

Collector of Central Excise Vs. Goodlass Nerolac Paints Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-11-1985

Reported in : (1986)(8)LC639Tri(Mum.)bai

Appellant : Collector of Central Excise

Respondent : Goodlass Nerolac Paints Limited

Judgement :

1. This appeal is by the Collector of Central Excise, Bombay-I. It arises out of and is directed against the Order-in-Appeal No. M.1617/ BI-556-558/84 dated 15-8-1984.

2. The facts necessary for the disposal of this appeal lie in a small compass. They are undisputed also. M/s. Goodlass Nerolac Paints Ltd., Bombay (for short 'Paints Ltd') are the manufacturers of paints and varnishes falling under T.I. 68. Paints Ltd. used V.N.E. Oils falling under T.I. 12. They were working under SRP. They were allowed proforma credit facilities. During the period from 13-11-1979 to 8-4-1981 Paints Ltd had availed the proforma credit of the duty paid on V.N.E. Oils received and used in the manufacture of Paints and varnishes. The jurisdictional Superintendent of Central Excise on noticing that Paints Ltd. were invariably receiving the raw materials viz. V.N.E.Oils not directly from the manufacturers namely, M/s. Allana Oils Mills, but through their distributors, M/s. Allana Sons Pvt. Ltd., issued a notice to Paints Ltd requiring them to show cause as to why the credit of duty amounting to Rs. 48,876.52 for the period from 13-11-1979 to 8-4-1981 should not be recovered from them under Sub-rule (3)(v) of. Rule 56A of the

Central Excise Rules, 1944 (for short 'Rules'). Paints Ltd who are the respondent in this appeal sent a reply contending inter alia that they had not contravened the provisions of Rule 56A(3)(v) in as much as they had duly accounted for the goods and disposed of the goods in the manner prescribed in the rules. They further contended that they had produced gate passes- along with D-3 intimation. It was also contended by them that gate passes need not be in their name and that the Central Excise department cannot impose conditions which were not contemplated by the Rules. It was also contended by them that the claim for refund of credit beyond 25-10-1980 was barred by time. The Assistant Collector of Customs who had held the enquiry rejected the contentions of Paints Ltd and confirmed the demand made by the Superintendent of Central Excise.

3. Being aggrieved by the order of the Assistant Collector, Paints Ltd. carried the order-in-appeal to the Collector of Central Excise (Appeals) Bombay. The Collector (Appeals) allowed the appeal. He disagreed with the view taken by the Assistant Collector. He held that Paints Ltd are entitled to avail proforma credit even though the gate passes were originally issued in the name of M/s. Allana Sons Pvt. Ltd. The Collector of Central Excise as stated earlier had filed this appeal challenging the order of the Collector (Appeals).

4. During the hearing of this appeal, Shri N.K. Pattekar, the learned departmental representative urged that before availing of the proforma credit, a manufacturer of the finished excisable goods is required to strictly observe the conditions laid down in the relevant rule as well as the Public Notices and Trade Notices issued from time to time. Shri Pattekar contended that Paints Ltd received the raw materials under the gate passes which were in the name of M/s. Allana Sons Pvt. Ltd. and that M/s. Allana Sons Pvt. Ltd. had not made any endorsement on the gate passes and no subsidiary gate passes were also issued by M/s.

Allana Sons, and therefore Paints Ltd., could not avail of the proforma credit in respect of the raw materials received through M/s. Allana Sons Pvt. Ltd. Shri Pattekar further urged that Paints Ltd., failed to observe the conditions prescribed under Rule 56A in as much as they could not produce proper duty paid documents evidencing payment of duty paid by them.

5. It was further contended by Shri Pattekar that Paints Ltd failed to obtain their requirements of the duty paid materials direct from the manufacturer of such duty paid materials in their own name under separate gate passes and therefore, they were not entitled for the proforma credit. In support of his contention Shri Pattekar relied upon Trade Notice No. 77/81 dated 5-6-1981.

6. Shri D.D. Gwalani, learned Advocate for Paints Ltd., contended that there is no merit whatsoever in the appeal. He urged the following grounds: (ii) Although the gate passes were in the name of M/s. Allana Sons Pvt. Ltd., the goods came directly from M/s. Allana Oil Mills to the appellants' factory in the original packed condition accompanied by the duty paid documents, namely, gate passes.

(ii) The appellants had filed D-3 intimation and along with D-3 intimation they had enclosed the certificate issued by M/s. Allana Sons Pvt. Ltd. which was to the effect that 'that they had sold the entire quantity received from M/s. Allana Oil Mills mentioned in the gate pass, No. and date, to Paints Ltd and that they had no objection for a manufacturer to take the proforma credit of the excise duty paid thereon'. There had been a proper verification of D-3 intimation by the proper officer. They had complied with the conditions laid down in Rule 56A. In the said circumstances the demand made by the Superintendent and confirmed by the Assistant Collector had been rightly rejected by the Collector (Appeals).

