

Keramos Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-28-2003

Reported in : (2003)(87)ECC744

Judge : S Kang, a T V.K.

Appellant : Keramos

Respondent : Commissioner of Central Excise

Judgement :

1. In these three appeals arising out of common Order-in-Appeal No.668-670/99, dated 6-8-2001 passed by the Commissioner (Appeals), the issue involved is whether the benefit of small scale exemption notification is available to the goods manufactured by M/s. Keramos.

2. Shri A.N. Haksar, learned Advocate, submitted that the appellants carry on the business of printing and decorating on glazed tiles; that they do not manufacture glazed tiles which are purchased by them from other manufacturers or from the market; that they merely carry an activity of printing and decorating the tiles as per specification/design approved by their customers; that their products are customer's specific inasmuch as the customers place an order on them of the choice of KERAMOS design acceptable to them. He mentioned that the process of manufacture in brief is that the duty paid plain ceramic tiles are selected as per the design requirement, plain tiles are cut to required size, designs are made in various sizes and colours, the design and colour separation are made by artists;

that the design is then exposed on a screen, the screen is thereafter exposed in the exposing machine to make it ready for screen printing, the ceramic colour paste is used along with the screen for printing on top of tiles one colour at a time, then tiles are put on wooden racks for atmospheric drying after every colour impression, the tiles are then put to the furnace; that sometimes the colour paste is spread on to the tiles using a spray gun with compressed air in a spray cabin or sometimes designs are printed with colour paste on transfer paper which are transferred to the tile surface; that sometimes the designs are hand printed on the tiles with brushes and colour paste. He also mentioned that the packages in which tiles are received are re-used for packing the printed decorated tiles for economic reasons to save cost; that, however, on every packing they affix/paste sticker bearing their brand name KERAMOS conspicuously; that after the visit of Central Excise Officers two show cause notices were issued to them for demanding duty which were confirmed under Adjudicating Order No. 18/99, dated 29-11-99 and 14/2000, dated 31-1-2000 and which have been upheld by the Commissioner (Appeals) under the impugned order holding that small scale exemption notification was not available to them as the printed tiles were bearing the brand names of other persons and were being cleared in the original packings of the other manufacturers, relying upon the decision of the Tribunal in the case of Cochin Soft Drinks Ltd. v. CCE, Cochin 3. The learned Sr. Advocate submitted that the customers of the appellants do not place orders on them for supply of tiles manufactured by NITCO, or SOMANI, or ORIENT, etc., that the customers are neither interested in knowing the basic tiles manufacturer's name nor do they specify anything in their purchase order; that the customers approach them for buying KERAMOS tiles irrespective of the original manufacturers; that they buy glazed tiles as raw material for manufacturing printed decorative tiles; that in the operation undertaken by them the portion of the tile on which name of the original manufacturer is mentioned may be cut and removed; that they have their own registered brand name KERAMOS which is printed on every invoice. He, further, mentioned that the restrictions placed under SSI notification on the brand name comes into play only in a situation where a large scale manufacturer is taking advantage of the small scale manufacturer by getting the goods manufactured by an independent unit under its brand name; that in the present matter the

appellants are not manufacturing the goods on behalf of any large scale manufacturer as they are dealing with the goods manufactured by them; that Para 4 of Notification No. 8/99 provides that the exemption shall not apply to the specified goods bearing the brand name or trade name of another person; that this restriction does not apply to the goods manufactured by themselves; that they are not putting the brand name of another person on the goods manufactured by them; that none of the bills raised by them anywhere mentions the brand name of any other manufacturers. He also referred to the Board's Circular No. 71/71/94-CX., dated 27-10-94 wherein it has been clarified that the brand name put on the castings is the brand name of the machinery manufacturer, and putting the brand name is only to suit the manufacturing need of the customers and the benefit of SSI Exemption is not to be denied. He also submitted that the statement of Shri Shasi Kumar to the effect that after printing, etc., the brand name remained on the tiles, does not indicate that the tiles printed by them were cleared under the brand name of other manufacturers; that a reading of his statement would clearly show that the tiles purchased by them already bear the brand name pre-cast on them and they were not clearing the tiles by affixing the brand name of other person; that the decision in the case of Cochin Soft Drinks is not applicable as they are not job workers for the manufacturers of tiles like, Somani, Nitco, & Orient, etc., whereas in Cochin Soft Drink case the appellants were job workers manufacturing and filling soda in the bottles supplied by the customers which had brand name of the customer. He also relied upon the decision of the Larger Bench in the case of Prakash Industries v. CCE, Bhubneswer - 2000 (119) E.L.T. 30 (Tribunal) wherein the Larger Bench has referred to the Board's Circular dated 27-10-94, Reliance has also been placed on the decision in the case of Kohinoor Elastic Pvt. Ltd. v. CCE, Indore - 2001 (136) E.L.T. 1155.

