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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Dec-02-2004

Reported in : (2005)(182)ELT485Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Excel Corrugated Boxes (P) Ltd.

Respondent : Commissioner of C. Ex.

Judgement :

1. M/s. Excel Corrugated Boxes (P) Ltd., Palakkad and the Revenue have filed appeals against the Order-in-Appeal No. 232/03-C.E. dated 31-7-2003. M/s. Excel Corrugated Boxes (P) Ltd. have also filed an appeal against the Order-in-Appeal No. 32/04 dated 26-2-2004. Since M/s. Excel Corrugated (P) Ltd. have appealed against both the Orders-in-Appeal, a single Order is issued in respect of all the three appeals.

2. M/s. Excel Corrugated Boxes (P) Ltd. (hereinafter referred to as "M/s. Excel" in short) are engaged in the manufacture of corrugated paper boxes, an excisable commodity. The above commodity was under exemption till 1-3-2001. After 1-3-2001, the item was exempted up to Rs. 10 lakhs for the month of March 2001 and Rs. 1 Crore for the period from 1-4-2001 to 8-11-2001 in terms of Notification Nos. 6/2001 and 8/2001 both dated 1-3-2001. Investigations revealed that M/s. Excel received raw materials from M/s. Pepsi Cola Manufacturing Company (hereinafter referred to as "M/s. Pepsi" in short) for the manufacture of corrugated boxes on job

work basis. However, M/s. Pepsi Cola did not comply with the Notification No. 214/86-C.E. dated 25-3-1986 by filing the required declaration undertaking responsibility to pay excise duty.

M/s. Excel did not pay duty on the goods manufactured out of the raw materials supplied by M/s. Pepsi. Under these circumstances, the Revenue initiated proceedings against M/s. Excel for demanding duty.

The Original Authority demanded duty amount of Rs. 12,53,953/- plus Rs. 8,57,480/- under proviso to Section 11A and imposed penalty of Rs. 12,53,953/- under Section 11AC of Central Excise Act, 1944. A penalty of Rs. 1,000/- under Rule 25 of Central Excise (No. 2) Rules 2001 was also imposed on M/s. Excel. In appeal, the duty demand was confirmed for a period of one year, as the Appellate Authority was of the view that proviso to Section 11A cannot be invoked in the absence of intention to evade duty. However penalty of Rs. 1,000/- against under Rule 25 was upheld. Interest under Section 11AB was also upheld.³ The Revenue is aggrieved over the Order of the Commissioner (Appeals) on the ground that there is clear suppression of facts and hence proviso to Section 11A was correctly invoked by the Original Authority. It was argued that M/s. Excel effected clearance worth Rs. 29,28,243/- during March 2001 thereby exceeding the exemption limit by Rs. 19,28,243/-. The above fact was suppressed from the Department. This is the contention of the Revenue.

4. M/s. Excel contended that they received raw materials from M/s.

Pepsi and others on job work basis for manufacture of corrugated paper boxes. Even though the above duty was leviable to excise from 1-3-2001, they were not aware of the changes. Therefore, they continued to clear the goods without payment of duty. M/s. Pepsi vide their letter dated 5-9-2001 had intimated to the jurisdictional authority that they were sending kraft paper to M/s. Excel for conversion into corrugated paper boxes on job work basis. They wanted the same to be treated as intimation under Notification No. 214/86-C.E. dated 25-3-1986. M/s.

Pepsi sent a revised declaration to the Deputy Commissioner, Palakkad with a request to treat the intimation with retrospective effect from 1-3-2001 and to grant them exemption from Excise duty on the corrugated boxes manufactured by M/s. Excel. It was further contended that even they had cleared the boxes on payment of duty, M/s. Excel would have availed Modvat credit and the whole excise duty is revenue neutral.

They also challenged the imposition of penalty as there was no mens rea. They urged that the declaration filed by M/s. Pepsi belatedly should be accepted and benefit of exemption should be given to them as they were under the bona fide belief that the duty was not payable and therefore, the extended period of 5 years cannot be invoked, 5. Shri S. Raghu, learned Advocate appeared on behalf of M/s. Excel and Shri L. Narasimha Murthy, learned SDR appeared on behalf of the Department.

6. Learned Advocate relied on the decision of this Tribunal by Final Order No. 1527/2004 dated 20-9-2004 rendered in case of Kailash Auto Builders Ltd., v. CCE, Bangalore [2004 (178) E.L.T. 786 (Tribunal)] wherein it was held that under Rule 57F(4), the obligation to pay duty is only on the principal manufacturer. He contended that M/s. Excel received the raw materials on job work basis under Rule 57F(4) challans. If the principal manufacturer had not filed the declaration under Notification No. 214/86-C.E., the job worker should not be penalised.

7. The Order-in-Appeal No. 32/04 dated 26-2-2004 is on the same issue for the period from 1-4-2002 to 31-3-2003. This Order-in-Appeal has confirmed the Order-in-Original No. 56/2003 dated 18-12-2003 demanding duty of Rs. 7,64,418/- under Section 11A(1) of Central Excise Act, 1944. Interest under Section 11AB was also confirmed-.

8. Learned SDR contended that the declaration filed by M/s. Excel cannot be given a retrospective effect. He urged that Order-in-Appeal is legal and proper and the same should be upheld.9. We have carefully considered the rival submissions. M/s. Excel had received raw materials from M/s. Pepsi. They converted the same into boxes and sent them back to M/s. Pepsi. This fact is not disputed.

Moreover, the raw materials have been sent under Rule 57F(3) challans.

Therefore, the responsibility to pay duty by giving an undertaking under Notification No. 214/86-C.E. squarely rests on the principal manufacturer, i.e. M/s. Pepsi. M/s. Excel had undertaken the job work for others. The other raw material suppliers have followed the right procedure in filing declaration under Notification No. 214/86-C.E. It is only M/s. Pepsi who have filed a belated declaration on account of which the Revenue proceeded against M/s. Excel. In our view it would be against equity to punish M/s. Excel for the fault of the raw material suppliers. Under these circumstances, the demand of duty on M/s. Excel is not sustainable. Moreover, there are no strong grounds to invoke longer period and proviso to Section 11A. In this respect, the Commissioner (Appeals)'s findings are correct. Hence the Department appeal cannot be sustained. We also hold that the demand of duty and interest in both the Orders-in-Appeal cannot be sustained. We allow the appeals of M/s. Excel with consequential relief and dismiss the Department's appeal.

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