Padmini Products Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-08-1988

Reported in : (1988)(16)ECC115

Appellant : Padmini Products

Respondent : Collector of Central Excise

Judgement :

1. This is an appeal against the order of the Collector of Central Excise, Bangalore.

2. Brief facts of the case are that the officers on a visit to the appellants' factory found that the appellants were manufacturing Dhoop sticks, Dhoop Coils and Dhoop Powder with the aid of power and had been clearing the goods without payment of duty. The appellants were charged with having contravened provisions of Rules 9(1), 52A, 53, 173B, 173F, 174, 173G and 226 of the Central Excises Rules, 1944 and provisions of Rule 9(2) read with Rule 173 Q were invoked for levying duty, penalty and for confiscation of the goods. The main plea of the appellants before the lower authorities was that the goods manufactured by the appellants were handicrafts and were therefore eligible for exemption under Notification No. 55/75 dated 1-3-1975 as amended from time to time. The Collector, however, held that since the basic and vital stage in bringing about the essential character of the product is achieved by the use of power and just because there are cut and dried and packed in bundles by hand, the concept of making of such goods by hand will not arise. He, in short, held that the goods were

not handicrafts and the benefit of Notification No. 55/75 extended to handicrafts as claimed was not available to them. He also held that the dhoop sticks, dhoop coils and dhoop battis and dhoop powder were not Agarbatties as commercially known and turned down the appellants plea that being Agarbatties as held by Commerce [Ministry and other authorities as handicrafts these should be eligible for the benefit of Notification No. 55/75.

3. The learned advocate for the appellants pleaded that the dhoop sticks had been recognised by the All India Handicrafts Board as handicrafts and that dhoop is nothing else but Agarbatties. He produced the letter of Basic Chemicals, Pharmaceuticals and Cosmetics Export Promotion Council to show that dhoop sticks, incense cubes and cone, coils, joss sticks are Agarbatties in different physical forms and that the end-use of these and the ingredients used therein are one and the same and for this reason these had been made eligible for the benefit of export incentives as Agarbatties, He cited a 1955 Report on the Marketing of Handicrafts under the title "Survey of Indian Handicrafts" sponsored by the All India Handicrafts Board, brought out by Indian Cooperative Union. In this survey, he pointed out, Agarbatties find mention showing thereby that these were recognised as handicrafts. He pleaded that the Government of India also recognised Agarbatties as handicrafts and produced a copy of the letter issued by the office of the Deputy Director, All India Handicrafts Board functioning under the Ministry of Commerce, Department of Export Production No. 9/1/75 DDS dated the 12th 3une 1985 in which it has been certified that the Agarbatties are the products of the Indian Handicrafts Board, Ministry of Commerce. He has also pleaded that even the Central Excise authorities accepted Agarbatties as handicrafts and cited the Trade Notice No. 15/75 (copy of which he supplied and reproduced in Central Excise Tariff of India operative from 15-4-1975 : 5th Edition by Shri R.K. Jain, showing that Agarbatties are handicrafts eligible for exemption under Notification No. 55/75. He pleaded just because power has been used in the production of dhoop etc. this cannot take these products out of the purview of handicrafts. He pleaded that there can be use of power in the manufacture of handicrafts also and the same is not a taboo and use of power for some processes in their manufacture might be essential. He cited the case of Shyam Sunder Metal Industries and Ors. : 1982 ECR 289 (CBEC). He drew our attention to para 18 which is reproduced

below : "He then referred to the following portion from the "International Labour Office Report on the Meeting of Experts on the Role of Handicrafts in the National Economy of Developing Countries" in its session in New Delhi from 4th to 16th November, 1968 :- In fact, any process which reduces the drudgery of operation and makes it easier to prepare the basic form, on which the craftsman could do certain decoration, embellishment, etc. can be mechanised, with advantage. Handicrafts are now using modern techniques. They are not enemies but friends. Tool technology is related to personal skill of craftsmen. Mrs. Kamladevi Chattopadhyay, Founder/Chairman, All India Handicrafts Board and Vice-President of the World Craft Council, has rightly observed : In upholding craftsmanship one does not by implication reject machines or make an impassioned plea for return to hand production.

The problem posed before us is not man v. machine but rather a harmony and cohesion between the two".

and argued that this observation of experts would show clearly that Handicrafts, even in 1968, were being manufactured using modern techniques and the use of modern tools & machines had become an essential part of manufacturing operation of "Handicrafts".

and also the findings of the Board in para 35 and 36 of the said order.

The same are reproduced for convenience of reference : "The Board has also seen the definition given in the UNCTAD document (reproduced in para 12 above) and observes that the term Handicrafts is not averse to the use of machines in their manufacture so long as the essential character of the product is derived from the 'handmade' aspect.

