

Reliance Industries Ltd. Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : May-21-2004

Judge : S T S.S., T Anjaneyulu

Appellant : Reliance Industries Ltd.

Respondent : Cce

Judgement :

(a) Appellants have a plant erected to manufacture HDPE granules etc. Somewhere in 1992, prior to the said plant's commissioning, they obtained 32 MTs of imported duty paid HDPE for the purpose of a trial run of the automatic bagging plant and working thereof before the actual manufacturing operation could be conducted. The trials were completed using the 32 MTs of imported HDPE in the bagging plant and extruder section of the plant.

(b) The officers on 2.8.1992 on a revisit, earlier having taken cognisance on 1.8.92 of the abovesaid trial activity detained the following goods: (i) various grades/qualities of HDPE in 436 bags (approx 6540 kgs.) in mixed condition filled with HDPE granules, chips, flakes, and fines etc.

(ii) Relene HDPE granules of a produce of Reliance (Reliance Petrochemicals Ltd. Hazira) packed in standard pack of 25 kgs.

(iii) HDPE granules/chips mixed not stored in 500 kgs. bag in loose condition.

Out of these 635 kgs. (15875 kgs.) correlate to imported HDPE used for trial run.

(i) Confiscation of the above-mentioned goods under Rules 210, 226 & 173Q(1) of the Central Excise Rules, 1944 and gave an option to redemption on fine of Rs. 2.00 lakhs.

(ii) Imposed a penalty of Rs. 50,000 on assessee under Rules 210, 226 and 173Q.

(iii) Confirmed a demand of Rs. 1,84,849 on 14.890 kgs. of HDPE in different form viz. flakes/chips/fine granules and waste in lump under seizure.

(i) Demand of Rs. 1,84,849 has been correctly demanded as conversion of one primary form of HDPE into another as per Chapter Note 6 of Chapter 39 would amount to manufacture.

(ii) Modvat credit eligibility to 32 MTs of imported HDPE granules is not entitled.

(iii) The confiscation of fully manufactured and packed goods was upheld. (iv) Considering the gravity of the offence, redemption fine was reduced to Rs. 1,50,000 and penalty to Rs. 40,000. Hence this appeal.

(e) Use of imported HDPE in the trial run of the Capital Plant and Machinery installed is not in conflict. Items used in trial runs are not eligible inputs or to credit under Modvat. They cannot be inputs (see Flex Engineering Ltd 2004 (61) RLT 161) where Revenue reliance on Allahabad High Court Order dated 26.8.2002 in reference was upheld this would deny the eligibility as inputs to the imported HDPE granules.

(f) Once the imported granules are not an input, they are not "raw material" and manipulation thereof resulting in bagged HDPE, subsequent stages emergence from the trial, in flakes, granules, lump form cannot be considered, as to be covered by the concept of, manufactured following the Supreme Court's decision in the case of Union of India v, Allahabad Electricity Co. Ltd. which reads as follows: 23. In the case in hand also coal which leads to production of cinder is not sued as a raw material for the end product. It is being used for ancillary purpose that is a fuel. Therefore, irrespective of the fact whether any manufacture is involved in the production of cinder it should be held to be out of the tax net for the reason that it is not a raw material for the end product.

(g) The Ld. DR relies on para 28 of the decision in which reads as follows: 28. Recently this Court had occasion to deal with a case of excise duty sought to be levied on 'spent earth'. This was in Commissioner of Central Excise, Chandigarh v. Markfed Vanaspati and Allied Industries 2003 (153) ELT 491. Excise duty was being paid on "earth". 'Spent earth' is a residue resulting from treatment of fatty substances. The 'spent earth' remained 'earth' even after processing though its capacity to absorb was reduced. It was held that no excise duty was leviable on 'spent earth'. The facts in this case are quite similar to the facts of the case in hand. In Markfed case 'earth' was reduced to 'spent earth' with a reduced potency to absorb. In the case in hand coal was reduced to inferior quality coal which was no longer of use in the furnaces in the factories, therefore, it could reasonably be said that 'cinder' i.e. coal of reduced quality still was coal and not exigible to excise duty.

