

H.M.M. Ltd. Vs. Collector of Central Excise

H.M.M. Ltd. Vs. Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/4091

Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-20-1988

Reported in : (1989)(40)ELT422TriDel

Appellant : H.M.M. Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The question for decision in this appeal is liability of the appellants to Central Excise duty under Tariff Item 68 in respect of Coal cinder sold by them between 1.4.1981 to 31.1.1983 and legality and propriety of personal penalty of Rs. 3,000/- imposed against them for breach of certain Central Excise rules set out in the impugned order.

2. The present proceedings against the appellants arose as per show cause notice dated 17.10.83 which raised demand for the period 1.4.1981 to 31.1.1983 based in Trade Notice No. 82-CE, dated 28.8.1982 issued by the Chandigarh Collectorate. This Trade Notice stated that coal cinder is identifiable waste and is classifiable under Tariff Item 68. The notice further stated that demand for previous period from 1.8.1978 to 31.3.1981 would be raised after figures for the period were received by them from the appellants in their office. Another Show Cause notice was issued by Superintendent of Central Excise on 7.11.83 but this was cancelled by Show Cause notice dated 19.11.83 issued by the Assistant Collector of Central Excise, Patiala. This notice dated 19.11.83 called upon the appellants to show cause why for breach of certain rules and provisions set out

therein, penal action may not be taken against them.

The appellants filed reply dated 19.11.1983 denying the allegations inter alia maintaining that coal cinders is not excisable goods and strongly disputing the validity of Trade Notice No. 82-CE, dated 28.8.1982. The Additional Collector of Customs & Central Excise, Chandigarh by order-in-original dated 3.2.1984 after following the usual procedure, found against the appellants and demanded duty and imposed penalty as set out above.

3. At the hearing of the appeal on 6.7.87, Sh A.C. Gulati with Sh. S.K.Goel, Advocates representing the appellants, submitted that coal cinder was only a waste material and not excisable. The Trade Notice issued by the Collectorate would not be the basis of Central Excise classification. In support of his argument, he relied on the following decisions -Modi Rubber Ltd., Modi Nagar UP and Anr. v. Union of India and Ors.Collector of Central Excise, Allahabad v. Captainganj Distillery, Captainganj Relying on the decisions, he argued that demand of duty and imposition of penalty deserved to be set aside.

4. Smt. Chander relied on the meaning of cinder/slag given in The Condensed Chemical Dictionary, Tenth Edition, Revised by Gessner G.Hawley and argued that regard being had to this meaning, cinder should be treated as goods. She also relied on Rule 50 of Central Excise Rules, 1944 which prohibits removal of non-excisable goods without permission of the Collector.

The meaning of the word 'slag' to the extent material for this appeal and Rule 50 of Central Excise Rules are reproduced below - "The residue or ash from coal gasification processes; it may run as high as 40% depending on the rank of coal used.

For the purpose of facilitating the collection of duty on excisable goods, the Collector may require that a manufacturer shall not, without the permission of the proper officer and except in accordance with such procedure as may be prescribed by the Collector, remove from the approved premises any non-excisable goods produced in such premises, or any intermediate or residual product, except waste matter and such other material as may be specified by the

Collector in writing." 5. The respondent has also filed a Cross-objection which is in fact comments on the grounds of appeal and the request is to uphold the order. It is not a Cross-objection in proper sense and is therefore, dismissed as superfluous.

6. We have carefully considered the arguments advanced by the parties.

It appears that burning of coal in boiler leaves cinder as residue.

After coal is burnt, the residue cinder is removed. It is in fact waste which has brought some money to the appellants.

7. Delhi High Court in Modi Rubber Ltd case (supra) has held that waste/scrap though capable of fetching some sale price could not be treated as goods or obtaining of the same manufacture within the meaning of Central Excise law. In para 13 of the decision dealing with Rule 50 of Central Excise Rules, 1944, they have also held that so far as waste matter is concerned, it has been treated as non-excisable product with no restrictions on its removal. It is also not shown or suggested that waste obtained by burning of coal is specified in any Tariff item. Besides the above High Court decision, the Tribunal in Collector of Central Excise, Allahabad v. Captainganj Distillery, Captainganj (supra) relying on a number of decisions including one of Bombay High Court in Indian Aluminium Co. Ltd and Anr. v. A.K.Bandyopadhyay and Ors. [1980 ELT 146 (Bombay)] held that spent wash arising during process of manufacture of alcohol is waste and not excisable. It appears to us that ratio of these decisions would be applicable in the present case and based on the Trade Notice issued by the Collectorate, cinder cannot be held to be excisable or goods.

8. We, therefore, set aside the impugned order and allow the appeal with consequential relief, if any, to the appellants. Cross-objection is dismissed as superfluous.