In passing the Board would observe that for the purpose of determining the essential character, it is better to leave it to the persons dealing with it namely "All India Handicrafts Board" who are the expert authority in this matter. (They have been treating these goods as "Handicrafts"). The appellants have been registered with this Board and their experts have certified the goods manufactured by the appellants as "totally handicrafts items"." (ii) Agarbatties are accepted as handicrafts by various authorities including the Central Excise authorities; (iii) Use of power in the manufacture of these does not bar them from being called as handicrafts.

He further pleaded that there was no warrant in invoking longer time limit of five years for raising the demand and if at all demand should be raised it should be for a period of six months reckoned from the date of the issue of the show cause notice. He pleaded that the appellants were under the genuine impression that the Agarbatties were eligible for the benefit of the exemption under Notification No. 55/75 and even the Central Excise authorities had also issued Trade Notice in this regard. He pleaded that the prevailing understanding in the trade in the matter was also that goods manufactured by the appellants were handicrafts. He stated that there was no intent on the part of the appellants to evade payment of duty and that they had entered all transactions of dhoop sticks, coils etc., in their books and there was no question of clandestine removal. He pleaded there could be no question of levy of penalty in their case. He cited the case of Inarco Limited : Bombay v. Collector of Central Excise, Bombay : 1987 (31) E.L.T. 469 (Tribunal) and the case of Murugan and Company, Pudukottai v. Collector of Central Excise, Tiruchirapalli and Ors. : 1977 E.L.T.(J 193).

4. The learned JDR for the Department pleaded that the goods could not be considered as handicrafts and drew our attention to the definition of the term 'handicrafts' given in the Concise Oxford Dictionary : 7th Edition, which is reproduced below : "manual skill; manual art or trade of occupation; man skilled in a handicraft." She pleaded that for an item to be treated as handicraft it is essential that it should be the result of manual skill. She pointed out that in the case of the appellants it is an admitted fact that the raw materials for the dhoop are kneaded with the aid of power and after kneading the -same, are extruded in an extruder and the manual work that was done in the process was only in feeding of the raw materials by hand and later in the cutting of the sticks to the desired length.

Her plea is that neither any manual skill is used nor the product took shape by use of manual effort. She drew our attention to the definition of 'Handicrafts' as given in the case of Shyam Sunder Metal Industries and Others referred to supra, cited by the appellants. In this context, she stated the definition of Handicrafts as adopted by UNCTAD is as under : "Some goods may be produced partly by machine and partly by hand : (i.e. a dress made up by hand from machine made cloth, perhaps with additional hand embroidery or other decorations) ... in such cases a product should be regarded as hand-made or Handicrafts if the essential character of the product in its finished form is derived She stated that in as much the essential character in the case of appellants products had not been given by hand, the same could not be treated as handicrafts. She pleaded that for the item to be treated as handicrafts the process of manufacture was relevant and that as seen from the various authorities quoted by the Board in the order referred to supra it would be seen that the process of manufacture employed in the case of the appellants goods did not entitle these to be treated as handicrafts. She also pointed out that in Import Policy for 1984-85, handicrafts and Agar-batties and Dhoop figure under a Heading apart from Handicrafts and stated that Dhoop and Agarbatties have been listed under traditional item in Appendix 17 at serial No. V under Group Heading 'Toiletry and Prefumery" while the Handicrafts figure separately. Separate definition for Handicraft has been given in this Policy and this envisages the Handicrafts to be manufacture by hand. General Note I against the entry Handicraft in the Policy Book in this regard is reproduced below for convenience of reference : "Articles which are classifiable elsewhere in this policy will be deemed to be "Handicrafts" falling in this group only if such articles, besides being made by hand, have some artistic or decorative value; they may or may not possess functional utility value in addition. Artistic or decorative value of the Article exported need not necessarily come out of any art work, engraving or decoration done on the Article but the very form, shape or design of the Article could also be artistic and suggestive of the fact that the Article is primarily meant for decorative and not for utility purposes." Regarding the limitation, she pleaded that the appellants had been manufacturing goods without the knowledge of the Central Excise authorities and had removed the goods without payment of duty. In this background the removal of the goods had to be considered as clandestine removal.

(i) whether the process by which goods were manufactured would disentitle the goods from being called as handicrafts; (ii) whether the goods are to be considered as handicrafts in spite of the manufacturing process of the goods employed by the appellants; (iii) whether longer time limit can be invoked in the facts and circumstances of the case.

