

Collector of C. Ex. Vs. M.A. Paper and Card Board Factory

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : May-16-1988

Reported in : (1988)(17)LC221Tri(Delhi)

Appellant : Collector of C. Ex.

Respondent : M.A. Paper and Card Board Factory

Judgement :

1. This appeal by the Revenue questions the legality or correctness of order dated 28.6.84 passed by the Collector of Central Excise (Appeals) Calcutta. By the said order the Collector (Appeals) held that respondents who were availing benefit of exemption under notification 83/83 in respect of straw board falling under 17(1) of CET and had collected 10% ad valorem plus Rs. 525 per metric ton duty from the customers but had not included the same in the value as shown in the price list as not being includible for determining liability to central excise duty in respect of clearances and allowed the appeal. Aggrieved with this decision the Collector of Central Excise, Patna has presented this appeal to the Tribunal.
2. At the hearing of the appeal Smt. J.K. Chander, JDR for the appellant and Shri R.K. Jain, Advocate for the respondents were heard and the papers perused.
3. It is seen that the respondents availed of benefit of exemption under notification 83/83-CE dated 1.3.83 for clearance of 513.492 MT of their goods claiming that their value did not exceed Rs. 7.5 lakhs. A scrutiny of the respondents record shows that they had charged higher value from the customers than approved

value inasmuch as they had collected excise duty from the customers with respect to clearances exempt under notification 83/83. This led to show cause notice dated 5-12-1983 read with corrigendum dated 2-1 -1984 raising demand Rs. 96,566.77 against the respondents in respect of a quantity of 179.644 MT. After following the usual procedure the Assistant Collector of Central Excise, Muzaffarpur by adjudication order dated 28.1.84 confirmed the demand for Rs. 95,088.35 only. In the Memo, of Appeal it is, inter alia, urged that the finding of the Collector (Appeals) is perverse against law and that he had himself for the subsequent period in respect of the very respondent held the respondent liable to payment of duty. Shri R.K. Jain for the respondent closely analysed section 4 dealing with valuation of Central Excises and Salt Act, 1944 and submitted that the section is attracted when duty of excise is chargeable on any excisable goods with reference to value whereas in respect of the respondent at the relevant time goods were chargeable to duty not only on the basis of value but was also specific i.e., by weight basis. He also submitted that part of the demand was barred by limitation as shorter time limit for raising demand could apply against the respondent.

4. We find no force in the contention of Shri Jain. There is no gainsaying that while part of duty may have been specific it was also ad valorem and therefore value had to be determined only in accordance with Section 4. The Explanation inserted to Section 4(4) (d) retrospectively with effect from 1.10.75 by the Finance Bill, 1982 sets at naught Shri Jain's argument. The Explanation is reproduced below: "Explanation - For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of - (a) the effective duty of excise payable on such goods under this Act; and (b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods, and the effective duty of excise on such goods under each Act referred to in clause (a) or clause (b) shall be- (i) in a case, where A notification or order providing for any exemption (not being an exemption for giving credit with respect to, or reduction of duty of excise on such goods equal to, any duty of excise already paid on the raw material or component parts used in the production or manufacture of such goods) from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act in respect of such goods as reduced so as to give full

and complete effect to such exemption; and (ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods." Our this view finds support from the decision of Andhra Pradesh High Court in Asst. Collector of Central Excise Rajahmundry v. Andhra Pradesh Paper Mills Ltd. Rajahmundry 5. As for the plea of limitation it is seen that while in the price list the respondents did not include duty element, the same was collected from the customers. This came to be detected by the Revenue during scrutiny of respondents records. We fail to see how in the state of things the respondents could urge that shorter period of limitation would apply for raising demand against them and the demand should be restricted.

6. There could be no doubt that the impugned order is in contravention of Explanation referred to above. It must therefore be set aside. We therefore set aside the impugned order and allow the appeal and restore the order passed by the Assistant Collector of Central Excise. The appeal is thus allowed.

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