Compack P. Ltd. Vs. Commissioner of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Dec-13-2002

Reported in : (2003)(159)ELT486Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Compack P. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. Arguing the case for the applicants the learned Advocate Shri J.C.Patel, submitted that the applicants are engaged in the manufacture of Containers made of papers falling under sub-heading 4819.12 of the First Schedule to the Central Excise Tariff Act, 1985 which were chargeable to Central Excise duty at the rate of 35% ad valorem at the relevant time but the applicant enjoyed concessional rate of duty of 15% ad valorem in terms of the Tariff Notification 67/82 subject to the condition that :- (1) such container are produced out of Base Paper or Base Paper-board, on which duty has been paid.

(2) Modvat credit on such duty has not been availed of under Rule 57-A of the Central Excise Rules, 1944.

That LDPE (Plastic Coated Paper) is one of the inputs, used by the applicants and the applicants have been availing Modvat credit of duty, paid on the said LDPE coated paper and the said LDPE coated paper being neither Base Paper nor Base

Paper-board. The applicant, during the period, from November, 1992 to February, 1993 cleared the said Composite Containers under the Small Scale General Exemption Notification 175/86 read with Tariff Notification 67/82 which provided effective rate of 15% ad valorem and reduction of 10% ad valorem.

2. The learned Counsel has drawn our attention to the findings of the Commissioner (Appeals) at page 52 wherein the learned Commissioner (Appeals) has observed that the appellants manufacture Composite Containers and for their final product, the LDPE coated paper is the Base Paper out of which the said products are manufactured. The coating with LDPE does not take it away from the realm of Base Paper out of which the Composite Containers are manufactured. Therefore, the learned Commissioner fully justified the availing of benefit by the applicants under the said notification. He also drew our attention towards First proviso of Clause (1) of the Notification No. 49/87 as amended which provided that such converted type of papers or paperboards have been produced out of Base Paper or Base Paperboard on which the appropriate duty of Excise leviable under the said schedule or additional duty of customs leviable under Section 3 of the Customs Tariff Act, 1975 has been paid. He finally contended that the applicants have got a prima facie strong case in their favour for waiver of entire demand of duty.

3. Shri M.H. Sheikh, learned JDR appearing on behalf of the Revenue contended that it is the base paper for the manufacture of the Composite Containers which entitled the applicants to avail the benefit of the notification in question. Since the applicants have used LDPE coated paper for the manufacture of the final product, they are not covered within the purview of the said notification.

4. After hearing rival submissions and perusal of the records, we find that LDPE coated paper used by the applicants as one of the inputs duly duty paid entitled the applicants for benefit of the Notification No.67/82 read with Notification No. 175/86. Therefore, we dispense with the pre-deposit of the entire duty amount during the pendency of the appeal. The appeal shall come up for regular hearing on 17-3-2003.