and in view of the fact that Chapter Note 6 to Chapter 39 of the Central Excise Tariff Act, 1985 Schedule would imply that the coverage of manufacture, as prescribed by this Note, would cover the levy under the Central Excise Act, 1944. This plea of the Ld. DR cannot be accepted since the tests prescribed by the Supreme Court of the levy on manufacture under the Central Excise, 1944 would be applicable and have to be satisfied, even in cases where the activity is attracted into the ambit of manufacture "by chapter notes in the Schedule to Central Excise Tariff Act, 1985 (See CCE Patna v. Tata Iron & Steel Co. Ltd. (h) In the present case, the goods in the changed primary forms are admittedly mixed condition and the marketability thereof is not established. They are not the consequence of 'a deliberate skilful manipulation of the inputs or the raw materials' (See Modi Rubber Ltd. . Ld. DR relied by the Supreme Court's decisions in Ahmedabad Electric Co. Ltd. The converted form 'are neither marketable nor sale-ability thereof established & relying upon CCE v. India Tube Co. Ltd. 1995 (77) ELT 21 (SC) the alleged converted forms, in this case, are to be held as out of excise net.

(i) The Show Cause Notice at inner page 5 in the last para (not numbered) in the last sentence accepts as follows:Where fed in their extruding machine where the said products were melted and subsequently different form of HDPE were manufactured and same were being kept in the BSR. The quantity was the same

which was earlier placed under detention....

When goods allegedly manufactured have been kept in the BSR (the abbreviation for the term and place 'Bonded Store Room') in the licensed premises, where all manufactured goods are to be kept pending clearance on payment of duty, the non-accountal thereof in the production records, as prescribed viz. RGI, would only be a technical electrical omission and not a substantial violation to call for ordering the confiscation under the provision of the Central Excise Rules 173Q(1), 210, 226. Since no intention of or evasion of duty could be established, as no attempt to remove the goods is established and concluded, following the catena of decisions of this Tribunal after Bhillai Conductors' case 2000 (125) ELT 781 confiscation cannot be upheld even those goods are held to be exigible and manufactured. The Ld. DR's reliance on Kirloskar Brother's case Bom is not approved as in the facts of this case, since in Kirloskar Brothers' case the fact was of non-duty paid removal is exigible goods read with the non-accountal (see para 4 of Kirloskar Brothers' case) and not a case, as in this case, of a simplicitor non-accountal. The Andhara Pradesh High Court in the case of Southern Steels 1979 (4) ELT 1402 have held that there was no warrant for rendering the goods to confiscation for the mere fact of non-accountal in production records viz. RGI when no preparation for illegal removal was not existing- In the present case not only there is no preparation of illegal removal but the goods are admittedly not even sorted out into granule/flakes/powder etc. the alleged individual converted forms.

Quantity being in 500 kgs., jumbo bags, normally used only as a storage container in factories and not in shipment-packaging. The confiscation arrived at is therefore to be set aside, as goods are not excisable, even if excisable, they are not liable to warrant a confiscation.

(j) When confiscation liability is not upheld, the penal liability cannot be upheld. Since goods are not exigible, no liability could arise. If goods are exigible, the penal liability under Rule 210 being maximum Rs. 1000 and Rule 226 of Rs. 2000 the penalty of Rs. 40,000 arrived at without showing the break up cannot be upheld. (k) Since goods are found to be non-excisable, no duty liability would

arise. In fact when they are found in the BSR, therefore, even if exigible, duty liability would arise only on clearance i.e.

removal Ex BSR and not when they are in BSR as per Rules. Duty demand as made cannot be therefore sustained.

2. In view of the finding arrived, the order is required to be set aside.

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