

Pioneer Enterprises Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-07-2003

Reported in : (2003)(87)ECC537

Judge : S Kang, a T V.K.

Appellant : Pioneer Enterprises

Respondent : Cce

Judgement :

1. The issue involved in this appeal, filed by M/s. Pioneer Enterprises, is whether the duty of Excise is payable by them on the excisable goods manufactured by them.
2. Shri J.S. Agarwal, learned Advocate, submitted that the appellants manufacture footwear and parts thereof; that they also do the job work on the raw material supplied by others; that M/s. Aero Club supplied the raw material to the appellants for doing job work under Rule 57AC(5)(a) under serially numbered delivery challans; that it is clearly mentioned on the challans that the duty would be paid by the principle manufacturer and the goods are to be returned after doing the job work to M/s. Aero Club; that M/s. Aero Club had sent an intimation under letter dated 19.4.2000 to the Asst. Commissioner intimating that they would be getting their products manufactured on job work basis and they also undertook the responsibility of discharging duty liability on the final products in terms of provisions of Notification No. 214/86-CE dated 25.3.86 as amended; that a copy of

the said letter was also sent to the Asst. Commissioner, Central Excise, in whose jurisdiction the appellants' factory falls; that further, the appellants had filed a declaration under Rule 173B of the Central Excise Rules, 1944 in which they had clearly mentioned that they would be undertaking the process of manufacture on job work basis against the raw material supplied under Rule 57AC(5)(a)/Notification No. 214/86; that the Commissioner under the impugned Order has confirmed the demand of duty and imposed penalty on them holding that the raw material supplier is not the manufacturer and they manufactured the goods and cleared the same without payment of duty. The learned Advocate, further, submitted that Notification No. 214/86 clearly provides that the goods manufactured on job work basis can be cleared on payment of duty for home consumption from the factory of the supplier of raw material. He also placed reliance on the Board's Circular No. 306/22/97-CX dated 20.3.97 wherein it has been clarified that the duty liability is required to be discharged by the manufacturer and not by the job worker. He finally submitted that the appellants have produced documentary evidence before the Adjudicating Authority that the duty had been discharged by the supplier of the raw material which has not been controverted by the department.

3. Countering the arguments Shri A.S. Bedi, learned SDR, submitted that the benefit of Notification No. 214/86 is available subject to the fulfilment of the conditions stipulated therein. One of the conditions specified in the notification is that the supplier of the raw material gives an undertaking to the Asst. Commissioner/Dy. Commissioner having jurisdiction over the factory of the job worker that the goods shall be used in or in relation to the manufacture of the final product in his factory or removed from his factory without payment of duty under bond for export, etc. or removed on payment of duty for home consumption from his factory; that no such intimation has been received by the jurisdictional Asst. Commissioner having jurisdiction over the factory of the job worker; that as this condition of the notification has not been fulfilled the question of extending the benefit of Notification No. 214/86 to the appellants does not arise. In this regard the learned SDR relied upon the decision of the Supreme Court in the case of CCE, Ahmedabad v. Cadila Laboratories Put. Ltd., 2002 (82) ECC 709 (SC) : 2002 (142) ELT279 (SC) wherein it has been held that "the law enjoined that the

procedure stipulated in Rule 56A had to be followed" and as the procedure was not followed the benefit of Notification cannot be given to the respondents. Reliance has also been placed on the decision in the case of Indian Aluminium Co. Ltd. v. Thane Municipal Corporation,(SC) and International Engg. & Mfg. Co.

Pvt. Ltd. v. CCE, Jaipur, 2001 (42) RLT 141 (Tri) wherein it has been held by the Tribunal that the job worker and not the supplier of the raw material is the manufacturer; that in International Engg. & Mfg.

Co. case it has also been held by the Tribunal that "as the conditions specified in the Notification have not been complied with, the benefit of notification is not available to the goods manufactured by them." In reply the learned Advocate relied upon the decision in the case of Aggarwal Rolling Mills v. CCE, New Delhi, 1997 (93) ELT 615 (Tri) wherein it has been held that duty liability, if any, which may arise in case of non-fulfilment of conditions prescribed in Paragraph 2 of Notification No. 214/86 would lie on the supplier of the raw material as the responsibility has been explicitly cast on him as a principal manufacturer.

4. We have considered the submissions of both the sides. Notification No. 214/86-CE dated 25.3.86, as amended, exempts goods specified in the table annexed to the notification and manufactured in a factory as a job work and used in relation to the manufacture of the final products specified in the table or cleared as such from the factory of the supplier of raw material on payment of duty for home consumption/without payment of duty under bond for export, etc. It has been contended by the learned Advocate that Aero Club who are the supplier of the raw material to the appellants have sent an intimation dated 19.4.2000 to the Asst. Commissioner in-charge of their factory with a copy to the Asst. Commissioner having jurisdiction over the factory of the job worker i.e. the appellants. According to this declaration Aero Club were to supply the raw materials as per the list enclosed to the Pioneer Enterprises, the appellants, for manufacture of footwears. The Revenue has not denied the receipt of the said intimation by the Asst. Commissioner having jurisdiction over the factory of Aero Club. A perusal of the said letter clearly shows that a copy was endorsed to the Asst. Commissioner, Central Excise, Div. II, Sector-2, Noida in whose jurisdiction the factory of the

appellants is located. It can, therefore, be not alleged that the conditions of the notification of sending undertaking to the Asst. Commissioner having jurisdiction over the factory of job worker has not been satisfied. In addition we also observe that the appellants themselves in classification declaration filed under Rule 173-B of the Central Excise Rules, 1944 had clearly mentioned that they would be undertaking the process of manufacture of footwears and footwear parts on job work basis against the raw material supplied by the principal manufacturer under Rule 57AC(5)(a)/Notification No. 214/86, as amended and duty where applicable would be paid by the principal manufacturer. It has also not been controverted by the Revenue that Aero Club, the supplier of raw material has discharged the duty liability on the excisable goods manufactured and cleared from the factory of the job worker i.e.

the appellants. In view of these facts we hold that the benefit of Notification No. 214/86-CE is available in respect of the goods manufactured and cleared by the appellants to Aero Club. Accordingly we set aside the impugned Order and allow the appeal.

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