

Bliss Pack Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-10-1985

Reported in : (1985)(5)LC2079Tri(Delhi)

Appellant : Bliss Pack

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal filed by M/s. Bliss Pack (hereinafter called the 'appellants') under Section 35-B of the Central Excises and Salt Act, 1944 against the Order-in-Original No. 2 of 1983, dated 2-6-1983 issued on 11-7-1983 passed by the Collector of Central Excise, Bombay, whereby the appellants were required to pay excise duty of Rs. 1,17,281. 25+Rs. 975.84 and also to pay penalty of Rs. 25,000/- under Rule 173Q read with Rule 9(2) of the Central Excise Rules. An order confiscating the land, building, machinery etc. used in connection with the manufacture of excisable goods involved in the case was also passed but an option was given to the appellants to redeem the same on payment of fine of Rs. 10,000/-.

2. Briefly stated the facts of the case are that the appellants are the manufacturers of corrugated boxes falling under Item No. 68 of the Central Excise Tariff. For the manufacture of corrugated boxes, the appellants used to supply kraft paper to M/s. Bliss Enterprises, Bombay and got corrugated sheets manufactured from them. M/s. Bliss Pack, the appellants, as well as M/s. Bliss Enterprises are situated in the adjacent premises and are partnership concerns. The partners in both the

concerns are related. Shri Harish Keshavlal Shah who is an active partner is common in both the concerns.

3. M/s. Bliss Pack, the appellants, have obtained Central Excise Licence L-4 for the manufacture of corrugated boxes and were clearing such corrugated boxes without payment of Central Excise duty by claiming exemption under Notification No. 89/79, dated 1-3-1979.

4. On verification of the records of both the concerns, it was found that the value of the corrugated boxes manufactured and cleared in the name of M/s. Bliss Pack and M/s. Bliss Enterprises together exceeded Rs. 30 lakhs on 22-1-1979. It was also found that M/s. Bliss Pack, the appellants had installed the machinery only for the manufacture of corrugated boxes and M/s. Bliss Enterprises had installed the machinery only for the manufacture of corrugated sheets.

5. On 4-6-1979, officers of the Headquarters Preventive Branch, Bombay, intercepted a Truck No. MSR 9743. On verification, it was found to be loaded with 1,900 corrugated boxes from M/s. Bliss Pack, Bombay. The said consignment covered with the Gate Pass No. 8, dated 4-6-1979 with nil duty. On verification of the records of M/s. Bliss Pack it was found that the said consignment was cleared by the appellants from their factory without its accountal in their R.G. 1 Register. It was also found that 1,600 corrugated boxes in fully manufactured condition were lying in the factory without their accountal in the R.G. 1 Register. In the circumstances, the officers seized 1,900 corrugated boxes intercepted in transit and 1,600 corrugated boxes lying unaccounted in the factory premises totally valued at Rs. 24,270/- in the reasonable belief that provisions of the Central Excises and Salt Act, 1944 and the Rules framed thereunder had been contravened.

6. The Assistant Collector of Central Excise (Preventive) Headquarters, Bombay issued a show cause notice No. V (P1)/AU/15-7-79, dated 24-11-1979 to M/s. Bliss Pack, Bombay, the appellants asking them to show cause to the Collector of Central Excise, Bombay as to why- (a) Central Excise duty amounting to Rs. 1,17,281.85 at the appropriate rate may not be demanded and recovered on 3,28,825 corrugated boxes cleared during the period from 22-1-1979 to 3-6-1979

and Central Excise duty amounting to Rs. 975.84 at the appropriate rate may not be demanded and recovered on 1,900 corrugated boxes under seizure under Rule 9(2) of the Central Excise Rules, 1944; (b) 1,900 corrugated boxes seized in transit and 1,600 corrugated boxes seized in the factory premises may not be confiscated under Rule 173Q and/or Rule 9(2) and/or Rule 52-A and/or Rule 226 and/or Rule 210 of the Central Excise Rules, 1944; (c) plant and machinery and material used in connection with the manufacture of the said goods may not be confiscated under Rule 173Q(2) of the Central Excise Rules, 1944; and (d) penalty may not be imposed on them under Rule 173Q and/or Rule 9(2) and Rule 52-A and/or Rule 226 and/or Rule 210 of the Central Excise Rules, 1944.

