

Packam and Co. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-13-2002

Reported in : (2002)(104)LC750Tri(Mum.)bai

Judge : J Balasundaram, S T S.S.

Appellant : Packam and Co.

Respondent : Cce

Judgement :

1. The Appellants took over a portion of the factory belonging to one M/s. Extrusion Processes Ltd. in the year 1979 and were carrying on the activity of converting one type of duty paid metal container into another type of container. They were issued a Show Cause Notice dated 11.2.1991 demanding duty on the aluminium bottle, waste and scrap of aluminium and condensers cleared from the factory between 1.3.1986 to 29.2.1988 amounting to Rs. 13,02,580.63. The show cause notice alleged that the Appellants had manufactured these goods without payment of duty and without cover of a valid document, did not account excisable goods in statutory records nor filed returns or classification list and price list and that they suppressed the fact that they had manufactured excisable goods with intend to evade payment of duty.

(a) The demand is barred by limitation as the Department was well aware of the facts.

(b) The processes which they were doing on the duty paid containers does not amount to manufacture.

(c) They were eligible for small scale exemption in respect of the activities of housing for condensers.

(f) Change in the stand of authorities could result in a prospective levy and not for the past period.

3. The Collector passed an impugned order dtd. 13.09.1991 confirming the demand of Rs. 11,89,157.80 and imposed the penalty of Rs. 4 Lakhs under Rule 173Q. (a) The entire demand in the present matter is barred by limitation.

As we find that it is an accepted position, that as far as back 19.7.1977 M/s. Extrusion Processes Ltd. had sought clarification from the Assistant Collector of Central Excise regarding the applicability of Central Excise duty to the activity of converting duty paid containers being carried on by the Appellant. After consideration the Assistant Collector by his letter dtd. 19.7.1977 clarified that obtaining of one type of metal container out of duty paid metal container could not be chargeable further to duty. On 29.4.1983 certain Aluminium bottles manufactured were detained by the Preventive Officers and after consideration this detained article were released by an order dtd. 5.5.1983, by holding that the case of charging duty did not arise on such goods. Declarations were filed indicating the activities vide various notifications. From these documents on record we find that the activity of the appellant was in the knowledge of the department and allegation of suppression cannot be upheld. Therefore the appellants' plea that they carried on identical activity, as the erstwhile company, under a bona fide belief that the activity carried on does not amount of manufacture is a valid plea of bona fide belief. The Appellant have also taken out a licence under protest on 1.3.1988 as has been reported in the impugned order. The assessee vide their letter dtd. 6.11.1986 admitted to have discontinued the activity of manufacturing Aluminium housing out of duty paid raw material and therefore they have not filed any declaration in accordance with notification 174/86-CE dtd. 1.3.1986 for the year 1986-87. The last declaration has been filed on 13.4.1985. The manufacturing operations have been inspected and enquired into by the officers

from time to time, therefore, there can be no cause/case to invoke proviso to Section 11A(1) in the facts of this case.

(b) We find that in the case of Laminated Packaging 1990 (45) ELT 326 (SC) : 1990 (30) ECR 166 (SC) : ECR C 1664 SC the Supreme Court had held- ...6 The further contention urged on behalf on the appellant that the goods belong to the same entry is also not relevant because even if the goods belong to the same entry, the goods are different identifiable goods, known as such in the market. If that is so, the manufacture takes place, it is dutiable. 'Manufacture' is bringing into beings goods as known in the excise laws, that is to say, known in the market having distinct, separate and identifiable function....

(c) The Show Cause Notice alleges that the assessee manufactured Aluminium Bottles from blanks which were called as rounded Bottles by the Advocate having uniform cross section and dimension from top to bottom and after subjecting the same to different process, necking, tapering, threading is performed. The learned Advocate laid considerable stress on the plea that the process employed should not be considered to bring in the levy under Section 3 of the Central Excise Act, 1944. We cannot uphold the plea. The process is not undertaken on Blanks, as alleged in notice, but on what are duty paid 'Rounded Bottles' a container with cylindrical shape and one side closed as demonstrated which is used for storing pesticides, tablets/powder & closed with plastic disc stoppers. The final products emerging are tapered narrow neck Aluminium Bottles with/without threads which are closed by Bungs/Screw on caps & used for storing oils/liquids medicines etc. The new definition of manufacture, applicable, in this case, contains specific clauses, insteading of setting out the activities, & Clause (iii) simply states that any process which is specified in Section/Chapter note of the Schedule to Tariff Act would amount to manufacture. That would ipso-facto not simply mean that, a similar process not specified will not amount to manufacture, even when the tests prescribed by the Hon. Supreme Court are met. Applying the test as laid down in the case of Union of India v. J.G. Glass Industries Ltd. we find, that, admittedly, in this case, from a Rounded Aluminium Bottle a Taperend, threaded/unthreaded, Aluminium Bottle come into existence. The Commissioner has found- ...to the process of manufacture resulting in the emergence of a different product liable to

Central Excise Duty as demanded in....

The learned Advocate, fairly conceded that the threaded Bottles were for a different use of containing sandal wood oil/liquids while the rounded bottles were normally used for containing pesticides. No material could be produced as to why this specific end use difference should not be indicative of change or loss of the original identity of the Rounded Bottles brought for manufacturing threaded/unthreaded bottles or that the threading & tapering of ends has not resulted in the original product & Rounded Bottle having lost its shape and utility. Therefore we find that the two tests, as prescribed by the Apex Court to constitute manufacture, in this case, are satisfied. We would, therefore find the activity carried out by the appellant to attract the levy of excise once again.

Since no other plea on challenge to the findings of the Commissioner was made. In the case before us we find that the main plea of the assessee before the lower authority was that Aluminium Metal container which was duty paid and received by them were converted into another kind of Aluminium container which remain classified under the same chapter sub-heading prior to conversion and after conversion and hence not liable to pay any duty. This cannot be upheld in view of the admitted position that the threaded/unthreaded bottles with taper end were intended for use of containing liquids and are different, therefore different identifiable goods, tapered bottles will not be supplied when the order is placed for rounded bottles or vice-versa; they would, therefore be known differently, as such in the market. The decision of the Supreme Court in the case of Laminated Packaging is applicable to the facts of this case. We find no merit in the appeal before us. The appellant is covered by the levy of excise duty once again for the process being conducted by him on the duty paid rounded Aluminium bottles brought by him.

(d) There are no details in the finding arrived by the Commissioner as regard demand on Aluminium housing and also the argument and they were entitled to set off. The Commissioner findings on this aspect is as follows- I find from the compendium of papers submitted that the assessee had filed their last declaration on 13.4.1985 claiming exemption from licensing control, which holds valid for the

period 1985-'86. Hence the Central Excise duty demanded for the month of March 1986 is not recoverable to that extent only. The assessee proper Central Excise procedure as prescribed under the Central Excises & Salt Act, 1944, and Rules made there-under. Similarly, Central Excise duty is recoverable on waste and scrap for non-observance of the Central Excise procedure as the assessee has to claim necessary exemption in the Classification list after taking out Central Excise licence.

which does not appeal to us. The exemption of duty granted by a notification, has to be considered and given effect to and can be claimed at any stage. For mere non fulfillment of procedure requirement & claim non made duties cannot be demanded when exempted. The Commissioner should have considered the plea and passed a clear cut orders on the claims made by the assessee in this regard. Since the same has not been done, we cannot uphold the Commissioners orders on this aspect.

(e) Since we find no duty could be confirmed in this case, therefore no penalty under Rule 173Q is called for. The same is set aside.

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