

Shree Ram Packaging Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jul-01-2002

Reported in : (2003)(151)ELT640Tri(Mum.)bai

Judge : S T Gowri, G Srinivasan

Appellant : Shree Ram Packaging

Respondent : Commissioner of Central Excise

Judgement :

1. The appellant is absent and unrepresented despite notice. By its letter of 18-3-2002 it seeks adjournment on the ground that the matter is quite old. However, we find that the appellant has been seeking adjournments from 1999 onwards and were permitted to obtain a copy of the appeal before the Tribunal. Therefore, sufficient time was provided to the appellant. We therefore decline to adjourn. We have read the memorandum of appeal and heard the departmental representative.
2. The appeal is against the order of the Collector (Appeals) confirming the rejection by the Assistant Collector of the claim for refund in terms of Rule 57F(3) of the duty paid on packaging materials used by the appellant to make retail pack of detergent which were exported.
3. The reason advanced by the Assistant Collector and confirmed by the Collector (Appeals) for the denial of the claim is that the process that the appellant undertook does amount to manufacture. The appellant was engaged in repacking

of bulk detergent powder manufactured by Godrej Soaps Ltd. into small packs for export did not amount to manufacture as no new excisable product came into existence. The contention in the appeal that the order has been passed in contravention of the principles of natural justice, since the appellant was not given an opportunity of being heard, is not acceptable. The Collector (Appeals) records that the appellant was given three opportunities of being heard and did not appear on any of these days.

The claim that the notice of hearing was not received in any of the three days is not supported by any affidavit filed in support of this contention. The decision of the Tribunal in *Hindustan Lever Ltd. v. CCE* - 1985 (19) E.L.T. 96 is relied upon, as is a Trade Notice 21/89, dated 3-34989 [reproduced in 1989 (40) E.L.T. T33]. If the appellants were engaged in the manufacture of the detergent powder, the packing required for marketing that detergent powder would certainly be a process of manufacture. However, mere repacking of the detergent powder itself does not come within the definition of manufacture contained in Section 2(f) of the Act. Detergent powder that was in the bulk pack and that contained in the repack both are commercially known as detergent and having same nomenclature and use. It is only by introduction of the deeming provision in 1997, subsequent to the period with which we are concerned (1989-90), that the process was considered to be manufacture.

In fact the Chandigarh Collectorate's trade notice relied upon indicates that such repacking does not amount to manufacture and credit of the duty paid on bulk product cannot be utilised for repacking. Both the Assistant Collector and the Collector (Appeals) had relied upon the fact that the permission granted to Godrej Soaps Ltd. was specifically conditional on the ground that in the process no manufacture, or emergence of a new commodity would take place. We therefore do not find any ground to interfere.

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