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

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Mar-05-2003

Reported in : (2003)(156)ELT581Tri(Mum.)bai

Judge : K Kumar, S T C.

Appellant : Compack Pvt. Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. The issue in this case involves interpretation of Notification No.67/82-CE., dt. 28-2-1982. This notification exempts printed Cartons, Boxes, Containers and cases from so much of the duty of excise leviable thereon as is in excess of 20% subject to the condition that the appropriate duty of excise or additional duty leviable under Section 3 of the Customs Tariff Act has already been paid in respect of the base paper or paper board used in their manufacture. The notification is however not applicable to a manufacturer who avails of the special procedure prescribed under Rule 56A or 57A of the Central Excise Rules, 1944, in respect of the duty paid on the base paper or paper board. The explanation to the notification clarifies that base paper or paper board purchased from the market shall be deemed to have paid the duty.

2. It is not disputed that the appellant used duty paid LDPE coated paper in manufacture of composite containers and that they have availed of Mod-vat credit in respect of the duty paid on such coated paper for paying duty on the final

product. It is their claim that since they have not taken credit of duty paid on the base paper they cannot be denied the exemption under the aforesaid Notification No. 67/82.

3. In this case, the facts are not in dispute but interpretation of the Notification is in dispute. The learned Advocate for the appellants claims that they cannot be denied the exemption as the proviso to the notification is inapplicable in their case. On the other hand, the learned Jt. C.D.R. appearing for the department argues that since the goods made by the appellants are not made from base paper, they are not eligible for the exemption.

4. A plain reading of the Notification No. 67/82 makes it clear that it prescribes lower rate of duty for printed cartons etc. if these are made from duty paid base paper/paper board including base paper and paper board purchased from the Market. Such lower duty is subject to the condition that the credit of the input duty has not been taken. In other words, either the manufacturer can avail the lower rate prescribed under this notification without taking credit of the duty paid on base paper/paper board or he can pay the higher tariff rate and take credit of the input duty. The proviso to the notification is meant to ensure that the manufacturer does not get double benefit of the lower exempted rate and also credit of the input duty at the same time.

5. What the appellants are seeking to get is lower rate of duty on their final product as well as credit of the duty paid on the input on the ground that their input is converted paper which is in turn made from duty paid base paper.

6. We are of the view that such double benefit is not admissible to the appellants. Strictly construed, the exemption can only be allowed to printed cartons etc. made from duty paid base paper/paper board, in view of the phrase "used in their manufacture" in the main clause of the Notification. In case the appellant's argument has to be accepted that the finished goods have been made indirectly from duty paid base paper/paper board as such base papers/paper board has been used in the LDPE coated paper, then it has also been held that the duty paid on base paper/paper board has been taken credit of by them indirectly as such duty is included in the credit of duty taken on the converted paper. Such technical

construction of the main clause of the notification will also deny them the benefit under the proviso to the notification applying a similar technical interpretation. In our view such interpretation is not warranted. According to us, since the appellants have not used duty paid base paper/paper board in the manufacture of the finished goods, they are not entitled to the benefit of the notification.