

Collector of Central Excise Vs. International Woollen Mills

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-30-1987

Reported in : (1987)(12)ECC195

Appellant : Collector of Central Excise

Respondent : international Woollen Mills

Judgement :

1. This is an appeal filed by the Collector of Central Excise, Chandigarh against the order of the Collector of Central Excise (Appeals).
2. Brief facts of the case are that the respondents were engaged in the manufacture of nylon yarn. The officers of the Central Excise (Preventive), on their visit on 8-2-81, found that 130 Kg of of nylon yarn have shown as balance in the RG-1 Register was not actually available. Further 28 kg nylon yarn was found with the respondents and the same had not been entered in the Central Excise Record nor classification list had been got approved in regard thereto. The respondents pleaded before the adjudicating authority that 130 kg nylon yarn had been stolen from their factory on 6-2-81 and that the 28 kg nylon yarn, seized was still in the Spinning Section of their factory and was not ripe for its accountal in RG-1 Register and that there was no need of classification list to be approved before the manufacture of the goods and the same was required to be approved before the clearance thereof, the Assistant Collector raised demand in respect of 130 kg of nylon yarn and also confiscated 28 kg of nylon yarn found not entered in the RG-1 register. A personal penalty was also levied under Rule 173Q. The Collector

(Appeals), however, has set aside the order of duty demand on the nylon yarn stated to have been stolen and the goods which had been confiscated were also released and the personal penalty reduced from Rs. 5,000/- to 200/-.

3. The learned SDR for the Department pleaded that there is no provision in the Central Excises & Salt Act, 1944 for remission of duty leviable on the excisable goods stolen and that any goods removed without payment of duty will have to suffer duty and the licensee is liable to pay that duty. In regard to 28 kgs of nylon yarn not accounted for in the RG-1 register. It has been pleaded that the same is liable to confiscation and that in fact, Collector (Appeals) held it so but set aside the imposition of the redemption fine of Rs. 1000/- filed in lieu of confiscation. This it has been pleaded, was not correct. No specific plea was made by the learned SDR about the reduction in personal penalty which has been reduced by the Collector (Appeals) from Rs. 5000/- to Rs. 200/-.

4. The learned advocate for the respondents, Shri H.S. Bedi, pleaded that the goods had been stolen and in term of Rule 49 no duty is chargeable and read Rule 49 in support of his plea. He pleaded a report was filed with the Police regarding the theft on 7-2-81 and that a copy of the FIR was produced before the Department and it has not been denied that Police report had been filed regarding the theft. On a query from the Bench, he stated that he was not aware of the follow-up action taken on their report of theft, nor he had any knowledge as to whether any recovery of the stolen property had been made. In regard to 28 kgs of nylon yarn, he pleaded that yarn was on the cones and it was not yet ready for being accounted for. He pleaded that Central Excise Rule 173B for filing of the classification list, does not enjoin upon the respondents to file the classification list before manufacture of the goods. The Rule, according to him, does not say that the classification list should be filed in respect of goods which are intended to be cleared and that the Rule merely states that the classification list was required to be filed in respect of the goods manufactured or produced by a licensee. He further pleaded that it was not as if a long period had elapsed between the manufacture of the goods and non-filing of the classification list.

(i) whether the duty could be demanded in respect of goods which are stated to have been stolen; (ii) whether 28 kgs of nylon yarn found unaccounted for was liable to confiscation; (iii) whether in respect the yarn manufactured the classification list was required to be filed before the manufacture of the goods or before the clearance of the same.

It may be mentioned that the contingencies envisaged under which no duty is required to be paid by the manufacturer in respect of excisable goods manufactured by him are set out under Rule 49. The relevant proviso of Rule 49 is set out as under : "Provided that the manufacturer shall on demand pay, the duty leviable on any goods which are not accounted for in the manner specifically provided in these Rules, or which are not shown to the satisfaction of the proper officer to have been lost or destroyed by natural causes or by unavoidable accident during handling or storage in such store-room or other approved premises:...." The question that arises is whether the goods which have been stolen can be taken to be covered by this Proviso. It is seen that it is only when the goods have been lost or destroyed by natural causes or by unavoidable accidents during handling or storage that the duty is not required to be paid in respect of such goods. Here, we find goods have been stolen and it cannot be held that the stolen goods, as pleaded by the learned advocate for the respondents, should be taken to have been lost. It may be mentioned that only when the goods have been lost or destroyed by natural causes that non-payment is envisaged under the rule. Stealing cannot be equated with the goods lost due to natural causes. Sealing is not an act of nature.

It may be that it is in the nature of a thief to steal but the act of stealing does not become a natural cause. Now corresponding to Rule 49, there is a corresponding provision under the Customs Act Section 23, under which where any imported goods have been lost or destroyed before their clearance, the Asstt. Collector can remit duty. Here the word 'lost' used is in a general sense and probably the meaning of the goods lost as read by the learned advocate for respondents, could be read in Section 23 of Customs Act, 1962 but certainly not in Rule 49 of Central Excises and Salt Act where the causes leading to the loss have been specified and unless the loss is due to the causes specified therein, the duty of excise has

to be paid. My attention was also drawn by the Learned SDR during the course of hearing to Rules 25 of Central Excise Rules under which in case any excisable goods are removed in contravention of any conditions prescribed under the Rules by any person from a place where they are produced or manufactured or where the goods are warehoused, the producer or warehouse keeper of the warehouse has been held responsible and liable to be dealt with according to the Act and Rules as if he has removed-the goods himself.

