

Hast Shilp Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jun-25-2004

Reported in : (2004)(95)ECC345

Judge : S Kang, M T K.D.

Appellant : Hast Shilp

Respondent : Cce

Judgement :

1. The appellants filed this appeal against the Order-in-Appeal passed by the Commissioner (Appeals).
2. The brief facts of the case are that on 24.1.97, the Officers of Revenue Department visited the office premises of M/s. Kurlon Limited and on verification it was found that M/s. Kurlon Limited were purchasing pillows from the present appellant with brand name of M/s.

Kurlon Limited. Thereafter the Officers of Revenue Department made enquiry from the present appellant and it was found that that the present appellants entered into a contract with M/s. Kurlon Limited for supply of pillows and one of the condition of the agreement was that pillows will carry the brand name of "Kalpana Velvet Touch" of M/s.Kurlon Limited. A show cause notice was issued to the appellants demanding duty after denying SSI exemption on the ground that the appellants were clearing the branded goods without payment of duty. The adjudicating

authority confirmed the demand and imposed the equal penalty amount under Section 11AC and Rule 173Q of the Rules.

3. The appellants filed the appeal and the Commissioner(Appeals) confirmed the demand and reduced the amount of penalty under Section 11AC as this section was introduced in the Central Excise Act on 28.9.96 and some period of demand was prior to 28.9.96. The Commissioner(Appeals) also imposed the penalty under Rule 173Q of the Rules.

4. Heard both the sides. The contention of the appellants is that the pillow covers were stitched by different tailors and the tailors who stitched the pillow covers are the job workers and they were also stitching label bearing the brand name of M/s. Kurlon Limited.

Therefore, no demand can be made from the present appellants. The appellants also pleaded that the demand is time barred. The demand is made for the period of 1997 and the show cause notice was issued in May, 1998. The appellants also pleaded that the penalty is on the higher side.

5. The contention of the appellants is also that the appellants entered into contract with M/s. Kurlon limited for supply of pillow covers with brand name of M/s. Kurlon Limited. The pillow covers were got stitched and thereafter the appellants were filling the foam and thereafter they were clearing the pillow covers with brand name of M/s. Kurlon Limited. Therefore, the appellants were entitled to SSI exemption.

6. Regarding the limitation, the contention of the Revenue is that the appellants never disclosed the fact that they were clearing the branded goods. Even no declaration was filed for availing the benefit of SSI exemption, therefore, the extended period is rightly invoked.

7. We find that the admitted facts are that the appellants entered into an agreement with M/s. Kurlon Limited for supply to pillow covers and the terms and conditions of the contract were that the pillow covers will carry the label of brand name of M/s. Kurlon Limited.

8. The contention of the appellants is that they are manufacturers of pillow covers and the pillow covers were got stitched from the job workers, therefore, the job workers are the manufacturers of pillow covers. We find no force in this argument of the appellant as the appellants on receipt of pillow covers filled the same with polyester fibre. Therefore, pillows come into existence in the hands of the appellants. The pillows cleared by the appellants were with the brand name of M/s. Kurlon Limited. In the circumstances, we find no infirmity in the impugned order that the appellants are not entitled to the benefit of SSI exemption notification. The contention of the appellant is that the demand is time barred is also without any merit as the appellants never disclosed to the Revenue regarding manufacturing activity. Even no declaration for availing the benefit of SSI exemption notification was filed. In respect of imposition of penalty, we find that the adjudicating authority imposed a composite penalty under Rule 173Q read with Section 11AC of the Act and the Commissioner (Appeals) reduced the penalty under Section 11AC on the ground that Section 11AC was introduced with effect from 28.9.96, therefore, the provisions of this section will be applicable only in respect of the demand after 28.9.96. We find that the Commissioner (Appeals) after reducing the penalty under Section 11AC imposed a penalty of Rs. 1,75,000 under Rule 173Q for the clearance prior to 28.9.96. Taking into consideration the facts and circumstances of the case as the appellants never disclosed the fact to Revenue that they were availing the benefit of SSI exemption and appellants cleared the goods without payment of duty claiming the benefit of SSI exemption which is not available to them, hence we find no ground for reduction in the quantum of penalty. The appeal is dismissed.

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