

Perfect Cartons Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-24-1987

Reported in : (1987)(12)LC76Tri(Delhi)

Appellant : Perfect Cartons

Respondent : Collector of Central Excise

Judgement :

1. - The issues that arise for consideration in this Appeal are as to whether :- (a) the Appellant and M/s. Perfect Agencies are two different entities; (b) if not, the value of clearances effected by both of them during the years 1982-83 and 1983-84 should be clubbed for the determination of Appellants' eligibility to the benefit of Notifications Nos. 80/80 and 83/83; (c) the Appellant had contravened any or all of the provisions in Rules 9(2) and 173(Q); and (d) the levy of penalties of Rs. 500/- under Rule 173-Q and Rs. 250/- under Rule 9(2) of the Central Excise Rules was justified and they are maintainable? 2. Certain penalties which would appear to have been imposed on M/s.

Perfect Agencies are not relevant for our purpose in this appeal by M/s. Perfect Cartons. No appeal of M/s. Perfect Agencies is before us.

(i) unity of ownership of both the appellant as well as M/s. Perfect Agencies, (ii) the manufacture of duplex board printed cartons aggregating in value of Rs. 10,46,729.63 during 1982-83 and Rs. 1,10,684.32 during 1983-84 ostensibly by M/s. Perfect Agencies, in the premises of the appellant, (iii) the ineligibility of the

appellant to the benefit of the aforesaid notifications, once the quantities manufactured by both the appellant as well as M/s. Perfect Agencies are aggregated, and (iv) contravention of various rules, and requiring the appellant to show cause as to why duty in the amounts specified for the aforesaid years should not be recovered and penalties for contravention of the Rules, levied; (b) in adjudication, after reply to the aforesaid notice, it was held that the appellant was liable to pay duty for manufacture and clearance of goods in excess of Rs. 7.5 lakhs during the aforesaid years. Penalties in the aforesaid amounts were also levied for contravention of Rules 9(1) and 173-Q of the Rules; (c) on confirmation of the aforesaid order, the instant appeal is the sequel.

4. In the appeal as well as in the proceedings prior to it, the manufacture and clearance of cartons in excess of the exempted limits, to the extent alleged, from the appellant's premises had been admitted.

But then it is contended that the excess of cartons over Rs. 6,63,409.35 for 1982-83 and Rs. 7,02,362.27 for 1983-84 in value was attributable to M/s. Perfect Agencies - an independent partnership concern - who had merely leased the premises of the Appellant between 1-12-1982 to 31-3-1983 and 15-8-1983 to 31-3-1984. The goods manufactured by them should have been assessed in their hands and when, once it is so done, the appellant would be well within the exemption limits and, in consequence, the demand for duty would abate.

5. The relevant clause in notification No. 80/80-CE, dated 19-6-1980 read as under :- "4. Where a factory producing the specified goods is run at different times during a financial year by different manufacturers, the aggregate value of clearances of the specified goods from such factory in any such year shall not exceed rupees five lakhs and rupees ten lakhs respectively in terms of clauses (a) and (b) of paragraph. 1." There was a similar clause in subsequent notification No. 83/83-CE, dated 1-3-1983 also, though somewhat differently worded., We reproduce that clause also :- "Nothing contained in this notification shall apply if the aggregate value of clearances of all excisable goods for home consumption :- (i) by or on behalf of a manufacturer, from one or more factories, or (ii) from any factory, by or on behalf of one or more manufacturers, had exceeded rupees

twenty-five lakhs in the preceding financial year." It is quite evident that by virtue of the aforesaid clauses, the two notifications fixed two ceiling limits, one for the manufacturer and the other for the factory. Even, if one of these ceiling was crossed, the exemption became inadmissible irrespective of the fact whether M/s.

Perfect Cartons or M/s. Perfect Agencies were really one firm or two separate firms, clearances made by both of them had to be clubbed for determining the ceiling limit in respect of the one factory which both of them worked in the financial year. By so clubbing the clearances of the two firms, the ceiling limit for the factory was crossed and hence the appellants were not eligible for the exemption. We find from the impugned order that before the Additional Collector the appellants virtually accepted this position and begged for leniency in the matter of penalty only.

6. There is, however, force in the submission of the appellants that since under Rule 7 of the Central Excise Rules, 1944, the duty liability is on the manufacturer of the goods, they should not be fastened with the liability even in respect of the goods manufactured and cleared by M/s. Perfect Agencies. During the hearing before us, the learned representative of the department saw the force in this point and he suggested that the matter may be remanded to the Additional' Collector for allocation of the duty liability between the two manufacturers. We agree with him.

7. In the consequence, we modify the impugned order only to the extent that the duty liability in respect of the total clearances from the factory shall be apportioned between the two manufacturers. The Additional Collector shall do this apportionment on the basis of the respective clearances of the two firms. But for this modification, the appeal is otherwise dismissed.