

Super Printers Vs. Collector of Central Excise

Super Printers Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/3517

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-01-1987

Reported in : (1987)(12)LC707Tri(Delhi)

Appellant : Super Printers

Respondent : Collector of Central Excise

Judgement :

1. Show Cause notice dated 27-2-1985 was sent to the appellants M/s Super Printers with reference to the manufacturing activity carried on by them under an agreement with M/s I.T.C. It was mentioned in the notice that out of raw material supplied by M/s ITC the appellants were manufacturing slides (for cigarette boxes) falling under T.I. 68 CET, but that they had not taken out a licence therefor. They were directed to show cause why they should not be called upon to take out a licence and file classification list as also price list. They were also called upon to show cause why exemption claimed by them in terms of notification No. 77/83 as amended should not be denied since the slides were manufactured by the appellants on behalf of M/s ITC who were not eligible for any such exemption. On the above premises they were further called upon to show cause why an amount of Rs. 98,400.29P should not be demanded as duty from them in respect of slides manufactured and cleared during the period 30-8-84 to 10-2-85 and why duty should not be demanded for the clearances effected after 10-2-85 also. In their reply the appellants contended that they were the manufacturers of the slides and not M/s ITC and relied upon the terms of the agreement in support of this

contention. They claimed that the value of their clearances was such that they were entitled to duty free clearances under Notification No. 77/83 and they were not liable to take out a licence or observe other excise formalities. They therefore claimed that no duty could be demanded from them. On adjudication the Assistant Collector under order dated 9-9-85 rejected the above contentions and directed the appellants to comply with the requirements set out in the show cause notice and further confirmed the demand as raised and also directed that duty shall be payable by them on their clearance's after 10-2-85 also. The appeal against the said order was dismissed by the Collector (Appeals) under his order dated 24-7-86.

This appeal is against the said order.

2. We have heard Shri Sriram Panchu, Advocate for the appellants and Shri K.C. Sachar for the Department.

3. The allegations in the show cause notice were (1) the appellants were the manufacturers of slides out of raw material supplied by ITC; (2) In terms of Notification No. 305/77-M/s ITC are to be treated as the actual manufacturers of slides, the manufacture thereof by the appellants being on behalf of M/s ITC; (3) Since M/s ITC were not eligible for exemption in terms of Notification No. 77/83 the appellants were not entitled to duty free clearances and must therefore take out a licence, file classification list, price list etc. and observe other excise formalities.

4. From the terms of the agreement between the appellants and M/s ITC (the relevant terms being extracted in the reply dated 29-4-85 to the show cause notice and also in the order of the Assistant Collector) it is seen that M/s ITC were to supply at their cost the ink and the board for manufacturing and printing the slides; the manufacture was to be strictly in accordance with the specifications and details of M/s ITC and to their satisfaction; the first set of cutting and creasing rollers and printing gluts were supplied by M/s ITC to the appellants, these being returnable to the ITC on the expiry of the agreement; M/s ITC had right to reject such of the slides as did not conform to their specifications and details. The agreement further stipulated that the relationship between M/s ITC and the appellants was always to be one of principal and principal and not principal and agent. The contention for

the appellants is that they had been functioning as printers even before this contract with M/s ITC was entered into and that in fact they carry out the work of printing for other customers also apart from M/s ITC and that the appellants owned their own machinery on which the work for M/s ITC was being carried out and not exclusively on the machinery supplied by M/s ITC. They contend that their unit had been commenced independently on its own and that M/s ITC had neither incurred, nor staked, any financial investment of its own in the plant and machinery of the appellants except when, under the agreement entered into long after the appellants printing press was set up, the machines required specially for carrying out the work of ITC was given by the ITC, to be used alongwith other machinery already owned by the appellants. As earlier mentioned, the order of the Assistant Collector also referred to supply of the first set of cutting and creasing rollers and printing gluts only to the appellants and not other machinery required in the manufacture of printed cigarette slides. The appellants further contend that except to the extent that their manufacture was to be to the specifications and details given by M/s ITC their operations were never supervised or controlled by M/s ITC.⁵ On the question whether the raw materials supplier would, on the basis of such supply of raw material and the fact that the processing of the raw material into the processed product was to be to the specifications of the raw material supplier, be the actual manufacturer rather than the processor, has been considered by this Tribunal in its judgment in the case of M/s Multi Trade Overseas Corporation and others (Order No. 426 to 431/87-D dt. 26-5-87 in Appeal Nos. 3064 to 3068 and 3070 of 1984-D). It had been held that so long as the actual manufacturer was not a mere dummy for the supplier of the raw material, the raw material supplier could not be termed to be the manufacturer even if the processing was to be done to his specifications. It had been held that if the raw material supplier and the processor were two distinct legal entities, entering into the contract on principal to principal basis, the processor would be the actual manufacturer and not the raw material supplier. The following decisions were considered in the said judgment for carrying at the above conclusion: ii) Andhra Rerolling Mills [1979 (4) ELT 600 A.P.] [affirmed in 1986 (25) ELT 3 S.C.]