6. We observe that the appellants case is based on the fact that inasmuch as the Agarbatties have been considered as falling within the Group Heading 'Handicrafts' by some authorities, their goods should be treated as handicrafts for the purpose of Notification No. 55/75. The appellants in this regard have pleaded as under : (i) The Export Promotion Council has accepted that since Dhoop sticks, coils etc. have the same ingredients and end-use as Agarbatties these should be considered as Agarbatties; (ii) The Ministry of Commerce in a certificate titled "To Whosoever It May Concern" have certified that the Agarbatties are the products of handicrafts and are under the purview of the All India Handicrafts Board for its alround development; (iii) The Central Excise authorities have by issue of Trade Notice, held that the Agarbatties are handicrafts eligible for the exemption under Notification No. 55/75 since handicrafts are exempted under this.

They have also tried to draw authority in this regard from a Report on Marketing on Handicrafts published in 1955 referred to supra wherein one of the items listed is Agarbatti under the Heading "Miscellaneous".

In the list of handicrafts in the Guide Book for Handicraft Cooperatives, brought by the All India Handicarfts Board, incense perfumery articles are listed as handicrafts and the appellants plea is that the Agarbatties since it belong to this Board category can be taken to mean that the Agarbatties are products of the handicraft industries. The Revenue have pointed out that in the Licensing Policy for 1984-85 as referred to above Agarbatties and Dhoop figure under a separate heading under the product heading - Toiletry and Prefumery and Handicrafts find a separate mention. It has been pleaded for the purpose of Article to be classified as handicraft the essential criterion is that essential form and shape of Article should have been given by the use of hand. The main plea of the appellants however is that inasmuch as the Agarbatties have been held to be handicrafts by various authorities cited by them there is no need to examine the issue beyond that and even if the power has been used in the manufacture thereof, these should be considered as handicrafts only. We observe that even though Agarbatties and Dhoop have been considered to be product alike in view of the end-use and the ingredients used, the two are commercially known as separate things. When a person goes to the market to buy Agarbatties, dhoop is not offered in its place and vice versa. Nowhere it has been stated nor any evidence has been produced before us that Agarbatties and dhoops are manufactured by the same process. These occur in different forms. It is not also the plea of the appellants that the Agarbatties are given their essential shape by use of power as in the case of the appellants' product and yet the same have been considered by any authority as handicrafts. All that has been stated is that for the purpose of export incentive and for the purpose of taking care of the development of the product, the goods fall within the purview of the All India Handicrafts Board and that export incentives available to the Agarbatties will also be given to Dhoop.

Now as a matter of State policy taking into account the nature of the product, the State may choose for a limited purpose to place products of certain range within the purview of a particular authority for promoting the purpose for which the said authority has been set up.

This does not mean that for all purposes the character of the product will be determined just because a particular department of the government has been assigned a particular product for a limited purpose which in the present case has been done for the limited purpose of export promotion and development of the Agarbatti and incense stick industry. The Hon'ble Supreme Court in the case of MS Company Private Limited v. Union of India : 1985 ECR 110 (SC) interpreted the word 'Industry' in a different context and have observed as under : "When the word to be construed is used in a taxing statute or a notification issued thereunder it should be understood in its commercial sense. It is well known that under the law levying customs duties sometimes exemptions are given from the levy of the whole or a part of customs duty when the goods in question are sold, either in the form in which they are received or in a manufactured or semi-manufactured state, to a manufacturing establishment, for purposes of using them in manufacturing finished or semi-finished goods in order to lessen the cost of machinery or equipment employed in or raw materials used by such manufacturing establishment. The object of granting such exemption is to give encouragement to factories or establishment which carry on manufacturing business.