7. The appellants did not file written explanation to the said show cause notice and the Collector of Central Excise, Bombay-I, on the basis of evidence available on record decided that the appellants had exceeded the total clearances of corrugated boxes of Rs. 30 lakhs on 22-1-1979 and they should have discharged duty liability on corrugated boxes manufactured and cleared from 22-1-1979 to 3-6-1979. The Collector did not accept the plea of the appellants that the appellants had manufactured corrugated boxes on behalf of M/s. Bliss Enterprises on job work basis and that they were eligible for exemption under Notification No. 89/79 as corrugated boxes manufactured on behalf of M/s. Bliss Enterprises may not be computed for total clearance of the appellants.

8. Being aggrieved with the said order passed by the Collector of Central Excise, Bombay, M/s. Bliss Pack the appellants filed this appeal before this Tribunal alleging therein, inter alia, that the Collector has erred in holding that the appellants had exceeded a total clearance of Rs. 30 lakhs value during the year 1978-79 and ought not to have clubbed the clearances of job work done on behalf of M/s. Bliss Enterprises. M/s. Bliss Pack, the appellants and M/s. Bliss Enterprises are two distinct legal entities and the value of the corrugated boxes manufactured on job work basis on behalf of M/s. Bliss Enterprises should not have been added.

9. We have heard Shri K.D. Kelawala, Advocate for the appellants and Shri H.L. Verma, S.D.R. for the Department and gone through the record.

10. Shri Kelawala, the learned Counsel for the appellants, argued that the show cause notice was issued on the presumption that the appellants switched over production and sales of boxes in the name of M/s. Bliss Enterprises from September, 1978, and this was done deliberately with a view to evade Central Excise duty. According to him, this is incorrect as per record. The appellants continued to manufacture boxes till December, 1978. Only in January and February, 1979 it stopped manufacturing boxes. In March, 1979, it manufactured boxes valued at Rs. 2,99,318/- and if this production is added to the production of appellants upto December, 1978 even then it would be less than Rs. 30 lakhs and hence eligible for concession in the next year. There was no need for the appellants to manoeuvre production in the name of M/s.

Bliss Enterprises from September, 1978 when their own production was less than exemption limit in September to December, 1978. This itself proves that Bliss Pack manufactured boxes of M/s. Bliss Enterprises on job work basis and there was no intention to evade duty. Even the goods manufactured on behalf of M/s. Bliss Enterprises were sold by M/s.

Bliss Enterprises and M/s. Bliss Enterprises had charged sales tax on such sales. The production of the appellants upto 31-3-1979 was within 30 lakhs limit and all clearances had taken place under regular gate passes, so intention to evade duty could not be presumed.

11. Shri Kelawala further submitted that both the concerns i.e. the appellants and M/s. Bliss Enterprises are separate units registered under Small Scale Industries. Both pay sales tax separately and have separate independent licences. Both are eligible for exemption under normal circumstances. Simply because some partners are common and relatives does not mean that these concerns are not independent. Shri Kelawala submitted that if it is held that M/s. Bliss Pack, the appellants had manufactured goods on job work basis on behalf of M/s.

Bliss Enterprises, then the value of goods cleared on behalf of M/s.

Bliss Enterprises will be the value of job work only and in that case even if the value of clearances of both the units is taken then it falls within the exempted limit.

He cited a decision of Calcutta High Court in the case of Associated Pigments v. Collector of Central Excises, Calcutta (1983 E.L.T. 876) in support of his contention that vide Notification No. 119/75, dated 30-4-1975, excise duty should be charged only for the job work done and not on the total value of the articles when it leaves the factory of the job workers. He also cited a decision of the Bombay High Court in Narendra Engineering Works v. Union of India and Ors. 1981 E.L.T. 859 in support of his contention that while computing the value of clearances of a job worker, it is only the cost which is incurred by him in relation to the manufacture of excisable goods can be taken into account and therefore, the value of raw material supplied by the customers to the job workers would not be taken into account while computing the real value of the goods manufactured on the job work basis.

12. Shri Kelawala, the learned Counsel further argued that the duty amounting to Rs. 1,17,285 demanded from the appellants is with respect to the clearances of the goods effective from 22-1-1979 to February, 1979. The rate of duty at the material time was 5% and the duty cannot be recovered at, the rate of 8% on the goods cleared during the relevant period. He cited a decision of the Government of India in the case of Mining and Allied Machinery Corporation, Durgapur (1982 E.L.T.517) in support of his contention that words "cleared" or "clearance" in the Central Excise Rules would only mean removal of the goods from a factory or warehouse but rates of duty applicable in this case should be the rates applicable on the dates of removal under Rule 9-A(i)(ii) of the Central Excise Rules and not Rule 9-A (5).

