Essel Packaging Ltd. Vs. Commissioner of Central Excise

Essel Packaging Ltd. Vs. Commissioner of Central Excise

SooperKanoon Citation : sooperkanoon.com/17111

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-03-1999

Reported in : (2000)(119)ELT660Tri(Mum.)bai

Appellant : Essel Packaging Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. On hearing Dr. D.M. Mishra for the applicants and Shri B.K. Choube for the Revenue. It appeared that at this stage itself the main appeal could be taken up for consideration this was done by granting waiver of predeposit, duty confirmed amounting to Rs. 20,49,694/-.

2. The appellants manufactured "Multilayer Plastic Laminated Web"; an intermediate product in the manufacture of their final product namely "Multilayer Plastic Laminated Tubes". They filed a declaraion in terms of Rule 173 C (1) second proviso whereby prices of such web were indicated on cost construction basis varying between Rs. 77/- to Rs. 112 per kg. and 114 per kilo. These goods were removed for captive consumption to their sister units during May, 1996 to June, 1997. One variety of such were was sold on 10 occasions to a buyer at calculated price of Rs. 233 per kg. Show Cause Notice was issued for recovery of differential duty on such webs captively consumed during the period 4-9-1997 to 29-9-1997, on the ground that where the market price was avilable the same should have been adopted for captive consumption also. The Assistant Collector following the law laid down by the Tribunal to the effect that where the nomal price

was available at the factory gate, the same should form basis the valuation for captive consumption confirmed the demand. The assessee then filed an appeal.

The Commissioner (Appeals) on the ground that prima facie balance of convenience was in the favour of department directed them to predeposit the entire duty. The assessees then sought modification of this order.

The Commissioner did not oblige but dismissed the appeal for non compliance of his earlier order. Hence the present appeal.

3. Prior to its amendment by virtue of Notification No. 4/94 CET, dated 1-3-1994 in terms of Rule 173C the assessees were required to file price lists in terms of the said Rule and effect clearances only on approval of the price lists. In certain conditions the prior approval was waived. In the various proforma the various situations under which the goods were sold to buyers were prescribed. The law which developed in that situation was relied upon by the Assistant Commissioner in his order. With the amendment in Rule 173C, the prescription of declaration and approval of prices for sale during the normal course of business was dispensed with and the clearance documents themselves were made the documents for declaration of prices. In certain circumstances such as the goods not being sold or for other reasons such as captive consumption, the declarations were mandatory which were made by the assessee in the present case.

4. Dr. Mishra states that the description "ordinarily sold" occuring in Section 4 of the Central Excise Act, 1944 would not cover the transaction in the present case, in as much as the product was sold to a buyer for specific purposes of tests being conducted in their factory. We do not see merits in this plea. The purposes for which goods are purchased has no bearing on the ordinary character of the sale. We however, find that the contested goods were captively consumed by the assessee from 1993 onward. It is their statement that except for these 10 transactions there have been no instances where the goods were sold to buyers. The duration of such outside sales was limited between the period May, 1996 to June, 1997. The question which would therefore arise for consideration is whether the prices indicated as prices in the ordinary course of business for same goods would continue to apply for captive consumption, for an indefinite period or

whether in the absence of any further transactions, a reasonable time limit should be placed thereupon. This question is based on the understanding that the prices in the free market envisaged in Section 4 are dynamic in nature given to fluctuations. All these questions pose themselves on the rewording of Rule 173C to which the ld. Commissioner has do not made any reference. We find it hard to accept the conviction of the ld.Commissioner that balance of convenience was entirely in the favour of the department.

5. To enable the ld. Commissioner to address himself to the complexity raised by the show cause notice, we deem it proper to allow this appeal and remit the proceedings back to the Commissioner. He will not insist on predeposit of duty but give an opportunity to the assessees to state their case before him, and thereafter shall pass a well reasoned order on merits.

6. Since the issue is of great importance we hope that the ld.Commissioner would decide the appeal before him at the earliest. The assessees are directed to cooperate.