Commissioner of Central Excise Vs. Stay-on-papers (P) Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Aug-22-2005

Reported in : (2006)(193)ELT204Tri(Bang.)

Judge : S Peeran, J T T.K.

Appellant : Commissioner of Central Excise

Respondent : Stay-on-papers (P) Ltd.

Advocate for Def. : Shri. B.V.K

Judgement :

1. Revenue has filed this appeal against Order-in-Original No. 122/04, dated 27-9-2004 passed by the Commissioner (Appeals).

3. The Directorate General of Anti Evasion, Chennai conducted certain investigations. The investigations revealed that the respondents M/s.

Stay-On-Papers (P) Ltd. (SPPL for short) received certain materials from M/s. Laser Spectra Technology Private Limited, Mayiladuthurai, Tamil Nadu (LSTPL for short) for doing some job work. According to the DGAE, after SPPL processed the film by adhesive coating and lamination the resultant goods become Self Adhesive Polyester (Holographic) Film (PPHF in short). The goods were returned to LSTPL. The main charges against the respondents are as follows : (i) The goods were misdeclared as Chromo art label stock and Maplilho label stock falling under Chapter sub-heading 4811.20 of the Schedule to the CETA, 1985.

(ii) The assessable value mentioned in the respondent's invoice covered only job work charges and not the value of the material supplied by LSTPL.

(iii) The extended period was invoked in the show-cause notice for the recovery of duty.

The adjudicating authority demanded duty of Rs. 3,04,470/- for the period from January, 1997 to March, 1997 in terms of proviso to Section 11A of the Central Excise Act, 1944. He imposed equal amount of penalty under Section 11AC read with Rules 173Q and 210 of Central Excise Act, 1944 and interest under Section 11AB was demanded. The impugned goods were classified under Chapter subheading 3919.00 of the CETA, 1985. The respondents approached the Commissioner (Appeals). The Commissioner (Appeals) relying on the decision of the Tribunal in the case of Holographic Security Marking Systems Pvt. Ltd. v. CCE, Mumbai held that the impugned goods are classifiable under Chapter sub-heading 4901.00. The decision of the Tribunal has been affirmed by the Apex Court reported in Commissioner v. Holographic Security Marking 2003 (158) E.L.T. A181 (S.C.). Since the duty rate is nil under the above mentioned classification the Commissioner (Appeals) did not go into the other aspects, namely, valuation, invoking extended period and imposition of penalty. Revenue has come before us aggrieved over the decision of the Commissioner (Appeals) on the following grounds : (a) The Commissioner (Appeals) has passed the order on the supposition that the decision of the Hon'ble Tribunal in the case of Holographic Security Marking Systems P. Ltd. (supra) was only an additional evidence which was not examined by the original authority. This is not correct. The original authority examined the decision at para 34 of the Order-in-Original and came to the conclusion that the goods covered in the present case and those covered by the Tribunal's decision are different.

(b) The process of manufacture of the impugned goods as explained by Shri K. Ganesan, Managing Director of LSPTL in his statement given under Section 14 is different from the process of manufacture of goods involved in the case of respondents. Hence the case law relied by the Commissioner (Appeals) is not applicable to the present case.

The process of manufacture of the impugned goods in the present case is similar to the process of manufacture of goods that was mentioned in the case of Holostick India Ltd. v. CCE, Meerut-II . In that case it has been held that printed aluminium holographic film laminated on one side and with self adhesive quality on reverse is classifiable as self-adhesive film under Heading 39.19 of the Schedule to the Central Excise Tariff Act, 1985 and not as product of printing industry under Heading 49.01 ibid even if essential character to it is imparted by printing. In this case, ERB, Delhi considered the decision of the Tribunal in the case of Holographic Security Marking Systems Pvt.

Ltd. (supra) relied by the Commissioner (Appeals).

4. Shri R.N. Viswanath, ld. SDR appeared for the Revenue and Shri B.V.K. ld. Counsel for the respondents. Ld. SDR reiterated the grounds of appeal. We have gone through the records of the case and the submissions made by both sides at the time of hearing. The Dte. General of Anti Evasion officers in their investigations found that the respondents failed to declare correct classification of the goods manufactured by them and also did not pay duty on the correct value of the goods cleared by them. In other words they paid duty only on the job charges received by them and did not include the value of the raw materials supplied by LSPTL and after doing the job work returned the goods to them. This fact is also not in dispute. Under the Central Excise Law there is no need for the job worker to pay duty when he returns, the goods to the principal manufacturer. The Tribunal in the case of M. Tex and Anr. v. CCE, Jaipur 2000 (39) RLT 1091 (CEGAT) has held that when the job worker returned the goods after processing he is not liable to pay the excise duty. The principal manufacturer will pay the duty. In this connection the observations of the third Member (Majority view) is as follows : 33. For the reasons already recorded by me, I am in complete agreement with the view taken by the ld. Vice President in his dissenting Order, holding that the appellants [job workers who received inputs from principal manufacturers under challans issued under Rule 57F(4), as this rule stood during the relevant period, and returned the said goods after carrying out the process of heat setting and stentering on job work basis to the principal manufacturers] were not required to pay duty on the goods so returned during the period in question.

In this case, even though, the principal manufacturer is LSTPL no show cause notice is issued to them. There is no indication to show whether M/s. LSTPL cleared the sent goods on payment appropriate duty or not.

When LSTPL returned the goods for job work to the respondents they are duty bound to follow the provisions under Notification No. 214/86.

Strangely, the principal manufacturer remains unaffected and untouched in the entire investigation. If the principal manufacturer had paid correct duty then there is no loss to the exchequer. If they had not, then action should have been taken against them. This is also not done.

In the case of CCE v. D.K. Processors (P) Ltd. (T) it has been held by the Tribunal that when job workers returned the good's after process of heat setting and stentering on the fabrics supplied to them, the principal manufacturer is liable to pay duty and not the job worker. If the respondents had not followed the proper procedure they cannot be slapped with the demands when the principal manufacturer discharge the duty liability. Under Notification No. 214/86 the principal manufacturer is liable for payment of duty on the goods. It is his duty to inform the jurisdictional Superintendent of the job worker. Even the adjudication authority in the following para observes the inadequacy of the investigation.

39. From the above statements I agree with the learned Advocate that M/s. LSTPL is the principal guiding force in this fraudulent venture to dupe the exchequer for tax liability but since the show cause notice do not seek imposition of any penalty on M/s. LSTPL or on Mr.

Ganeshan, I do not like to go into this issue and I also do not to go into the Annexure B relied upon documents submitted by Shri Ganeshan wherein details of invoices raised by M/s. Stay on Papers Pvt. Ltd. comprising invoice No. 205 for quantity of 425 sqm, and invoice No. 432 for quantify of 5668 sqm. In respect of M/s.

Stay-on-Paper Pvt. Ltd and the goods of Sri Industries for a total quantity of 9858 sqm., were also not included in the show cause notice by the investigating agency, hence the duty to be recovered on such goods after correct assessable value which needs to be worked out is not dealt with in this order. The request of cross-examination is not going to alter the facts available before the assessee as no pertinent point of doubt was raised on the statement of Mr. Ganeshan, or on the Chartered Accountant hence the request of learned Advocate is only a weapon to delay the proceedings and I need to go ahead with deciding this case based on facts.

5. In view of the above, we find that the question of correct classification of the impugned goods is only academic. No purpose would be served by allowing the Revenue's appeal. Hence the same is rejected.