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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-01-1985

Reported in : (1986)(24)ELT151TriDel

Appellant : Wadpack Private Ltd.

Respondent : Collector of Central Excise

Judgement :

1. Briefly stated the facts of the case are that M/s. Wadpack Pvt.

Ltd., Bangalore (hereinafter called the appellants) are engaged in the manufacture, inter alia, of corrugated boards which are excisable goods falling under item 17 of the First Schedule to the Central Excises and Salt Act, 1944. The corrugated boards, as aforesaid, are manufactured by the appellants out of Kraft Paper [falling under sub-item (2) of item 17] purchased by them directly from manufactures of such paper and on which the appropriate duty of excise has already been paid. By Notification 15/78 the effective rate of duty on Kraft Paper in force was specified as 37.5%. But certain class of paper manufacturers were however allowed certain concession under Notifications Nos. 128/78 and 129/78 and the duty was paid at the effective rate of 37.5% less the concession available to them.

2. The second proviso to Notification No. 46/71 as introduced by Notification No. 14/78 specifies that duty on boards is exempt when made out of paper on which duty has been paid at the rate of 37.5% ad valorem.

3. The appellants availed full exemption on Corrugated Board from 24-1-1978 to 25-8-1978, even though the Kraft Paper (65 GSM and above) used in their manufacture did not discharge duty at 37.5% ad valorem.

Short-levy for the period from 24-1-1978 to 25-8-1978 was sought to be recovered by the department by issuing show cause notice C. No.V/17/3/255/78 dated 30-11-1978 to the appellants to show cause to the Assistant Collector of Central Excise, Bangalore I Division why duty at 5% ad valorem as per Notification No. 72/76, dated 16-3-1976 should not be recovered under Rule 10 of Central Excise Rules, 1944 on Corrugated Boards/Rolls cleared under nil rate of duty during the period 24-1-1978 to 25-8-1978.

4. The appellants filed reply to the said show cause notice alleging therein that they have availed of duty exemption under Notification No.14/78 dated 24-1-1978 in respect of corrugated boards/rolls made out of kraft paper cleared from the producing mills on payment of duty at 37.5% ad valorem less the duty concession availed of by them under Notifications Nos. 196/76, dated 16-6-1976; 128/77, dated 18-6-1977 and 129/77, dated 18-6-1977 and that therefore, what is significant is the rate of duty at which the producing mills had paid duty on kraft paper purchased by them and that even though these producing mills have availed of the duty concession under Notifications 196/76, 128/77 and 129/77 referred to above, the rate of duty on the kraft paper remained as 37.5% ad valorem.

5. The Assistant Collector, however, did not accept this contention of the appellants and confirmed the recovery of duty at 5% ad valorem in terms of Notification No. 46/71 as amended by Notification No. 72/76, dated 16-3-1976 for the intervening period 24-1-1978 to 25-8-1978 during which the appellants manufactured corrugated boards/rolls out of less than 37.5% ad valorem duty paid kraft paper and cleared at Nil rate of duty. According to the Assistant Collector the appellants have manufactured corrugated boards/rolls out of less than 37.5% ad valorem duty paid Kraft Paper and cleared at Nil rate of duty.

6. Being aggrieved by the said order of the Assistant Collector, the appellants filed appeal before the Appellate Collector of Central Excise, Madras, who by his Order-in-Appeal Nos. 1489 to 1505/80, dated 30th June, 1980 also rejected the

contention of the appellants and observed as under : "...During the period to which the demands relate in respect of corrugated board/rolls manufactured by the appellants, the duty exemption in terms of Notification No. 46/71 as amended by Notification No. 72/76, dated 16-3-1976 is available provided that on the Kraft Paper from which the corrugated boards/rolls are manufactured, duty has been paid at the rate of 37.5% ad valorem. In respect of the kraft paper received from the producing mills though charged to duty at 37.5% ad valorem the net amount of duty paid on them is less, on account of certain concessions enjoyed by the producing mills under the Notifications Nos. 198/76, 128/77 and 129/77. Therefore, the actual amount of duty paid on such kraft paper from which the appellants have manufactured corrugated boards/ rolls has not suffered i.e. the duty exactly at the rate of 37.5% ad valorem. Therefore, the corrugated boards/rolls made out of such Kraft Paper are not eligible for the full duty concession under the Notification 14/78 dated 24-1-1978 for the reason that the Kraft Paper from which corrugated boards/rolls have been manufactured by the appellants have not suffered full quantum of duty at the rate of 37.5% ad valorem."
7. However, the Appellate Collector restricted the demand to a period of six months from the date of receipt of the show cause notice as laid down in Rule 10 of Central Excise Rules, 1944.