(iii) The allegations in the show cause notice were (1) that Paints Ltd had brought 465490 kgs. of V.N.E. Oil and taken the proforma credit without producing the documents, namely the gate passes.

(2) that they had contravened the provisions of Rule 5A(3)(v). Both these allegations are baseless. Paints Ltd had duly accounted for the raw materials received. Thus, there has been no violation of Rule 56A(3)(v). They had also produced gate passes evidencing the payment of duty and the raw materials in the original packing was produced for verification of the proper officer. Thus, both the allegations contained in the show cause notices were without substance.

(3) Rule 56A(3)(v) did not lay down that the gate pass should be in the name of the assessee.

In the circumstances there was compliance with the provisions of Rule 56A. In support of the above contentions Shri Gwalani relied upon the following decisions: In Universal Cables Ltd., v. Union of India reported in 1978 ELT J-495.

(ii) In Re: Chaliha Rolling Mills, Calcutta reported in 1982 ELT P.547. (iii) In Re: Solid Containers Ltd. reported in 1981 ECR page 567-D and (iv) In Hyderabad Allwyn Metal Works Ltd. reported in 1982 ELT 585. and lastly (iv) he urged that conditions more onerous than the conditions incorporated in the Rules cannot be imposed by Public Notices or Trade Notices. He, therefore, prayed that the appeal may be rejected.

7. It is necessary to clarify that there were three appeals before the Collector (Appeals), one against the order passed by the Assistant Collector and two against the orders passed by the Superintendent of Central Excise. The Collector (Appeals) had clubbed all the appeals and passed a common order. While granting authorisation the Collector of Central Excise, Bombay-I had authorised the Deputy Collector to file appeals against all the three appeals. Though against column No. 2 it was stated that the appeal was against the order of the Collector (Appeals) as a whole, in the body of the appeal a challenge was restricted to that part of the order of the Collector (Appeals) by which he set aside the order of the Assistant Collector. The copy of the order in original produced along with the appeal was the copy of the order passed by the Assistant Collector.

8. In the circumstances the present appeal is treated as an appeal against that part of the order of the Collector (Appeals) by which he set aside the order in original passed by the Assistant Collector.

9. I have carefully considered the submissions made by both sides and perused the records of the case.

10. The question that arises for consideration is 'whether a manufacturer of finished excisable goods is not "entitled to take proforma credit of the duty paid on the raw material or components or finished products (to be hereinafter referred to as 'inputs') used in the manufacture of the finished excisable products if the gate passes are not in the manufacturer's name or not duly endorsed in their name?'

11. It is not in dispute that Paints Ltd were allowed the facility of proforma credit. It is further not in dispute that in the gate passes G.P. 1 the consignees are shown as M/s. Allana Sons Pvt. Ltd. It is also not in dispute that M/s. Allana Sons Pvt. Ltd. are the sole distributors of V.N.E. Oils manufactured by M/s. Allana Oil Mills. It is again not disputed that in the- gate passes issued by M/s. Allana Oil Mills in the name of M/s. Allana Sons Pvt. Ltd., the manner of transport of goods are indicated as under: It is further not in dispute that the inputs were received in Paints Ltd., premises in original packing and the original gate passes issued in favour of M/s. Allana Sons Pvt. Ltd., were handed over to Paints Ltd. along with the certificate from M/s. Allana Sons Pvt. Ltd. and the specimen of the certificate reads: 'This is to certify that we have sold entire quantity of Soyabean Refined Oil received from M/s. Allana Oil Mills under Excise G.P. No. 210 dated 5-3-1981 to M/s. Goodlass Nerolac Paints Ltd., Ganpatrao Kadam Marg, Bombay and have no objection if M/s. Goodlass Nerolac Paints Ltd. takes the proforma credit on excise duty paid thereon'. Following are the details of the supply:-Item Refined Soyabean Oil QuantityAmount of Excise Duty 1094.78Date 5-3-1981 Tanker No. MHD 3069 It is further not in dispute that Paints Ltd were furnishing D-3 intimation.

12. The procedure required to be followed by a manufacturer who has been permitted the facility of proforma credit is set out in Rule 56A(3). Shortly stated they are: (1) giving of prior notice to the proper officer of the receipt of inputs in the factory premises. This intimation is known as D-3 intimation.

(2) he is required to bring to the factory the inputs in original packing under the cover of A.R. 1 or G.P. 1 of Bill of Entry.

(3) he is required to produce the inputs when brought to the factory before the proper officer to enable him to identify the inputs and verify the actual quantity thereof.