13. Regarding penalty imposed, the learned Counsel argued since there was no intention to evade duty, no penalty should have been imposed. He cited a decision of this Tribunal in the case of Shriram Pistons and Rings Ltd. v. Collector of Central Excise, Meerut (1983 E.L.T. 1927) in support of his contention that penalty cannot be levied when there was no intention to evade payment of duty.

14. Regarding confiscation of plant and machinery, the learned Counsel Shri Kelawala submitted since there was no intention of evading duty, plant and machinery should not have been confiscated. He cited a decision of this Tribunal

in the case of Shree Shankar Industries, Bombay v. Collector of Central Excise, Bombay 1984 (17) E.L.T. 402 in support of his contention that the provision of Rule 173Q(2)(b) for confiscating the land, machinery, building etc. used in connection with the manufacture of the excisable goods is not normally invoked unless the party is habitual offender and delinquent. In the absence of such an evidence and also because mala fide intentions of the appellants have not been proved by the Department, the order of confiscation of the land, machinery, building etc. used in connection with the manufacture of excisable goods under Rule 173Q(2)(b) should be set aside.

15. Shri Verma, the learned Departmental Representative countered the arguments of Shri Kelawala and submitted that both these concerns though appear to be separate and two distinct entities are one in reality. According to him, the employees of both the concerns are the same, the Managing Partner is common and the other partners are relatives.

16. He pointed out that during the course of investigation, statement of Shri Harish Keshavlal Shah, Managing Partner, in both the units was recorded on 29-5-1979. In the said statement, he inter alia stated that the raw material for the manufacture of corrugated sheets such as Kraft paper are purchased by M/s. Bliss Pack, Bombay, the appellants and got converted into corrugated sheets from M/s. Bliss Enterprises on job work basis. Thereafter, M/s. Bliss Pack manufactured corrugated boxes from such corrugated sheets received from M/s. Bliss Enterprises and supplied such corrugated boxes to various customers as per their orders. During the period from November, 1978 to March, 1979, M/s.

Bliss Enterprises themselves purchased kraft paper, manufactured corrugated sheets therefrom and got the corrugated boxes manufactured from M/s. Bliss Pack and supplied such corrugated boxes to the same customers to whom the corrugated boxes were supplied by M/s. Bliss Pack. According to Shri Verma, it is pertinent to note that Shri Harish Keshavlal Shah when called upon to explain was not able to give any explanation as to why M/s. Bliss Enterprises chose to get the corrugated boxes manufactured on their behalf from M/s. Bliss Pack during the aforesaid 5 months and again stopped such arrangement from April 1979 onwards

abruptly? According to Shri Verma, the contention of the appellants that during the period from October, 1978 to March, 1979 only M/s. Bliss Pack, the appellants manufactured corrugated boxes on behalf of M/s. Bliss Enterprises is not at all sustainable. The appellants, who actually manufactured the corrugated boxes though the raw material might have been supplied by Bliss Enterprises, should be considered as the actual manufacturers and the whole of the value of such corrugated boxes manufactured by the appellants during the relevant period should also be included in the clearances of the appellants for the purpose of Notification No. 89/79, dated 1-3-1979.

The appellants crossed the limit of 30 lakhs on 22-1-1979 and, therefore, the appellants should have discharged duty liability on the corrugated boxes manufactured and cleared from 22-1-1979 onwards.

17. Regarding penalty, Shri Verma, stated that the facts of the case clearly show that in order to evade duty of excise on the corrugated boxes manufactured by them, they intentionally adopted a dubious method of organising the manufacturing activity during the relevant period i.e. November, 1978 to March, 1979, and again reverted to the original arrangement thereafter. Keeping in view the penalty amount involved and other circumstances, the penalty amount of Rs. 25,000/- cannot be said to be disproportionate.

18. Regarding confiscation of plant and machinery, the order of the Collector of Central Excise is also justified inasmuch as the appellants intentionally evaded the payment of duty by adopting dubious method of organising the manufacturing activity in his own factory with the aid and help of the machines installed therein. Shri Verma, submitted that the Collector of Central Excise has, however, ordered the redemption of the same on payment of Rs. 10,000/- as fine.

