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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-27-2000

Reported in : (2001)(130)ELT105TriDel

Appellant : Mac Venetians

Respondent : Commissioner of Central Excise

Judgement :

1. The appellants - M/s. Mac Venetians, are manufacturers of 'Venetian blinds' and 'Vertical blinds'. The dispute relates to payment of central excise duty on vertical blinds manufactured and cleared during the years 1989-90,1990-91,1991-92 and 1992-93. The goods had originally been cleared without payment of duty as exempted under Notification No.65/87 dated 1-3-1987 as made without the aid of power. After investigations, show cause notice dated 13-12-1994 was issued holding that the goods were actually manufactured with the aid of power and therefore, this notice invoked the extended period as contemplated in proviso to Section 11A of the Act on the allegation that the manufacturers had wilfully suppressed facts with intent to evade payment of duty on the goods manufactured by them. The adjudication Order No. 7/98, dated 23-7-1998 impugned in this appeal was passed by the Commissioner of Central Excise, Delhi-I confirming duty demand of Rs. 26,63,825 /-. The order also imposed a penalty of Rs. 3 lakhs on the manufacturer.

2. The appeal has challenged the order on the ground that the process of assembling vertical blinds is not a manufacturing activity leviable to central excise

duty, even if the activity was assumed to be manufacture, the appellants were eligible for the exemption, the demand was time-barred and that the demand amount has been worked out incorrectly.

3. With regard to appellants' submission that there was no manufacture of excisable goods, the contention is that for bringing into existence vertical blinds, the activities carried out are only one of cutting aluminium channels and making holes in them, cutting of fabrics into strips and stitching the ends and fitting nylon cord and other items and these did not amount to manufacture. The appellants have also submitted that the exemption notification was in respect of "goods made without the aid of power". It has been contended that the word 'made' cannot be treated as equivalent of manufacture as has been done by the central excise authorities. During hearing, the learned counsel for the appellants submitted that the use of the word 'made' in the notification implies that all the processes in the making of the goods should be carried out without the aid of power. He submitted that the difference in the intention would be clear when the usage of the word 'made' in this notification is contrasted with other Notifications like Notification 167/86 which uses the expression 'no process in or in relation to manufacture of the said goods'. The learned counsel submitted that when the intention was that exemption should be applicable only to producing entirely without the use of power, care was taken to use words like 'no process' is carried out with the aid of power. In the other cases, even if power was used for carrying out some of the processes, it would still be a situation of making without the aid of power. In the instant case, as only very few of the processes like cutting and stitching are alleged to be carried out with the aid of power, and remaining processes are admittedly carried out without the aid of power, this case would be still one where goods are made without the aid of power. The learned counsel also contended that the demand is on account of a misunderstanding that words 'manufacture' and 'made' meant the same and are interchangeable.

4. The appellants have also submitted that during the relevant period, the vertical blinds were not liable to central excise duty and the appellants had filed classification list classifying the product under tariff item 6301 by mistake and its approval by the central excise authorities did not also mean that the goods were

liable to duty under that tariff item. During the demand period, the tariff item 6301 which related to "Other made-up textile articles" covered "Made-up textile articles not elsewhere specified including blankets (other than of wool), tarpaulins, tents, sails for boats". The learned counsel pointed out that tariff heading 6301 was amended in 1995 to include 'interior blinds'. The counsel, therefore, submitted that before the amendment of 1995, the entry for made-up textile articles did not cover vertical blinds. He also submitted that even the interpretation of the inclusion clause in 6301 i.e. "including blankets, tarpaulins, tents, sails for boats" would not bring vertical blinds within the scope of the tariff entry as it stood during the relevant period. With regard to the submission that the demand is time-barred, learned counsel pointed out that clearances in all these cases had taken place in accordance with approved classification lists whereunder the appellants had claimed the exemption under Notification No. 65/87 and the departmental authorities had approved the claim. He submitted that it has to be assumed that approval are granted after due verification and therefore, it was not open to the department to allege at a later time that any suppression of facts with intent to evade payment of duty had taken place. With regard to demand being inflated, learned counsel submitted that the demand has been worked out on the entire amount realised by the appellants. Learned counsel submitted that such computation is not legally correct. The adjudicating authority should have treated the amount realised by the appellants as cum-duty realisation. Assessable value should have been worked out from such gross realisation after giving permissible deductions in terms of Section 4 of the Central Excise Act.

5. Learned DR has submitted that the objections raised by the appellants are not sustainable. He submitted that the appellants had brought into existence a new product with a different commercial identity and use and therefore, the activity has to be treated as 'manufacture'. He submitted that vertical blinds is a well recognised commercial product with a different identity and use from the materials of which it is made i.e. aluminium channels, fabric etc. He, therefore, submitted that there is no legal basis to the appellants' submission that the processes carried out by him did not amount to manufacture.

The learned DR also submitted that the distinction that the appellants have sought to make between 'manufactured' and 'made' has no basis.

