

L.M.L. Limited Vs. C.C.E.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-17-1988

Reported in : (1988)(38)ELT336TriDel

Appellant : L.M.L. Limited

Respondent : C.C.E.

Judgement :

2. Upper India Polymers is a division of the appellants LML Limited.

They are licenced to manufacture man-made Filament Yarn. They filed a Classification List No. 1/Caprolactum/86 effective from 27.6.1986.

Thereunder they have shown Caprolactum, produced out of nylon Filament waste by a process of recycling such waste, under two headings. The second heading read "waste of synthetic filaments falling under sub-heading No. 5401.10". They had claimed the same to be free of duty under Notification 36/85-CE as amended by Notification 172/76-CE. Show cause notice dated 5.11.1986 was issued to them with reference to the said classification list. After receipt of reply the Assistant Collector, Kanpur adjudicated the matter. Under order dated 19.1.1987 he held that exemption claimed by the appellants was not available. He therefore approved of the classification list with the modification that the exemption claimed in respect of above product was not available. The appeal against the said order was dismissed by the Collector (Appeals) under his order dated 30.10.1987. Excise Appeal 3228 of 1987 is against the said order.

3. Following the order of the Assistant Collector noted above an offence case was registered and notice dated 24.3.1987 was issued. The Collector of Central Excise, Kanpur adjudicated in the said matter and, under order dated 16.10.1987, demanded duty of Rs. 305705.10 paise and imposed penalty of Rs. 10,000.00. Excise Appeal No. 3247/1987 is against the said order.

4. We have heard Shri R. Santhanam, General Manager (Legal) of the appellants on behalf of the appellants and Shri K.C. Sachar for the department.

5. At the commencement of the hearing Shri Sachar raised a preliminary objection that the show cause notice having been issued to M/s Upper India Polymers, who were the license holder, the appeal preferred by M/s LML Limited is not competent. Shri Santhanam submitted that Upper India Polymers is only a division of M/s LML Limited and not a separate legal entity, though licence was taken in the name of Upper India Polymers as it was a separate division. In view of the above the preliminary objection of Shri Sachar was over-ruled and hearing was proceeded with.

6. Man-made fibre is manufactured by the appellants out of Caprolactum.

In the process wastage occurs and this waste is recycled into caprolactum for being again put to use in the manufacture of man-made fibre. So far as the waste is concerned it is entitled to exemption under Notification 26/B-72-CE, dated 18.3.1972 if the same is used for recovery of caprolactum. In the classification list this waste, falling under sub-heading 5410.10 CET, is shown as Item No. 2 in page 3 of the classification list, under the heading "Particulars of other goods produced or manufactured and intended to be removed by the assessee".

The fact that no duty was payable thereon is not in issue before us.

The issue before us relates to the liability for payment of duty on the caprolactum produced out of the waste. The appellants claim that under Notification 36/85-CE., dated 17.3.1985, as amended, the caprolactum described by them under Item (ii) at page 2 of the classification list was free of duty. We may observe that in page 2 caprolactum manufactured out of waste is described under two sub-headings (i)

and (ii). The entitlement to exemption in respect of the caprolactum mentioned under sub-Item(i) was not disputed by the department but only the entitlement for the Caprolactum under sub-Item (ii).

7. The reason for this denial of exemption to sub-Item (ii) was the contention of the department that the benefit under the notification was available only in respect of caprolactum manufactured out of the nylon polymer waste as defined in the notification and that the nylon polymer waste mentioned in sub-Item (ii) was not nylon polymer waste as defined in the notification.

8. It is therefore necessary to reproduce the definition as contained in the explanation to the notification. The same read as follows:- "For the purpose of this notification "nylon polymer waste" means the waste arising during the manufacture of nylon yarn from caprolactum".

9. The case for the department is that the waste in issue in the present proceeding arose subsequent to the manufacture of filament and that therefore the same fell outside the nylon polymer waste as defined in the explanation. The argument is that it is only waste that occurred before the filament is formed that would be covered by the definition in the explanation.

10. On the other hand the contention for the appellants is that the manufacture of nylon yarn is completed only when the yarn is wound on the cops and, therefore, the nylon filament yarn waste in issue in the present case would be waste that had arisen during the manufacture of the nylon yarn and hence the benefit claimed in the classification list was available to the appellants.

11. Both sides have stated that this issue is not the subject matter of any decision of either this Tribunal or any Court. We have therefore to decide whether the waste in issue i.e. the waste arising subsequent to emergence of filament from the spinnerette but before being wound on cops, would be waste arising during the manufacture of nylon yarn. In this connection Shri Santhanam relies On the meaning of the word "During" as given in Black's Law Dictionary (5th Edition) -at page 453.

The meaning given is Throughout the course of; throughout the continuance of; in the time of; after the commencement and before expiration of. As earlier mentioned his argument is that since the manufacture of yarn is completed only after it is wound on the cops (when only it is ready for removal for marketing) any waste arising before that stage would be waste arising during the course of manufacture. The Assistant Collector has held "I hold the view that once the nylon yarn has been manufactured, waste originating during further processing on the yarn, though qualifying as Nylon Waste, would not be entitled to this exemption since this exemption is restricted to the waste which has arisen upto the stage of manufacture of nylon yarn from caprolactum. Since the waste of synthetic filament falling under sub-heading 5401.10 would not be the waste arising prior to the manufacture of Nylon yarn, but would be arising in a subsequent process, as such." Shri Sachar reiterated this submission.

12. With a view to test the correctness of this conclusion it was enquired whether duty was being collected on the yarn after it is wound on the cops (and with reference to the quantity so wound) (the duty being a specific one). We were informed that duty was being levied and collected in the said manner only. Therefore it cannot be said that manufacture of the yarn is complete so soon as it emerges from the spinnerette and is not postponed to the stage of winding on the cops.

We are therefore of the opinion that the conclusion of the Assistant Collector [confirmed subsequently by the Collector (Appeals)] that the waste that occurred after emergence of the filament, but before the same is wound on the cops, is not waste arising during the course of manufacture of nylon yarn, is not correct.

13. That would mean that the exemption claimed in the classification list was available to the assessee and the refusal thereof by the lower authorities was incorrect. It would therefore follow that the classification list ought to be approved as filed and not with the modification ordered by the Assistant Collector.

14. This would therefore mean that the order of the Collector (impugned In Excise Appeal 3247/87-D) is also liable to be set aside so far as the duty demanded therein is concerned. It would therefore further follow that the penalty imposed has

also to be set aside. We would only observe that even if the liability for payment of duty is to be confirmed the imposition of the penalty appears to have been without justification. The appellants had filed a classification list giving full details and on adjudication an order had been passed by the Assistant Collector which was, at the time of adjudication by the Collector, the subject matter of an appeal before the Collector (Appeals). Thus there was a difference of opinion between the assessee and the department and at the time of the order of the Collector, the issue was still being disputed before the Collector (Appeals). In the circumstances the imposition of penalty appears in any event to be unjustified. As earlier mentioned the penalty has to be set aside on the very ground that the demand for duty is itself being set aside.

15. Both appeals are accordingly allowed and the orders of the lower authorities are set aside with consequential relief, if any.

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