4. Countering the arguments Shri Kumer Santosh, learned SDR, submitted that as the appellants are engaged in printing and decoration of the tiles, they could have put their brand name also on the tiles; that it is apparent from Para 3 of the memorandum of appeal that they have not made any attempt to put their own brand name on the tiles; that Shasi Kumar, their Manager, has clearly deposed in his statement that the tiles bear the brand name of other manufacturers from whom they were purchasing the same and after printing the brand name remains

on the tiles; that in addition they are packing the tiles after the operation undertaken by them in the same packing materials in which the original tiles were received by them; that such packing also carries brand name of the original manufacturer; that Board's Circular dated 27-10-94 is not applicable as it refers to job workers and the appellants are not job workers; that the ratio of the decision in the case of Cochin Soft Drinks is applicable to the facts of the present matter as tiles which are cleared by them bear the brand name of other persons and Paragraph 4 of the notification clearly provides non-availability of the notification if the specified goods bear the brand name of other person. He finally submitted that the Larger Bench decision in the case of Prakash Industries is not applicable as the facts are entirely different inasmuch as in the said matter HDPE Sacks, bearing the brand name of the buyer, were sold to the buyer and the use of the brand name was not in the course of trade whereas the tiles manufactured and cleared by them are sold in the market by their customers.

5. We have considered the submissions of both the sides. The facts which are not disputed are that the tiles purchased by the appellants already bear the brand name of the respective manufacturer of the tiles. After the process of printing and decoration undertaken by the appellants tiles are cleared and the brand name of the original manufacturer remained on the tiles on the reverse side. Notification No. 8/99-C.E., dated 1-3-99 provides that "exemption contained in this notification shall not apply to the specified goods bearing the brand name or trade name, whether registered or not, of another person....".

We find force in the submissions of the learned Sr. Advocate that the appellants are purchasing the plain tiles from the market as their raw material on which they carry the process of printing and decoration as per specification of their customers. There is nothing brought on record by the Revenue to show that the tiles after the process of printing and decoration were sold by the appellants as tiles bearing any specific brand name. It has been emphasized by the learned Sr.

Advocate that the purchase orders received from their customers do not anywhere mention that the customers are placing their orders for tiles bearing brand name of other manufacturer. The Revenue has not controverted this averment made by the

appellants even in their reply to the show cause notice. There is no material or evidence brought on record by the Revenue to show that the tiles after being printed and decorated by the appellants indicate a connection in the course of trade between specified goods and some persons using such name. In view of this the Revenue has not succeeded in establishing that the appellants are clearing the goods which bear the brand name of another person. The decision in the case of Cochin Soft Drinks (supra) is not applicable to the facts of the present matter inasmuch as in the said matter the appellants therein were doing a job work for Mc Field Beverages (India) Ltd. who supplied them the bottles bearing their brand name. The Tribunal in the light of these facts observed that the item which is marketed by the appellants is aerated water which is put in the bottles which already had brand name of another persons and in the case of aerated water there is no other way of affixing the brand name except by putting them in the bottles which are already embossed.

We, therefore, hold that the benefit of small scale exemption cannot be denied to the appellants as the Revenue has not established the fact that the goods manufactured by them were bearing the brand name of another person. We, accordingly, set aside the impugned Order and allow all the appeals.

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