There is also no basis for the submission that the criterion for deciding eligibility are different when the word used in the notification are 'made' or 'manufactured'. In the present case, all the important processes involved in the making of the vertical blinds like preparing the channels for becoming a component of the vertical blinds by cutting to size and punching holes and the process of cutting and stitching fabric to the required dimensions are carried out with the aid of power. Therefore, it has to be held that the goods were made with the aid of power. Learned DR submitted that 'manufacture' involves several activities and the definition of the term 'manufacture' under the Central Excise Act also includes incidental and ancillary activities. It would be grossly unreasonable to argue that everyone of those processes should be carried out with the aid of power if the goods are to be treated as made with the aid of power. This would also lead to absurd results. He, therefore, submitted that the vertical blinds involved in the present case should be treated as made with the aid of power and there is no error in the impugned order on this score.

With regard to the contention that during the relevant period vertical blinds were not liable to duty under heading 6301, learned DR submitted that the tariff heading 6301 covered "made-up textile articles not elsewhere specified". Therefore, the entry was broad enough to cover all made-up textile articles. The amendment of 1995 so as to separately mention interior blinds under a separate heading could not, in any way, be argued to mean that the entry as it stood earlier did not cover these items. The learned DR submitted that the amendment only clarified and confirmed that the goods remained covered under the chapter always.

He also submitted that the use of the terms 'including blankets (other than of wool), tarpaulins, tentes, sails for boats' did not mean that to be included in the chapter heading, all items had to be in the nature of the items specified in the included group of goods. He submitted that it is settled law that an inclusive definition expanded the scope of the entry and not shrunk it. He referred, in this context, to the decision reported in 1994 (51) ECR 436 (Tribunal). The learned DR

also submitted that even if it is held that there is doubt about the eligibility to the exemption, the doubt must be resolved in favour of the Revenue and not the assessee, as it is settled law that exemptions are by their nature exceptions and should be construed strictly and that, in the event of doubt, the construction should be in favour of the State and not the subject. Learned DR also contended that the appellants' contention regarding time-bar is entirely untenable in the facts of the present case. The appellants had claimed exemption in the classification list claiming that the production was without the aid of power. These facts were on verification and investigations found to be false. Therefore, this is a case clearly involving suppression of facts and mis-statement which are specifically covered by proviso to Section 11 A. In such a case, the approval of classification list did not confer any immunity on the appellants.

6. We have perused the records and have considered the rival submissions. In the instant case, the appellants had procured various inputs like aluminium channels, fabrics etc. By carrying out various processes on these materials, they brought into existence an entirely new product, namely, blinds. The blinds have very different identity and use than the inputs in their original state. Therefore, the criteria required for holding the new goods to be manufactured goods are fully met. We are not able to find merit in the submission made that since all the processes involved in its production are not carried out with the aid of power, the vertical blinds should be held to be made without the aid of power. 'Manufacture' includes various major and minor processes including processes incidental thereto. It is not necessary that all these processes should be carried out with the aid of power to meet the requirement that the goods are made with the aid of power. In fact, in almost all situations, some of the processes are bound to be carried out manually or otherwise that with the aid of power. It would lead to absurd results if one were to hold that each and everyone of the processes should be carried out with the aid of power, to hold that the goods are made with the aid of power. We are not able to also agree with the appellants' contention that vertical blinds became excisable only after the amendment of the tariff item with effect from 1995. Prior to that period also, Chapter 63 covered "Made-up textile articles not elsewhere specified". Vertical blinds in question are made-up textile articles as they are made predominantly from textiles. The expansion of the heading by the inclusive clause

does not reduce the scope of the chapter so as to cover only the category of goods in the included items. Further, the amendment of the chapter in 1995 had only a limited effect. It split the entry into several sub-headings. By such splitting of headings, its scope and coverage is no way altered. There is no addition or curtailment. It only facilitated levying different rates of duty, if so considered proper, on each of the items or group of items covered by the various sub-headings, rather than subjecting all made-up goods to duty at one rate. We are, therefore, not able to agree with the appellants' contention that prior to 1995, the goods were not liable to central excise duty. The appellants' contention that the demand is time-barred is also not sustainable in the facts and circumstances of this case.

The appellants had claimed the exemption which was applicable to goods made without the aid of power. Subsequent verifications and investigations showed that important processes involved in the manufacture were carried out with the aid of power and that the appellants' premises had power operated machines along with power connections. Thus, actual facts were contrary to what was submitted to the central excise authorities. Therefore, it is clearly a case of suppression of correct and relevant facts. As such suppression of facts conferred tax exemption on the appellants, from the circumstances, it follows that such suppression was done with intent to evade payment of duty. Therefore, we agree with the Revenue that in the present case, demand could be raised inspite of the fact that classification lists had been approved invoking the extended period. In view of these facts, we hold that the appellants were not eligible for the exemption under Notification No. 65/87 and duty has been correctly demanded. However, with regard to the computation of the duty amount, we agree with the appellants that the same had to be worked out after giving necessary deductions as permissible under Section 4 of the Central Excise Act.

That Section is clear that central excise duty and other taxes payable are to be deducted while fixing the assessable value of goods. Since the same has not been done in the present case, the matter is required to be sent back to the original authority for computing the duty amount correctly in accordance with law. We, therefore, hold that the appellants are entitled to relief in this regard. The case is,

accordingly, remanded to the Commissioner of Central Excise for a fresh computation of amount of duty after treating the amount realised by the appellants on sale of goods as cum-duty price.

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