(4) he is required to maintain accounts in form R.G. 23 Parts I and II. (5) he is required to maintain the adequate credit balance in the account current to cover duty leviable on the finished goods cleared at any time.

(6) the total stock of inputs in the factory at any time should not exceed the quantity utilised in the factory during the previous two calendar years.

13. According to Paints Ltd., they had complied with all the above conditions. The department however contends that the second condition set out above had not been fulfilled. It was the contention of the department that Paints Ltd. were not shown as the consignee in the gate passes and there was no endorsement on the reverse of the gate pass by the jurisdictional Superintendent and further no subsidiary gate pass had been given by the vendors, namely, M/s. Aliana Sons Pvt. Ltd., to Paints Ltd. The department therefore contends that Paints Ltd were not entitled to take credit of the duty paid on the inputs. The finding of the Assistant Collector to quote his own words 'it is true that the procedure envisaged under Rule 56A in respect of duty paid raw materials or component part for use in the manufacture of finished excisable goods but it is subject to the strict observance of the conditions laid down therein. In the instant case I find that the assessee invariably received the consignments in the name of M/s.

Allana Sons Pvt. Ltd., the distributors of M/s. Allana Oil Mills, Thane. In other words they failed to obtain their requirements of duty paid materials direct from the manufacturer of such goods in their own name under separate pass in form G.P. 1 or on account of their name through the distributors. Therefore, the assessee were not entitled for the proforma credit unless and until the consignments were received in their name or subsidiary gate pass was produced in their name as per the instructions contained in Trade Notice No. 77/81 dated 5-6-1981'.

14. Now according to the order of the Assistant Collector the appellants cannot avail the facility of proforma credit if they did not directly receive the inputs from the manufacturers or at least subsidiary gate pass from the distributors. The Assistant Collector's order does not indicate that the above requirements were laid down in Rule 56A. On the other hand according to the order of the Assistant Collector the above requirements were provided in Trade Notice No.77/81 dated 5-6-1981. During the hearing of this appeal Shri Pattekar had also placed reliance on the said trade notice. Paints Ltd., had produced a copy of the said Trade Notice as well as a few other Trade Notices. The Trade Notice No. 77/81 dated 5-6-1981

was issued by the Collector of Central Excise, Bombay-I. The above Trade Notice lays down the procedure for availing proforma credit by the manufacturers who receive inputs from the canalising agencies such as Public Sector Corporations like STC and MMTC. This Trade Notice relates to the countervailing duty. Countervailing duty is payable in respect of imported goods. In order to take proforma credit a manufacturer has to satisfy that the inputs utilised in the production of the finished products are duty paid inputs. When the inputs are imported not directly by the manufacturers but by canalising agencies and later distributed to the manufacturers, the manufacturers who intends to avail of the facility of proforma credit are required to prove the payment of countervailing duty on the inputs. The nature of proof required to be produced by such manufacturers is set out in this Trade Notice. The proof they are required to produce are the Bill of Entry which would be the duty paying document or a certificate from the canalising agency in a prescribed form. The Trade Notice requires the canalising agency to maintain accounts of the disposal of the imported goods and should also give declaration about non-availment of refund of countervailing duty from the Customs Authority. Strictly speaking this Trade Notice has no relevance to the issue involved in this appeal. The proforma credit was not availed of in respect of countervailing, duty.

On this ground alone the order of the Assistant Collector becomes unsustainable and the contention of Shri Pattekar would fail.

15. The procedure required to be followed by a manufacturer working under Rule 56A when the inputs are secured through a third party such as sole agent or the distributors of manufacturing inputs was considered by the Central Excise Collectorate from time to time. In the earliest Trade Notice of 6th July, 1970 it was laid down that a manufacturer who secures the inputs through a third party should obtain a certificate from the jurisdictional Superintendent of Central Excise.

This procedure was causing difficulties and therefore to remove those difficulties and to reduce the work especially when the entire consignment was meant exclusively for the particular manufacturer working under Rule 56A, a Trade Notice dated 9-11-1971 came to be issued by the Bombay Central Excise Collectorate.

This Trade Notice dispensed with the obtaining of the certificate from the jurisdictional Superintendent. It however, required that the gate pass issued by the original manufacturer should show that the goods are ultimately meant for a particular manufacturer working under Rule 56A and the entire consignment should move without being opened at any intermediate station and the goods should remain in the original packing when they arrive at the factory of the manufacturer working under Rule 56A.16. From the facts narrated above it could be said that there has been substantial compliance of the conditions laid down in the Trade Notice dated 9-11-1971 by the Paints Ltd in this case. Though there is no endorsement on the gate pass by the manufacturer of inputs that the goods are ultimately meant for Paints Ltd working under Rule 56A, there is sufficient indication in the gate pass that the goods are intended for M/s. Goodlass Nerolac Paints Ltd. Besides the gate pass there is a certificate issued by the sole distributors and further the goods had been received in the premises of the Paints Ltd in the original packing condition. Thus, it could be safely said that there had been substantial compliance with the requirement of the Trade Notice dated 9-11-1971.

