

Stp Ltd. Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Sep-24-2002

Reported in : (2003)(153)ELT198Tri(Mum.)bai

Judge : J Balasundaram, B T K.K.

Appellant : Stp Ltd.

Respondent : Commissioner of Central Excise

Judgement :

1. The above appeals arise out of the order of the Collector of Central Excise, Bombay-III. The as-sessees are aggrieved by - (a) denial of benefit of Notification No. 126/78-C.E, dated 27-5-1978 to Tankmastic although the classification claimed under Central Excise Tariff sub-heading 2715.90 as "cut back bitumen" has been accepted, (b) denial of benefit of Notification No. 35/86-C.E., dated 10-2-1986, to the products CPRX compound and Shalikote T-10, T-12, T-14 & T-25, (a) extension of benefit of the above Notification to Tarfelt BH, BS, DC & Tarfelt Scrap, although the claim for classification of these products under CET sub-heading 5909.00 has not been accepted and the goods have been classified under CET sub-heading 5906.90, (b) extension of benefit of Notification No. 126/78-C.E. to Tankmastic and Shalitek Primer, (c) extension of benefit of Notification No. 126/78-C.E. to Shalibond BS and Shalibond CS, and (d) extension of benefit of Notification No. 35/86-C.E. to Shalikote T-30 and T-32.

2. We first take up the appeal of the assessee. The assessee who are represented by Shri K.M. Mondal, Consultant along with Shri D.H. Shah, Advocate do not challenge the denial of the benefit of the relevant Notifications, although, such dispute was raised in the appeal memorandum. Before us, the only plea raised is that the demand in the present case can only be prospective, in the light of the judgment of the Hon'ble Supreme Court in the case of Collector of Cen. Excise, Baroda v. Cotspun Limited [1999 (113) E.L.T. 353 (S.C.)], wherein, the Apex Court approved its earlier decision in the case of Rainbow Industries v. CCE, Vadodara [1994 (74) E.L.T. 3 (S.C.)] holding that "once the department accepted the price list, acted upon it and the goods were cleared with the knowledge of the department, then in absence of any amendment in law or judicial pronouncement, the reclassification should be effective from the date the department issued the show cause notice. The reason for it is clearance with the knowledge of the department and no intention to evade payment of duty." 3. The contention of the assessee has no force in view of Section 110 of the Finance Act, 2000, which authorises actions taken for recovery during the period 17-11-1980 to May, 2000. We, therefore, hold that the demand is sustainable, uphold the impugned order and reject the appeal No. E/4494/95-BOM filed by the assessee.

4. Now we proceed to decide the appeal of the Revenue, We deal with each group of products separately .

(1) Tarfelt BH, BS, DC & Tarfelt Scrap. The samples of these products were drawn and sent to Chemical Examiner for test and test report stated that the treatment of jute fabrics with bitumen may cause rot proof effect on the jute fabric used in the product. It is on the basis that these products are rot proofed jute products that the Adjudicating Authority has extended the benefit of Notification No. 53/65-C.E. which exempts rot proofed jute products, laminated jute products and fire resistant jute products falling under Chapter 53, 59 or 63 of the Schedule to the Central Excise Tariff Act, 1985 from the payment of so much of the excise duty leviable thereon as is in excess of the duty payable on unprocessed jute manufactures used in the manufacture of jute products. The Id. D.R. contends that the report of the Chief Chemist is not categorical regarding the product being rot proofed jute products and therefore, benefit should not have been extended to these products.

However, we find that the issue is not res integra, in view of the orders of the Tribunal in the assessee's own case holding that the benefit of Notification 53/65 is available to these products (Order No. A-447/CAL/1996, dated 10-7-96) which has been followed in the case of CCE, Madras v. STP Ltd. [Final Order No. 366/2000-D, dtd 31-10-2000 - 2001 (127) E.L.T. 20 (Tribunal)]. We, therefore, reject the challenge of the department.

(2) Tar Plastic & Shalitex Primer. According to department, these products are not free flowing liquid but a pasty mass as seen from the first test report and the benefit of Notification No. 126/78 is available only to certain free flowing liquids at ordinary temperature. The further challenge is on the ground that the technical literature found in the factory of the assessee described tarplastic as cold applied plastic bituminous caulking compound for water proofing purposes, filling cracks and stopping leakage in masonry and wooden structures, while the Notification in question covers only those solutions of bitumen etc. used in filling cracks in road surfaces.

5. We have seen the test report of these products reproduced in the adjudication order. The samples have been found in the form of free flowing dark brown liquid. Further, careful reading of Notification No.126/78 does not lead us to accept that the end use should only be for filling cracks in road surface. The notification covers solutions of bitumen etc. which are meant for road surfacing, filling cracks, bonding aggregate stabilising soil, or for use as an adhesive. It is not confined to those solutions which are meant for filling cracks in road surface. Therefore, on both grounds the challenge fails.

(3) Shalibond BS & Shalibond CS : According to the Revenue, the benefit of Notification No. 126/78 is not available as these products are semi-solid and creamy i.e. in the form of paste as seen from the assessee's literature, and are not free flowing liquids.

6. We have seen that the Collector has relied on an earlier adjudication order of the Asstt. Collector of Central Excise, Mulund Divn. dated 13-10-87, in which the test report shows that the sample is black free flowing liquid. The Id. D.R. has not been able to show us that the Asstt. Collector's order referred to herein above has

been reversed by any higher authority. Since these two products were not tested in the present case, there is no error in relying upon the earlier test report referred to in earlier order of these two products.

The challenge in respect of these products, therefore, fails.

(4) Shalikot T-30 & T-32. : According to Id. D.R. the benefit of Notification No. 35/86 is not available to these products as the literature describes the products as having anti-corrosive, protective properties for metal works and structural steel and for preventing corrosion and vibration in motor vehicle, while the permissible end uses in the Notification are for road surfacing, filling cracks etc.

7. The Collector has relied upon the earlier adjudication order dated 13-10-87 of the Asstt. Collector who decided the issue in favour of the as-sessees on the basis of test results of the samples drawn at the material time and on the basis of end use certificate produced by the assesseees clearly stating that their customers have used these products for filling cracks and crevices. The Revenue has not rebutted this finding by showing that the Asstt. Collector decided the issue without satisfying himself as to the end use of the product or that the order has been set aside by any higher authority. Therefore, the challenge as far as these products are concerned also fails. Since we uphold the extension of benefit of Notifications to the above 4 groups of products, we are not going into the aspect of limitation.

8. In the result the appeal filed by the Revenue is also rejected. Both the appeals are hence dismissed.

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