by Notification No. 1/93. Ld. Counsel point out that though the demand was raised against the supplier of the raw material in the show cause notice, in the adjudication order and in the order in appeal, the same had been dropped. Finally since plastic strips are exempt from payment of duty under Notification No. 214/86, the benefit of the Notification was available for the manufacture of plastic strips. Appellants therefore, have sought the quashing of the duty demand on SPF and the penalties imposed both on SPF and FF.7. The Department's case is that since there was no dispute that plastic strips manufactured at the intermediate stage is not covered under the category of specified goods under Notification No. 1/93, duty has to be paid on plastic strips manufactured by SPF at the intermediate stage of production of plastic fabrics in terms of the Rules 9 and 49 of the Central Excise Rules, 1944. Ld. JDR, Shri Sumit K. Das submitted that in the instant case, it has to be noted that there was a further manufacturing process at the end of the supplier of granules, namely FF, after granules sent by them to SPF for conversion into fabrics had been received back. The decision in Dukart and Company Ltd. (supra) granting, by implication exemption to inputs captively consumed for the manufacture of finished products cannot be applied to the facts of the present case nor for the interpretation of Notification No. 1/93 read with Notification No. 83/94. Further, for purposes of Notification No. 83/94 as well as Notification No.

84/94, the specified goods were the same as in Notification No. 1/93. Also the Explanation in Notification No. 83/94 as well as Notification No. 84/94 to the expression 'job work' meant processing of or working upon the raw materials or semi-finished goods supplied to the job worker so as to complete a part or whole of the process resulting in manufacture or finishing of the articles or any operation which is essential for the aforesaid process. It would be evident from the explanation, according to the ld. DR, that the job work is restricted to processing or finishing of the material supplied to the job worker and not to carrying out of any manufacturing activity on behalf of the supplier of the raw material. Job work was restricted to carrying out the processing or finishing of material supplied to him and its return to the supplier of raw material for the manufacture of finished product.

In the facts of the instant case FF who are a SSI unit were not competent to supply plastic granules SPF for the manufacture of plastic fabrics on job work basis and claim benefit of Notification Nos. 83/94 and 84/84. The authorities below had therefore, correctly held that SPF were liable to pay the Central Excise duty on plastic strips captively consumed since as job worker, duty has to be discharged by them.

8. We have considered the submissions. We are unable to accept the contention of the appellants. The Tribunal's majority decision in Dukart and Company case (supra) would not apply to the facts of the case before us. That decision primarily dealt with the aspect of computation of aggregate value of certain specified goods captively consumed used for further manufacture of specified goods within the factory of production of inputs. The question of clearances of goods by job worker did not arise in that case. In the facts and circumstances of the instant case, the question relates to the availability of slab exemption to job workers where certain intermediate goods are manufactured during the process of job work. Further, it is also not permissible to extend the ratio of a decision interpreting one notification to another notification, since the objects of the two notifications would differ widely. We do not also find any infirmity in the line of reasoning followed in the impugned order relating to the limited scope of the definition of 'job work' under Notification Nos.

83/94 and 84/94. We therefore, confirm the duty demand made on M/s.

Super Poly Fabrics.

9. As regards the penalties imposed, we find that the order-in-original has not given any detailed reasons for imposing of penalties except to observe that duty leviable had not been paid in the guise of job work.

The adjudicating authority had stated that penal provisions are invokable against both the appellants on the ground that under fiscal statutes intention to evade the duty is not necessary. We are not able to give our unqualified endorsement to these observations. Where an assessee has on a mistaken idea about the availability of the benefit of an exemption notification failed to make payment of duty and had contested the duty demanded on a point of law, it will not be appropriate to impose penalty just because intention to evade duty in fiscal statutes was not necessary to be proved. We find that the appellants have even at the stage of replying to the Show Cause Notice maintained that emergence of plastic strips during manufacture of fabrics from plastic granules is inescapable. We are, therefore of the view that imposition of penalties is not warranted in the circumstances of the case. Penalties imposed on both the appellants are accordingly set aside.

10. Barring the above modification relating to the penalties, we find no reason to interfere with the impugned order and the duty demand confirmed against the M/s. Super Polyfabrics under the impugned order.