17. The Trade Notices are normally issued for the benefit of the trade.

They are not statutory notifications and they have no statutory force.

Mostly they are clarificatory in nature. Sometime they explain the existing statutory provisions and sometime they fill up the gaps, or omissions in the procedural statutory rules.

18. Rule 56A does not specifically lay down that G.P. 1 should be in the name of the manufacturer who claim proforma credit. The perusal of this Rule as well as the Trade Notices referred to earlier would make it clear that the object behind the procedure provided in the Rule as well as in the Trade Notice is for the purposes of knowing whether the inputs which were used in the manufacture of finished excisable products did not suffer duty. The other object could be as to whether any other manufacturer had earlier availed of proforma credit in respect of the same inputs. If the manufacturer who avails the proforma credit is shown as consignee in the G.P. 1 then it poses no problem.

If, however, the consignee in the gate pass (G.P. 1) is not the manufacturer who takes the proforma credit, then ofcourse the proper officer may have to be satisfied that no other manufacturer had availed of proforma credit in respect of the same inputs. In the instant case the original gate passes issued in the name of M/s. Allana were handed over to Paints Ltd., and besides the gate passes a certificate issued by M/s. Allana Sons Pvt. Ltd was also produced. Thus, there was proof regarding non-availment of credit by any other manufacturer. As a matter of fact there was no charge against Paints Ltd., that they took credit for the inputs in respect of which some other manufacturer had already availed of proforma credit. There is also no charge that the inputs in respect of which Paints Ltd had availed proforma credit were not duty paid inputs. The only objection raised was that in the gate pass G.P. 1 the manufacturer was not shown as the consignee but some other person was shown as the consignee. It is highly technical. No loss of revenue to the Government is either alleged or established.

19. As has been observed earlier Rule 56A nowhere lays down that the consignee mentioned in G.P. 1 alone could avail of the proforma credit.

There is no prohibition in that rule for availing of proforma credit by a manufacturer who is not mentioned in the G.P. 1 as the consignee.

This Rule does not speak of endorsement on the reverse of G.P. 1 or issue of subsidiary G.P. 1. These prescriptions are under Trade Notices which have no statutory force. Violation of the condition of a Trade Notice cannot by itself be sufficient to disallow proforma credit.

20. The elaborate procedure and the production of duty paid documents provided under Rule 56A(3) are intended to satisfy the Central Excise officers that the inputs received in the factory are duty paid inputs and that no other manufacturer had availed credit in respect of the said inputs. Once the Central Excise officer is satisfied as to the duty paid nature of the inputs received in the factory and further satisfied that no other manufacturer could have availed of credit in respect of the said inputs he should desist from raising hyper technical objections. Whether there was substantial compliance with the requirement of Rule 56A(3) should be the prime concern otherwise or else it would amount to denying the facility which Rule

56A intended to provide.

21. In Appeal No. ED(T)(BOM) No. 37/80 dated 21-6-1984 reported in 1984 (18) ELT 135 in Chemi-Equip Ltd. v. Collector of Central Excise, Thane, this Bench had laid down that if the authorities were satisfied as to the receipt of duty paid raw material and its utilisation in the finished product, they would not be violating the Rules if they allow a manufacturer to avail of the proforma credit even though the manufacturer had not strictly complied with the procedural aspects. The said observations aptly applies to the facts of the present case. In Universal Cable Ltd. v. Union of India and Others, 1978 ELT (3-495) the Madhya Pradesh High Court on an almost identical facts had held that 'the permission granted to a manufacturer under Sub-Rule (2) or Rule 56A is for the purpose of allowing him to avail credit of the duty already paid on the material or equipment or component parts which he receives and which he uses in the manufacture of excisable goods. The requirement of Sub-rule (3)(i)(b) that the manufacturer shall produce documents mentioned therein is for satisfying the proper officer that the material received was duty paid material.

22. On careful consideration of all the aspects I hold that in order to claim proforma credit it is not essential that the manufacturer who availed proforma credit should be shown as the consignee in G.P. 1 or there should be an endorsement on the reverse of G.P. 1 or there should be a subsidiary gate pass in his name.

23. As the respondent had satisfactorily established that the inputs utilised in the finished excisable products were duty paid inputs and that no other manufacturer had availed of proforma credit in respect of those inputs and since they had substantially complied with the procedural requirement laid down in Rule 56A and Trade Notice, there is no scope to interfere with the order passed by the Collector (Appeals).