This Rule places the responsibility for payment of duty in respect of goods removed in contravention of rules by any person on the producer or manufacturer of the goods irrespective of the fact as to, how the goods have been removed by the person. It is relevant in this context to -say that the charge on the goods is created as soon as these are manufactured and only the collection is postponed and the facility has been given within the law for storing the goods without payment of duty till the point of clearance and a bond is taken from the manufacturer under Rule 48 to the effect that the licensee shall produce all the goods stored in his premises without payment of duty and that no excisable goods will be removed from the premises without payment of proper duty except as provided for in the Rules and he is required to account for goods satisfactorily. All these provisions point to the fact that the liability to pay duty in respect of goods which are allowed to be stored without payment of duty rests on the licensee who manufacture the goods. In the Scheme of Central Excise law there is no provision where any remission of duty is provided for in respect of goods which have been stolen. It may be a case of hardship that where a person has genuinely lost his goods on account theft is also called upon to pay duty. For this the licensee who has been called upon to pay duty will have to have resort to other remedies by way of petition to the Government for grant of ex-gratia relief. But the law as it stands, no such relief is provided for. In view of this, I hold that the impugned Order 275 of the Collector (Appeals) in regard to remission of duty in respect of stolen goods is not maintainable in law. Regarding 28 KG nylon yarn, confiscated by the Assistant Collector for the reason that the respondents had not maintained the raw material account in respect of the same and a classification list in respect of same had not been filed. The Asstt. Collector held that the party's intention was mala fide as the party had earlier cleared the yarn without payment of duty. In the

grounds of Appeal also the Collector has also stated that this quantity was not accounted for in the Central Excise statutory records.

I observe that in the findings of the Assistant Collector order there is no mention that the confiscation has been done for the reason that the yarn had not been accounted for in the statutory records. He has only held that the respondents had not maintained raw material account properly. The ground of appeal therefore, I find, does not flow from the order of the Asstt. Collector. The respondents have explained that the yarn seized was not yet ready for being entered into the RG-I Register records as doubling in respect of the same was required to be done. The learned SDR has not also stated how the yarn was ready for entry in the RG-I Register.

The only charge therefore that remains is that this 28 Kg yarn could be confiscated for the reason that the classification list in respect of the same had not been filed. I observe that the relevant rule for filing of classification list is Rule No. 173-B. Rule 173B(1) reads as under:- "Assessee to file list of goods for approval of the proper officer -(1) Every assessee shall file with the proper officer for approval a list in such form as the Collector may direct, (in quintuplicate), showing- (a) the full description of (i) all excisable goods produced or manufactured by him (ii) all other goods produced or manufactured by him and intended to be removed from his factory, and (iii) all the excisable goods already deposited or likely to be deposited from time to time without payment of duty in his warehouse; (b) the item number and sub-item if any, of the First Schedule to the Act under which such goods falls; In this Rule, 1 observe that there is no mention as to the point of time when the classification list is required to be filed. In this context it also relevant to refer to Rule 173B(4) which is reproduced as under :- "If in the list approved by the proper officer under sub-rule (2), any alteration becomes Accessory because of - (a) the assessee commencing production, manufacture or warehousing of goods not mentioned in that list, or (b) the assessee intending to remove from the factory any non-excisable goods not mentioned in that list, or (c) a change in the rate or rates of duty in respect of the goods mentioned in that list or, by reason of any amendment, to the First Schedule to the Act a change in the number and sub-item, the assessee shall likewise file a fresh list or an amendment of the list

already filed for the approval of such officer in the same manner as is provided in sub-rule (1)".

From this it appears that whenever the assessee commences production/manufacture of goods which are not mentioned in the earlier classification list filed, he is required to file a fresh classification list or amendment thereto. Thus, it could be seen that a fresh classification could be filed as and when the manufacture of a new product commences. Thus the classification list can be filed after the commencement of the manufacturing process. In the Scheme of Central Excise, a licensee is required to apply for a Central Excise licence in respect of commodities he manufactures and for the purpose of clearance of the goods, the classification list and price list are required to be filed for quantification of the duty required to be paid. From, this, it can be said that so far as the filing of the classification list is concerned, it becomes primarily relevant for the purpose of clearance of the goods and it is the Central Excise licence which is required to be obtained for the purpose of production or manufacture of the goods. Therefore in this background, the failure to file the classification list in respect of the goods which were being manufactured by the appellants does not entail any penal consequences, under the Central Excise Act and Rules. Therefore the order of Collector (Appeals) in respect of the redemption fine is maintainable.

In view of the above, the appeal is partially allowed in the above terms. Since no cross-objection has been filed so far as the levy of penalty is concerned, no order in respect of the same is passed and the order of penalty passed by the Collector (Appeals) therefore stays.

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