

J.K. Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-03-2003

Reported in : (2003)(89)ECC195

Judge : A T V.K., P Bajaj

Appellant : J.K. Industries Ltd.

Respondent : Cce

Judgement :

1. In these two appeals, arising out of two Adjudication Orders the common issue involved is whether Central Excise duty is chargeable on the tyres, destroyed during the testing undertaken by M/s. J.K. Industries Ltd. 2. Shri B.L. Narasimhan, learned Advocate, submitted that the Appellants manufacture tyres and tubes after taking the approval from Bureau of Indian Standards (BIS), and accordingly they manufacture tyres as per ISI specification only; that in these circumstances they are bound to follow the terms and conditions stipulated by BIS; that as per conditions of BIS Manual they draw samples from time to time and maintain record of samples drawn and tested; that the test conducted on the tyres are Fully Wheel test, Plunger test, and Dimensional test; that after these tests the tyres become useless and they are cut and scrapped; that the Commissioner under the impugned Orders have confirmed the demand on these tyres on the ground that tyres having been manufactured are liable to Central Excise duty even before the tests are conducted. The learned Advocate, further, submitted that it has been settled by the Tribunal in a number of decisions that the samples drawn for quality

control testing within the factory are not assessable goods because only after such testing the final product becomes marketable. He relied upon the following decisions :Bhansali Engg. Polymers v. CCE, Indore, 1999 (114) ELT 947. It has been affirmed by the Apex Court as reported in 2002 (143) ELT A75CCE v. Bhansali Engg. Polymers, Finally the learned Advocate submitted that the issue stands settled by the decision of the Supreme Court in the case of ITC Ltd. v. CCE, Patna, 2002 (53) RLT 875 (SC) wherein the Supreme Court has categorically observed that if samples are drawn for Inhouse testing and proper records are maintained, then no duty is payable; that in the present matter the entire case of the department has been made upon various facts/documents maintained by them for samples drawn and tested and in view of the Supreme Court judgment no duty is payable by them on tyres drawn as samples for testing in Inhouse Laboratory.

3. Countering the arguments Shri Jagdish Singh, learned DR, reiterated the findings contained in the impugned Order. He, further, emphasized that it is not in dispute that the tyres which have been removed by the Appellants from shop floor for Inhouse testing were fully manufactured tyres ready for use, that these tyres had neither been entered in statutory records i.e. RG-1 register nor any duty of Excise was paid before they were removed from the factory premises for Inhouse testing; that as per Section 3 of the Central Excise Act all the excisable goods manufactured in India are liable to Central Excise duty unless and until they are exempted from payment of duty under Notification issued under Section 5A of the Act; that as per provisions of Rules 9, 47 & 49 of the Central Excise Rules, 1944 as soon as the goods are manufactured a charge is operated on the goods and the collection of duty is postponed till the time of removal for home consumption or for the manufacture of any other commodity or for further production; that the duty is required to be paid as soon as the goods are issued from the place of manufacture; that accordingly the duty is payable by them in the present matters as the tyres are in fully manufactured condition and these have been removed only to conform with the requirement of BIS. He also mentions that the decision in the case of ITC Ltd. is not applicable to the facts of the present matters as in the case of cigarettes specific Rules such as Rule 93 requires cigarettes to be put into packets which would be enclosed in a wrapper and affixed with manufacturer's

label; that such requirement is not there in respect of tyres and as such tyres are excisable as soon as these are manufactured. In reply learned Advocate also referred to the decision in the case of CCE v. Surya Roshni Ltd., 4. We have considered the submissions of both sides. It is not in dispute that after tyres were manufactured these were removed for Inhouse testing to be carried out by the Appellants in accordance with BIS Manual. It is now settled law that the testing is essential for making the goods marketable. In the absence of testing the goods cannot be sold and they cannot be treated as marketable. This was the view expressed by this Tribunal in a number of decisions which have been relied upon by the Appellants. The Supreme Court in the case of ITC Ltd. has held that the quantity of cigarettes sticks that is destroyed in the course of quality control test is not liable to Excise duty. We do not find any force in the submissions of the learned DR that tyres are marketable even before the tests are carried out by the Appellants.

If this contention is accepted, every product can be used even before testing. But testing is a must so that the product is certified as properly manufactured and fit for being bought and sold. Accordingly, following the ratio of decisions of the Supreme Court and this Tribunal we hold that no duty is chargeable on tyres which are destroyed in the process of testing. Both the appeals are thus allowed.

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