According to Shri Verma, the order passed by the Collector of Central Excise, Bombay, is based on facts and law and the appeal having no merit may be dismissed.

19. In this case, some of the facts are not disputed. Statement of Shri Harish Keshavlal Shah, Partner in both the units, was recorded on 29-5-1979 under

Section 14 of the Central Excises and Salt Act, 1944.

As per his statement, the raw material for the manufacture of corrugated sheets used to be purchased by M/s. Bliss Pack, Bombay and got converted into corrugated sheets from M/s. Bliss Enterprises on job work basis. Thereafter, M/s. Bliss Pack, the appellants, manufactured corrugated boxes from such corrugated sheets received from M/s. Bliss Enterprises and supplied such corrugated boxes to various customers as per their orders. During the period from November, 1978 to March, 1979 the earlier procedure was discarded and as per the case of the appellants M/s. Bliss Enterprises themselves purchased kraft paper, manufactured corrugated sheets therefrom and got the corrugated boxes manufactured from Bliss Pack, the appellants and supplied such corrugated boxes to the customers to whom corrugated boxes were used to be supplied by M/s. Bliss Pack. No explanation of any kind was given by the appellants as to why the earlier procedure was discarded for this particular period because after March, 1979 the parties again reverted to the earlier procedure. This fact is sufficient to show that actually the appellants were the manufacturers of the corrugated boxes and not Bliss Enterprises as claimed by the appellants. Even otherwise if we accept the contention of the appellants that the raw material for the manufacture of the corrugated boxes was supplied by M/s. Bliss Enterprises to the appellants who manufactured the corrugated boxes, the manufacturer of these corrugated boxes would be the appellants and not M/s. Bliss Enterprises who supplied the raw material for the purpose of Notification No. 89/79. After discussing this issue at length and relying upon the various decisions on the point, "C" Bench of this Tribunal in the case of Collector of Central Excise, Madras v. Modoplast (Pvt.) Ltd., Coimbatore (Order No. 147 of 1985-C, dated 13-2-1985) held that by mere supplying the raw materials, the customer does not become the manufacturer. The provisions of Section 6 of the Central Excises and Salt Act, 1944 read with Rules 43 and 44 of the Central Excise Rules, 1944 lead to the conclusion that it is the owner or occupier of the factory where the goods are manufactured who is the manufacturer and not the person who merely brings his own raw material for manufacture into the mill and pays only conversion charges.

Allahabad High Court in the case of M/s. Philips India Ltd. v. Union of India and Ors. (reported in 1980 E.L.T. page 263) held that it is only the person who actually manufactures the goods who is required to take out a licence under the Central Excise Rules. The appellants are the L-4 licence holders for manufacturing the corrugated boxes and, therefore, they are the actual manufacturers of the corrugated boxes and the value of the corrugated boxes manufactured by them during the year should be taken into account for the purposes of taking benefit under Notification No. 89/79, dated 1-3-1979. A decision given by a Larger Bench of this Tribunal in the case of M/s. National Organic Chemical Industries Ltd. v. Collector of Central Excise, Bombay (Order No. 70/85-C, dated 25-1-1985) negatives the contention of the appellants that M/s. Bliss Enterprises be treated as 'manufacturers' of the corrugated boxes during the period November, 1978 to March, 1979 and that the appellants were only job workers and, therefore, only job work charges should be included in total clearances made by the appellants during the year 1978-79. Notification No. 119/75 makes it clear that 'job work' has a particular and restricted meaning given in it. It means such items of work where an article intended to undergo manufacturing process is supplied to the job worker and that the article is itself returned by the job worker to the supplier after the article has undergone the intended manufacturing process. This is not the case here. The appellants actually manufactured the corrugated boxes out of the corrugated sheets alleged to have been supplied by M/s. Bliss Enterprises. New articles have emerged after manufacturing process and these are entirely different from the corrugated sheets alleged to have been supplied by M/s. Bliss Enterprises. The appellants cannot be termed as 'job workers' in this case. We find support in our findings from a decision of 'C' Bench of this Tribunal in the case of Securipax India Private Limited v. Collector of Central Excise [Order No.276/85-C, dated 29-3-85 in Appeal No. ED(SB) 22/81-C].

