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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-01-2003

Reported in : (2003)(157)ELT297TriDel

Judge : Author: K Usha

Appellant : Pitamber Coated Paper Ltd.

Respondent : Cce

Judgement :

1. This appeal is at the instance of the assessee. The order impugned is passed by the Commissioner of Central Excise, Jaipur confirming the duty demand of Rs. 1, 06, 39, 037/- under Section 11A of the Central Excise Act and imposed a penalty of Rs. 10 lakhs. The duty was confirmed on the ground that since the appellants are availing exemption on final product, namely, coated paper under Notification No.3/2001-CE dated 1.3.2001, they are liable t pay duty on uncoated paper.

2. The appellants are engaged in the manufacture of coated and uncoated paper falling under Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985. Notification No. 3/2001-CE grants exemption from payment of duty to paper and paper board or articles made therefrom upto the first clearance of an aggregate quantity of 3500 MTs in any financial year, subject t the condition that the pulp from which such paper is manufactured should have been made out of not less than 75% of non-conventional raw material. Admittedly the appellants satisfied the

condition regarding required nature of raw material. It is also not disputed that the appellants are entitled t exemption under, Notification No. 3/2001-CE on the first aggregated clearance of 3500 MTs in any financial year and that once the clearance exceeds 3500 MT, they are entitled to discharge duty liability on paper @ 16% ad valorem.

3. The sow cause notice dated 2.5.2002 proposed to demand duty on the clearance of uncoated paper captively consumed. It is alleged that uncoated paper and paper board manufactured by the assessee and consumed captively for the manufacture of coated paper and paper board are not eligible for exemption under Notification No. 67/95-CE dated 16.3.95 for the reason that the assessee had cleared final product i.e.

coated papers at nil rate of duty under Notification No. 3/2001-CE dated 1.3.2001 as amended. Accordingly, the show cause notice demanded Cenvat duty amounting to Rs. 1, 06, 39, 037/- unpaid by them. The appellants contended that paper whether coated or uncoated remained as paper and is entitled to the exemption Notification No. 3/2001-CE. The assessee contended that manufacturing of coated paper is a continuous process of obtaining uncoated paper from the pulp and then as coated paper. There is no manufacturing process involved. Therefore, there is no question of captive consumption of uncoated paper in the manufacture of coated paper. It was also contended that the exemption Notification No. 3/2001-CE does not treat coated or uncoated paper differently. The Commissioner was not inclined to accept the contention raised by the assesse. Duty demand was, therefore, confirmed under the impugned order.

4. It is contended on behalf of the appellant that the Commissioner has erred in treating uncoated paper subjected to coating, as a separate activity of manufacture. In support of the above contention reliance was placed on the decision of this Tribunal in CCE Aurangabad v. Shree Vindhya Paper Mills 1988(35) ELT 361 (T). In the above decision it was observed that "in spite of the process of coating the papers remain printing and writing paper then i cannot be said that the processes have brought about a change in name character or use an if that be so no manufacture having taken place the two descriptions of paper

would not attract Central Excise duty liability." On coating uncoated paper and article with different name commercially may have emerged but it is not a distinct article with different character or use. Therefore, no manufacturing process is involved while uncoated printing and writing paper is coated. It is, therefore, contended that no duty demand can be made at the uncoated stage. According to the appellants they are liable to pay duty at the stage at which coated paper is cleared from the factory. Reliance was also placed by the appellants on the decision of the Supreme Court in Sidhartha Tubes. v. CCE 5. The learned DR, ont he other hand, sought t rely on a decision of the Karnataka High Court in Deepak Extrustion and Another v. J.T.Chopra, Assitant Collector of Central Excise Bangalore & Another 1988(34) ELK 432(Kar.) and that of this Tribunal in CCE v. Universal Cans & Containers Ltd. 2002 (148) ELT 482(T). In the above decisions it has been held that the extruded plain tubes undergo a further transformation by lacquering, coating and printing and is, therefore, different from the plain tubes and a new and different commodity having distinct features, name, use and character emerged as a result of the lacquering and printing amounting to manufacture as envisaged by Section 2(f) of the Central Excise Act.

6. After hearing both sides we are of the view that the appellants are justified in contending that the process of coating of the uncoated paper would not amount to a manufacturing process. No different commodity emerges after the coating having distinct features, name, use and character. The coated paper continuous to be paper for printing and writing. The ratio of the decision of this Tribunal in CCE v. Shree Vindhya Paper Mills is directly applicable in the present case. The view taken by the Commissioner into he impugned order that the assessee is manufacturing two products, namely, uncoated paper and coated paper cannot be accepted. Uncoated paper emerges at one stage of the manufacturing process of coated paper. A reading of the exemption notification would clearly show that it grants an exemption from payment of duty on paper and paper board articles made therefrom upto clearance of 3500 MTs, when the same is manufactured from the stage of pulp and using non-conventional raw material. The objective is apparently to promote use of non-conventional raw material in making paper, paperboard and articles of paper and paperboard. If the interpretation sought to be given by the Revenue is accepted, it will defeat the very objective. Under these

circumstances, we find no reason to uphold the view taken by the Commissioner affirming the demand under the show cause notice. We, therefore, set aside the order impugned and allow the appeal.

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