The appellant, however, relies upon the meaning assigned to the word "industry" in the Industrial Dispute Act 1947 in support of its case. The expression 'industry' is no doubt given a very wide definition in Section 2(j) of the Industrial Disputes Act, 1947. It reads thus : "2(j) 'Industry' means any business, trade, undertaking, manufacture or calling of employers and includes any calling serve, employment, handicrafts, or industrial occupation or avocation or workmen." The above definition is given in the context of the subject matter with which the Industrial Disputes Act, 1947 is concerned. The pith and substance of that Act is to make provision for settlement of disputes between employers and employees in institutions, establishments, industrial or business houses or factories of various kinds. It is true that in the Bangalore Water-Supply & Sewerage Board etc. v. R. Rajappa and Ors. - (1978) 3 S.C.R. 207, this Court has held that hospitals would also come within the definition of the expression 'industry' given in the Industrial Disputes Act, 1947 which is as wide as the legislature could have possibly made it. But that definition cannot be used for interpreting the word 'industry' in a notification granting exemption from customs duty Act 1962." 7. We observe that what may be considered as handicrafts for the purpose of its development, export etc., would not be relevant for the purpose of interpretation of the notification issued under Central Excise Act and Rules. The word 'Handicraft' would have to be interpreted in the sense it is accepted taking into account the connotation of the word in the general sense. If on that basis the appellants pass the muster they would be entitled to the benefit of notification otherwise not. The appellants have cited the case of 1982 ELT 289 (CBEC) referred to supra given in the context of brass articles. The Board in that case considered various authorities and came to the conclusion that in that context the use of the power which was to reduce the labouriousness and the goods artistically handworked still continued to qualify as handicrafts' and for that reason since the same had been accepted as handicrafts by the All India Handicrafts Board, the Board allowed the appeal. It may be mentioned that the reasons given in that case were that the final Article which emerged was for its artistic value and notwithstanding the use of power since the work of art emerged as a result of hand-work, the Article was considered as handicrafts. It is pertinent to note that in that case the portion of the Report from the International Labour Office Report on Meeting of Experts on the Role of Handicrafts in the National Economy of Developing Countries (supra) was taken note of as also the definition of 'Hand-Made' and 'Handicraft' adopted by the UNCTAD (referred to supra) had been taken note of. The appellants have not shown as to how based on these authorities their products could be considered as handicrafts. These authorities only go to show that some goods may be produced partly by use of machines and partly by hand but these can be considered as handicrafts only if the product acquires its essential character in the finished form by use of hand. All that has been said is that the use of the machine in the manufacture of product is not precluded when essential character of the product is shaped by use of hand. In the case of brassware if the artistic work is by hand and the Article is sold for its art-work it has been rightly held to be handicraft. Likewise, in the case of the Agarbatties/Dhoop even when the kneading of the raw materials may have been done by machine if their formation had been done by hand, these could be considered as handicrafts. On the same point we observe that apart from the definition in the Concise Oxford Dictionary under which the handicraft has been defined as referred to supra, as something produced by manual work, in the Encyclopaedia Britannica, handicraft has been defined as under : "occupations of making by hand usuable products graced with visual appeal. Handicrafts encompass activities that require a broad range of skills and equipment, including needlework, lace-making, weaving, printed textile decoration, basketry, pottery, ornamental metalworking, jewelling, leatherworking, woodworking, glassblowing, and the making of stained glass." It is seen that in the manufacture of a product skill of the worker and the use of hand are two pre-requisites for a product to qualify as a handicraft. In the present case it is not disputed that the raw materials are mixed by hand and the first essential procedure in the manufacture of Dhoop etc., is kneading of the raw materials and the next essential stage is the formation of the Dhoop into sticks or coils. Both these processes are carried out by the aid of power. Only cutting of the sticks to the desired length is stated to be by hand. It is not the case of the appellants that in the formation of the Dhoop sticks or coils etc. there has been any use of the skill of the human hand to give the Dhoop its essential character. We, therefore, are unable to agree with the appellants' plea that the goods in question before us should be considered as handicrafts merely because some authorities have chosen to treat Agarbatties as handicrafts. We therefore uphold the order of the lower authority. Now adverting to the question of time bar, we find that the authorities have issued a Trade Notice holding Agarbatties as eligible for the benefit of exemption under Notification No.55/75. It is pertinent to note that they have not held that the Dhoop is also eligible for the benefit of this Notification No. 55/75. The Dhoop sticks etc. we have held above are a product different from Agarbatties even though the two may belong to the same category. If the process of manufacture of the two is different, obviously, the two will have to be treated differently for the purpose of application of the benefit of notification. The clarification given in the context of Agarbatties cannot be made applicable to the Dhoop sticks etc. Inasmuch as the appellants had manufactured the goods without informing the Central Excise authorities and had been removing them without payment of duty, these will have to be taken to attract the mischief of the provisions of Section 9(2) and the duty demanded for the longer time period is maintainable. However, taking into account the facts and circumstances of the case, levy of the penalty is reduced to R.s. 5,000/-. So far as the confiscation of the goods is concerned on account of what we have stated above, the same is also maintainable. The amount appropriated in respect of the same is not excessive and calls for no reduction. But for the modification as above, the appeal is otherwise dismissed.

8. The evidence of commercial understanding with all the infirmities therein brought out by brother Gulati, Member (Technical) in the order proposed by him is relatable to Agarbatties and not to Dhoop which is the product involved in the present appeal. I agree with brother Gulati that based on that evidence, the appellants could not get benefit of exemption under the notification in respect of Dhoop sticks in manufacture of which no craft or skill of hand is involved and the only contribution made by hand is cutting the sticks to pieces.