20. The case law cited by the learned Counsel of the appellants relating to the Calcutta High Court judgment in Associated Pigments Limited v. Collector of Central Excise (1983 E.L.T. 876) and Bombay High Court judgment in Narindera Engineering Works v. Union of India (1981 E.L.T. 859) itself proves that the appellants M/s. Bliss Pack are not entitled to the benefit of Notification No. 119/75. Had the appellants been job workers, payment of excise duty would have been

only for the job work done and not on the total value of the articles and for the purpose of computing the value of clearances of the job worker, it is only the cost which was incurred by him in relation to the manufacture of excisable goods could be taken into account. But in this case, the appellants have failed to show and prove that they were only job workers regarding the corrugated boxes actually manufactured by them in their factory during the period November, 1978 to March, 1979 and, therefore, the total value of the corrugated boxes manufactured by the appellants will have to be computed for arriving at the value of clearances for considering the benefit under Notification No. 89/79, dated 1-3-1979. Record shows that during the financial year 1978-79 the value of the clearance of the corrugated boxes manufactured by the appellants exceeded Rs. 30 lakhs on 22-1-1979 and therefore, the appellants should have discharged duty liability on the corrugated boxes manufactured and cleared from 22-1-1979 onwards at the appropriate rate.

21. The contention of the learned Counsel of the appellants that the rate of duty should be 5% and not 8% has not been substantiated by him on record. In this case, the appellants have not maintained any accounts showing the dates of clearances of such goods manufactured by them during the disputed period from November, 1978 to March, 1979.

Since there was no 'clearance' in accordance with rules (i.e. removal after completion of all excise formalities and payment of the duty due), as required by the unamended Rule 9A (i) and (ii) of Central Excise Rules during the relevant period, this rule was not applicable and, therefore, the provision of Rule 9A(5) of the Central Excise Rules will be applicable and the rate of duty would be 8% which was applicable on the date of payment of duty. The authority below has correctly raised the demand of Rs. 1,17,281.85 as the duty amount on the goods i.e. corrugated boxes manufactured and removed by the appellants.

22. Regarding the payment of the Central Excise duty amounting to Rs. 975.84, there is no dispute that 1,900 corrugated boxes were seized under Rule 9(2) of the Central Excise Rules which the appellants had removed without the payment of duty though with the gate pass. This demand is also valid.

23. Regarding penalty amount, it is clear from record and the statement of Shri Keshavlal Shah, the Partner of the appellant firm, also proves the same that the appellants adopted a dubious method of organising the manufacturing activity of the corrugated boxes for a particular period from November, 1978 to March, 1979. They cleared the goods without payment of duty and, therefore, the Collector of Central Excise has correctly found the appellants guilty and liable to payment of duty under Rule 173Q read with Rule 9(2) of the Central Excise Rules. The method adopted by the appellants clearly manifests the mala fide intention on the part of the appellants. Keeping in view the amount of duty evaded, we do not feel that the penalty to the extent of Rs. 25,000/- is disproportionate or excessive.

25. Regarding the confiscation of the plant and machinery installed in the factory of the appellants, provisions of Rule 173Q(2)(a) are aptly applicable in the present case. As held above, the appellants adopted a dubious method of organising the manufacturing activity of the corrugated boxes for a particular period from November, 1978 to March, 1979 and they cleared the goods without payment of excise duty and, therefore, the Collector of Central Excise correctly found the appellants guilty and liable to payment of duty under Rule 173Q read with Rule 9(2) of the Central Excise Rules. The authority below has correctly invoked the provisions of Rule 173Q(2) of the Central Excise Rules for confiscating the plant and machinery of the appellants which they had used for the manufacture of the goods which were removed from the factory without payment of excise duty. However, instead of absolute confiscation of the plant and machinery, the authority below ordered the release of the same on the payment of redemption fine of Rs. 10,000/-. The only point which needs consideration is whether this amount of Rs. 10,000/- is justified. In view of the fact that a penalty of Rs. 25,000/- has already been imposed on the appellants under Rule 173Q read with Rule 9(2) of the Central Excise Rules, we feel that the ends of justice would be met if this redemption fine is reduced to Rs. 1,000/- only.

26. With this modification, we confirm the order of the authority below. Appeal partly allowed only to the extent of reduction in the amount of the redemption fine.