8. Not satisfied with the said order passed by the Appellate Collector the appellants filed Revision Application before the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi, which stands transferred to this Tribunal under Section 35P of the Central Excises and Salt Act, 1944, to be heard as an appeal.

9. We have heard Shri R.K. Jain, Consultant for the appellants and Mrs.

Zutshi, SDR, for the department and gone through therecord.

10. Shri Jain, the learned consultant, raised a preliminary objection that neither in the show cause notice nor in the Order-in-original passed by the Assistant collector nor in the order passed by the Appellate Collector, amount of duty sought to be recovered and the value of clearances have been mentioned and hence the impugned order is not enforceable in the eyes of law. Shri Jain submitted that

leaving the point open for determining the value of clearances and the quantum of the duty to be charged from the appellants, it amounts to delegation of powers on the subordinate authority, which is not permissible under law. He argued that it is not an administrative function which can be done by a subordinate authority but requires some judicial function which cannot be delegated to a subordinate authority. He cited two decisions, one of Bombay High Court in the case J.B.A. Printing Inks Ltd. v. Union of India and Ors. (1980E. L.T. 121) and the other of Delhi High Court in the case Hindustan Aluminium Corporation Ltd. v.Superintendent, Central Excite, Mirzapur and Ors. (1981 E.L.T. 642) in support of his contention that the purpose of the show cause notice is to indicate the amount of duty payable by the assessee. The amount should be specified and not be relegated to conjecture, speculation or calculations for ascertainment of the exact amount payable.

11. Mrs. Zutshi, the learned Departmental Representative, pointed out that the Assistant Collector has clearly laid down in his order that differential duty has to be paid at the rate of 5% ad valorem in terms of Notification No. 46/71 as amended by Notification No. 72/76, dated 16-3-1976 for the period 24-1-1978 to 25-8-1978. The Appellate Collector in his impugned order, however restricted the demand for a period of six months from the date of receipt of the show cause notice.

According to her, duty amount ordered to be paid by the appellants can very well be ascertained on the basis of the impugned order and no judicial function is required for this purpose. It does not amount to delegation of judicial function on the subordinate authority. It is only an administrative act which can be done by any subordinate officer. Regarding the case law cited by Shri Jain, the Consultant, she pointed out that if the amount of duty sought to be recovered has not been specifically mentioned in the show cause notice, the assessee is within his right to ask for the specific amount before replying to the show cause notice but non mentioning of the amount does not make the show cause notice illegal. In this case the assessee never asked about the exact amount of duty sought to be recovered from it and therefore both these decisions do not advance the case of the appellants.

12. We find ourselves unable to agree with the contention raised by Shri Jain, the Consultant. No doubt it is true as has been laid down by the Bombay High Court in J.B.A. Printing Inks Ltd. (supra) and Hindustan Aluminium Corporation Ltd. (supra) that in case the amount of duty is not specified the assessee can enquire the amount of duty payable from the department before giving a suitable reply to the show cause notice. But in this case the assessee never asked the department to indicate the exact amount of duty sought to be recovered from it.

Moreover, the show cause notice clearly shows that duty at the rate of 5% ad valorem in terms of Notification 46/71, dated 24-4-1971 as amended by Notification No. 72/76, dated 16-3-1976 on corrugated boards/rolls which were cleared during 24-1-1978 to 25-8-1978 has been demanded. Calculation of duty amount in view of the order of the authority below in such circumstances does not amount to delegation of judicial function on the subordinate authority. The word 'delegation', as generally used, does not imply parting with powers by a person who grants the delegation but points rather to the conferring of an authority to do things which otherwise that person would have to do himself. It is an administrative act which a subordinate officer can be asked to do in terms of the orders passed by a superior authority.

13. On merits Shri Jain did not argue in view of the various decisions of this Tribunal on this issue. Our attention was drawn towards a decision passed by this Bench of the Tribunal in the case of Paper Packaging Pvt. Ltd. & India Packing Products Pvt. Ltd. v. Collector of Central Excise, Bangalore reported as 1984 (18) E.L.T. 512, wherein after discussing the provisions of the various notifications concerned and discussing the case law on the point it was held that under proviso to Notification No. 46/71, dated 24-4-1971 corrugated board produced out of kraft paper or kraft liner or corrugating medium of a substance equal to or exceeding 65 grammes per sq. metre on which excise duty has been paid at the rate of 37.5% ad valorem shall be exempt from payment of duty. Thus, the condition for availing exemption under this notification was payment of duty on the raw material at the rate of 37.5% and not just indeterminate rate of duty. In the present case, the appellants did not pay duty on such kraft paper from which the appellants have manufactured corrugated boards/rolls at the rate of 37.5% ad valorem and

therefore, the authorities below are justified in holding that the corrugated boards/rolls made out of such kraft paper are not eligible for the full duty concession under Notification No.14/78-CE, dated 24-1-1978.

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