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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-21-2000

Reported in : (2001)(97)LC167Tri(Delhi)

Judge : J Balasundaram, A T V.K.

Appellant : Golden Laminates Ltd.

Respondent : Cce

Judgement :

1. By the impugned order, the Commissioner of Central Excise has confirmed a duty demand of Rs. 55,14,713/-on paper based decorative laminated sheets manufactured by the appellants herein (classified under CET Sub-heading 4823.90), denying the benefit of Notification 135/89-CE dated 12.5.1989 to the product in dispute, on the ground that it is impregnated with plastics and, therefore, excluded from the coverage under the Notification, as held by the Tribunal in the case of Viral Laminates . He has also imposed a penalty of Rs. 15 lakhs on the appellants. The period of demand is 1.4.1993 to 28.2.1994 and the show cause notice raising the duty demand and proposing imposition of penalty is dated 20.2.1998.

2. The appellants who are represented by their Counsel, Shri G. Shiv Dass, do not contest the issue on merits, in view of the Tribunal's decision supra but only challenge the application of the extended period of limitation under the proviso to Section 11-A of the Central Excise Act, 1944.

3. We find that the adjudicating authority has held that the plea of the assessees that all facts were in the knowledge of the Department is unsustainable in view of the fact that they did not declare the names of melamine resin and formaldehyde resin being manufactured within their factory premises and also that it results in a resin forming solution, in order to conclude that they had concealed material facts wilfully and fraudulently with intention to evade payment of duty.

However, we find ourselves unable to agree with this conclusion. We note that in their letter dated 29.12.1992, the appellants in response to Departmental objection on the classification list filed w.e.f.

19.11.1992 to the extension of Notification 135/89 dated 12.5.1989 to their product, clearly mentioned the various chemicals used by them in the manufacture of decorative laminated sheets, including melamine, phenol formaldehyde, etc. They submitted in the letter that the use of the chemicals at the intermediate stage would not disentitle them to avail of exemption under Notification 135/89 and relied upon the decision of the Tribunal in the case of Meghdoot Laminates P. Ltd. reported in 1990 (45) ELT 75 : 1991 (32) ECR 304 (T) to support their stand. On 1.3.1993, they filed a fresh classification list for the final product, claiming exemption under Notification 1/93. A fresh classification list was filed by them on 1.4.1993 since SSI exemption under Notification 1/93 was applicable for each financial year. On 30.4.1993, a show cause notice was issued to them proposing to deny exemption under the Notification claimed in the classification list filed w.e.f. 1.3.1993, to which the appellants filed their reply in which they mentioned the various inputs used by them and explained the process of manufacture, claiming that no plastics emerged at the intermediate stage. They filed another reply on 23.5.1993 stating that the item emerging at the intermediate stage was phenolic resin which was used as a adhesive and they also submitted that the benefit of Notification 135/89-CE was being extended to other manufacturers falling within the same Collectorate. On 22.7.1993, the Assistant Collector of Central Excise passed his order, holding that the items emerged at the intermediate stage are plastics and, therefore, the final product should be considered as a product consisting of sheets of paper impregnated and coated with plastics which are excluded from Notification 135/89 and he modified the classification list filed w.e.f.

1.3.1993 by denying the benefit of exemption under the above mentioned Notification. As for the classification list filed w.e.f.

1.4.1993, it was approved by extending the benefit of the Notification, after verification from the Assistant Collector, Chandigarh that benefit under the Notification was extended to other manufacturers of similar products, and the appellants availed the exemption for the period in question. During the period 1994-95, similar exemption provided under Notification 20/94-CE dated 1.3.1994 was claimed by the appellants, but was denied by the Assistant Collector whose order was upheld by the Commissioner (Appeals), and the demand was also raised for the period from 1.4.1994. The appellants filed an appeal before the Tribunal bearing No. E/231/96-C which was disposed of vide Final Order No. 408/97-C by setting aside the order on classification and remanding the matter to the lower authorities for re-verification on the classification and applicability of exemption Notification. In these circumstances, when all facts were known to the Department, it cannot be alleged that the appellants had suppressed or misdeclared any material facts with intention to wrongly avail the benefit of exemption from duty resulting in evasion of payment of duty.

4. In the light of the above discussions, we hold that the proviso to Section 11A of the Central Excise Act 1944 is not attracted in the present case.

5. In the result, we set aside the demand as time barred and also set aside the penalty and allow the appeal on the ground of limitation.

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