

Qualipack Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-17-1987

Reported in : (1987)(14)ECC320

Appellant : Qualipack

Respondent : Collector of Central Excise

Judgement :

1. None appears on behalf of the appellants who have requested that the matter may be decided on merits.

3. The department's case is that appellants wrongly availed exemption under Notification 46/71, as amended, to which they were not entitled.

Holding that the assessee has deliberately suppressed facts with a view to avail of the exemption to which they were not entitled, the Additional Collector of Central Excise rejected the plea of time bar and demanded the duty of Rs. 59,167.68 on the goods cleared and also imposed a penalty of Rs. 5,000/-.

4. We observe from the record of personal hearing granted by the Additional Collector that appellants had admitted that they had used only white pulp board in the manufacture of corrugated board. They did not use duplex board or bituminised paper or corrugating medium of 65 gms. or above. Further they offered to pay the duty of 5% on the corrugated board manufactured and cleared by them.

5. In their appeal before us, however, appellants have taken a completely different stand and some of the arguments used, even though not sustainable, are rather ingenious. Appellants submit that their claim to exemption rested on second proviso to Notification 46/71.

While admitting that they had purchased and used white pulp board in the manufacture of their product, it is contended by the appellants that they used kraft paper for corrugation and 2 ply corrugated board was produced wholly out of this kraft paper. This 2 ply corrugated board, it is submitted, was a completely finished product, marketable as such, and, in fact, also marketed in some cases. It is submitted that white pulp board is pasted on the 2 ply corrugated board in some cases. Both varieties of boards, it is urged are known as corrugated board and no distinction is made between the two by the trade. It is added that the 2 ply corrugated board being exempt from duty, any further process on such corrugated board, by merely pasting white pulp board on it did not constitute process of manufacture.

6. It is also submitted by the appellants that the proportion of white pulp board so used by them in combination with kraft paper works out to an average of 3%, which is negligible. It is also contended that appellants have declared in the classification list only the major raw materials and there should be no penal action taken for not declaring a raw material which is used in negligible proportion.

7. The appellants contended that the 2 ply corrugated board, being exempt from duty, should be considered to have discharged its duty liability, and when any further corrugated board is manufactured out of the 2 ply corrugated board, such board should continue to be exempt from the duty. In the light of the facts it is also urged that there is no suppression of facts and therefore demand for duty is also barred by limitation.

8. The facts of the case and the submissions made have been carefully considered. For facility of reference the relevant notification, the benefit of which is claimed by the appellant is reproduced below : "In exercise of the powers conferred by Sub-rule (i) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the Notification No. 135/67-C.E., dated 3-7-1967, the Central

Government hereby exempts corrugated board of the description given in Column (2) of the Table hereto annexed and falling under sub-item (2) of Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944) from so much of the duty of excise leviable thereon as is in excess of the duty specified in the corresponding entry in Column (3) of the said Table.

----- S. Description of corrugated board Rate of duty No. 1. Corrugated board manufactured out of 5% ad paper falling under the aforesaid item on valorem which the appropriate duty of excise or the corrugated board on which the appropriate Nil duty of excise or the appropriate additional 3. Corrugated board manufactured partly out of paper falling under the aforesaid Item and Provided that nothing contained in this notification shall apply to a manufacturer who avails of : (i) the special procedure prescribed under Rule 56A of the Central Excise Rules, 1944 in respect of duty paid on base paper or board, or (ii) the exemption granted under the notification of the Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. 67/76-Central Excises, dated the 16th March, 1976 : (a) wholly out of kraft paper or out of paper and paper board of the type known as kraft liner or corrugating medium of a substance equal to or exceeding 65 grammes per square metre; or (b) partly out of kraft paper referred to in Clause (a) and partly out of bituminised paper or duplex board.

on which the appropriate duty, if any, has been paid, then, such corrugated board shall be exempted from the whole of the duty of excise leviable thereon." [Notification No. 46/71-C.E., dated 24-4-1971 as amended by Notifications No. 8/72-C.E., dated 15-1-1972; No. 49/72-C.E., dated 17-3-1972; No. 19/74-C.E., dated 1-3-1974; No. 72/76-C.E., dated 16-3-1976; No. 14/78-C.E., dated 24-1-1978 and No. 159/78-C.E., dated 26-8-1978].

9. It would be seen that as per second proviso to the relevant notification, exemption is accorded to corrugated board which is produced wholly out of kraft paper or out of paper and paper board of the type known as kraft liner or corrugating medium of a substance equal to or exceeding 65 grammes per square metre or partly out of such kraft paper and partly out of bituminised paper or duplex board. In the present case it is not denied that the impugned goods have

not been manufactured wholly out of the specified materials. Pasting a white pulp board for purposes of manufacture of the final product is admitted but it is urged that the 2 ply corrugated board which is obtained prior to the pasting of the white pulp board qualifies for exemption under the relevant notification and is marketable as such. This product, it is contended, should therefore not only be considered as exempt, but because of such exemption, should be considered to have discharged its duty liability. Thereafter, it is submitted, if there is further pasting of white pulp board this should not attract any duty. This argument has to be rejected. What is for determination is the entitlement to exemption of the finished product not the intermediate product, that is, 2 ply corrugated board. It is fallacious to argue that the final product should be exempt from duty because at the intermediate stage a product comes into existence which qualifies for exemption. It is equally fallacious to argue that further processing of exempted goods does not attract duty. The question remains as to what is the final product which is manufactured and liability to duty will have to be determined on the basis of whether the final product as such qualifies for exemption or not.

10. There is no doubt whatsoever that the final products contain inputs which are not covered under the relevant exemption notification.

Therefore, their liability to duty cannot be in doubt.

11. The question next arises whether demand for duty is time barred. We observe that the appellants admit that they did not declare to the department that they were using white pulp board. Their only defence is that such board was used only to extent of 3% and that they were under an obligation to declare only the major raw materials. This plea, again, has to be rejected. When the appellants were claiming an exemption which was conditional on their using specified inputs, and they were not only using other inputs also, but neither declaring this to the department nor paying duty, then clearly they are guilty of suppression of facts with the intention to evade duty by claiming exemption under a notification to which they were not entitled. The argument as regards the small percentage of such inadmissible inputs is of no avail at all.

12. In the light of our foregoing findings both the demand for duty and the penalty is upheld.

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