6. It is with reference to the ratio of the said decision that the facts in the present case are also to be appreciated and conclusions drawn. As earlier mentioned, the

appellants were functioning as printers even before the contract with ITC was entered into. They had been carrying out their work on their own plant and machinery from long before the said agreement. Even after the said agreement they were carrying out the work of printing of cigarette slides on behalf of other customers. Except to the extent that the printing of cigarette slides for ITC was to be done by the appellants to the specifications and printing details laid down by ITC, with a right of rejection in the ITC for sub-standard material, M/s ITC had no right of control and supervision over the actual day to day work of the appellants. The supply of the board, ink and slide bromides, as well as the first set of cutting and creasing rollers and printing gluts, by the ITC was for the reason that the work to be done by the appellants on that material was to manufacture a product suitable for the ITC only. Hence the supply of these materials would not amount to ITC having control over the manufacturing activities of the appellants. The clause for return of the cutting and creasing rollers and printing gluts to ITC (on the expiry of the agreement) was evidently for the reason that except for the work to be done under the said agreement these items would not be useful to the appellants. Evidently M/s ITC were anxious to see that these items were not put to use by the appellants for manufacture of slides for their competitors.

7. In his order the Assistant Collector had held that the agreement between ITC and the appellants was not on principal to principal basis.

As earlier mentioned, the agreement itself stipulates that the same was to be on principal to principal basis only. The Assistant Collector came to his above conclusion on the grounds that (1) part of the machinery was supplied by ITC and was returnable to them; (2) Ink, Board etc. was supplied by ITC; (3) ITC had the right to inspect the product and reject the same also if deemed fit; (4) ITC was the sole proprietor of the trade mark printed on the slides. For the reasons stated earlier it appears to us that none of the above circumstances would lead to the conclusion that the agreement was, for any of the said reasons, not one between principal and principal. The Assistant Collector held that the fact that the appellants were doing similar work (manufacture of cigarette slides) for others was not relevant. On the other hand, it appears to us that it is a very relevant circumstance to establish that the appellants were functioning independently of

ITC, the relationship between the two being only of raw material supplier and manufacturer of the final product, each dealing with the other as principal to principal. The conclusion of the Assistant Collector that in view of the circumstances mentioned earlier the appellants were only hired labour under ITC appears to us to be totally erroneous.

8. In the show cause notice reference had been made to Notification No.305/77. It is mentioned that in terms thereof the appellants are to take out a licence etc. In the order of the Assistant Collector he held that in terms of notification No. 305/77 ITC became the de jure manufacturer, the appellants being liable to comply with the requirements of Rule 174-A of the Central Excise Rules, as their manufacture was on behalf of ITC, the de jure manufacturer.

9. Notification No. 305/77 dated 5-11-77 was to the effect that the same exempted from the operation of Rule 174 of the Central Excise Rules every manufacturer who gets his goods manufactured on his account from any other person, subject to his authorising the said other person to comply with all procedural formalities. Therefore, recourse could be had to that notification only if it is held that M/s ITC were the actual manufacturers but that they had the same carried out by the appellants on their behalf. As we have already seen, the actual manufacturer is the appellant only and not M/s ITC. Hence pressing into service the said notification, for concluding that ITC is the manufacturer, is not proper.

10. As pointed out by the learned counsel for the appellants the Collector (Appeals) had fallen into a further error in holding that the appellants were agents of ITC. Not merely was there no such allegation in the show cause notice but the conclusion of the Assistant Collector was that the appellants were the hired labour of ITC and not their agents. The Collector further held that the case would have been different if the slides had been manufactured by the appellants on their own and then sold to ITC, whereas in the present case the raw material belonged to ITC and there was no sale of either the raw material by the ITC or the finished product by the appellants. It is true that in such a circumstance there would be no difficulty in holding that the ITC would not be the manufacturer. But that does not mean that in the absence of sale of raw material to the processor and sale of the

manufactured product by the processor it would be necessary to hold that the raw material supplier would be the actual manufacturer and not the processor. It has been already discussed as to when the raw material supplier would be the actual manufacturer and when he would not.

11. It may also be noted that while, on the one hand, the Department holds that M/s ITC were the actual manufacturers, the appellants being merely their hired labour, and the benefit of exemption Notification No. 77/83 was therefore not available to the appellants, the Department, on the other hand, seeks to levy duty on the manufactured articles and collect the same from the appellants and not from the ITC. This contradiction, in similar circumstances, has been commented upon by the Delhi High Court in the Poona Bottling Co. case [1985(21) ELT 389] and the Madras High Court in P.N. Abdul Latif [1985(22) ELT 758 (Mad.)].

12. In view of the above discussion we hold that the conclusion of the lower authorities, that the ITC were the actual manufacturers and the appellants were, therefore, not entitled to benefit under Notification No. 77/83 but were liable to pay duty, is not correct. The appeal is accordingly allowed and the orders of the lower authorities are set aside with consequential relief, if any.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com