

Premier Soaps and Detergents Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-15-1988

Reported in : (1988)(19)LC423Tri(Delhi)

Appellant : Premier Soaps and Detergents

Respondent : Collector of Central Excise

Judgement :

1. By the impugned order-in-original, the Additional Collector of Central Excise, Coimbatore has demanded Central Excise duty of Rs. 57,678.25 on the value of clearances of detergent cakes in excess of Rs. 7.5 lakhs under Rule 9(2) of the Central Excise Rules, 1944 read with Section 11-A of the Central Excises and Salt Act, 1944. A penalty of Rs. 25,000/- has also been imposed on the appellants under Rule 173-Q of the Central Excise Rules. The Additional Collector has further held that the detergent cakes seized from the premises of the appellants on 24-3-1983 were liable to confiscation. As, however, the seized goods were provisionally released to the appellants on payment of Rs. 15,000/- with a cash security of Rs. 5,425/-, he appropriated an amount of Rs. 2,000/- out of the cash security.

2. The charge against the appellants drawn by the Department was that they contravened the provisions of Section 6 of the Central Excises and Salt Act, 1944 and Rules 174, 9(1), 173-B, 173-C, 173-F and 173-G of the Central Excise Rules, 1944 inasmuch as they manufactured detergent cakes with the aid of power without obtaining a Central Excise licence, without filing classification list and price list, without keeping an account current with the Central Excise authorities, and

removed the goods without determining and paying Central Excise duty on the same.

In the show cause notice the appellants were asked to explain why Central Excise duty should not be demanded on the goods already removed, why penalty should not be imposed under Rule 173-Q of the Central Excise Rules and why the seized detergent cakes should not be confiscated to the Government. By the impugned order the Additional Collector held the charges as established and passed the orders as indicated in the first paragraph of this order. The present appeal challenges the order of the Additional Collector.

3. The Additional Collector's order is based on the following findings :- (i) The statement of the partner of the appellants' firm and the statements of the employees made it clear that they had been manufacturing detergent cakes with the aid of power. When the Central Excise Officers visited the factory an attempt was made to disconnect the power and the main gate was closed and the officers had to enter the factory from the rear gate. This shows the mala fide intentions of the appellants.

(ii) The contention of the appellants that detergent cakes were manufactured without the aid of power is not acceptable inasmuch as they themselves, vide their letter dated 29-3-1983 addressed to the Assistant Collector, Erode, stated that only a small quantity had been manufactured by using power. This proves that the manufacture of detergent cakes using power was possible in the plodder machine installed in their factory. The evidence of Shri V. Mani, the mechanic and the electrician Shri S.K. Ramaswamy to the effect that the machine was not suitable for operation with the aid of power should be construed only as an after thought and not acceptable.

(iii) The certificate issued by M/s. Shivasakthi Industries cannot be accepted in as much as they are not the competent authority to issue such certificate.

(iv) The certificate obtained from the Department of Industries and Commerce also does not prove that the power was not used in the manufacture of detergent cakes prior to 24-3-1983.

(v) The appellants' application for the permanent Small Scale Industries certificate was dated 19-3-1983 when they were using power because no unit would apply for a Small Scale Industries certificate unless it is operated by power. The appellants would have removed the motor from the factory after the Central Excise Officers booked a case against them on 23-4-1983 and hence the Department of Industries and Commerce refused the certificate vide their letter dated 26-4-1983.

4. During the hearing before us Shri M.S. Vaidyanathan, learned consultant appeared for the appellants and Shri V.M. Doiphode, learned SDR appeared for the respondent. At the beginning of the hearing Shri Vaidyanathan submitted copies of certain documents, such as Mahazar with its enclosures and the statements of the partners and the employees of the firm. The learned SDR raised the point that the papers were filed in the court during the hearing and he had no opportunity to go through the same. He said that he would require time to go through the same before he was able to argue. The Bench, therefore, put to learned consultant two alternatives, namely (i) not to rely on the papers filed in the court without prior notice to the respondent or (ii) to take adjournment of hearing of the matter to enable the learned SDR to go through the papers. Shri Vaidyanathan preferred not to rely on the papers submitted in the court and he stated that he would argue the case without referring to the copies of the papers submitted on the day of hearing, but he would base his arguments on what has come on record in the order of Additional Collector. Accordingly, the papers submitted in the court at the commencement of the hearing are not being considered by us.

5. Shri Vaidyanathan has argued that the appellants manufactured detergent cakes without the aid of power. Power connection was installed in the factory on 1.3.1982. The detergent cakes were manufactured manually. The plodder machine was designed for use without the aid of power. On 24.3.1983, one 2 HP single phase motor was operated with the aid of power to see whether detergent cakes could be manufactured in that machine with the aid of power. The motor was taken on loan for this trial. On that very day the Central Excise Officers visited the factory. That the motor was obtained on loan basis for trial purpose was confirmed by the statements of the mechanic and the person who gave the motor on loan. There was an attempt to disconnect the power when the Officers visited

the factory, but this was done apprehending any trouble from the officials of the Municipal Corporation. The meter card showing the consumption of power was before the Additional Collector. Electricity consumption was about 200 units per month as would be seen from paragraph 9 of the impugned order. With this power consumption detergent cakes to the extent calculated by the Department could not be manufactured. The Additional Collector has not given any finding on the power consumption vis-a-vis production of the detergent cakes. There is no basis for holding that power was used in the manufacture of detergent cakes for the whole period from 1.4.1982 to 24.3.1983. The Additional Collector has based his order on presumption and assumption. The order is not sustainable in law.

Although one partner and the employees of the firm stated that power was used in the manufacture of detergent cakes, the said statements were not voluntary, but the same were obtained by the Central Excise Officers under duress. The statements were retracted vide letter dated 29.3.1983 addressed to the Assistant Collector of Central Excise, Erode. In the said letter it was also stated that the seized goods except for a small quantity which was produced on 24.3.1983 on trial basis by using power were manufactured wholly by manual power and no electric power was used in the production. In another letter dated March, 1983 addressed to the Superintendent, Central Excise, Erode, a copy of which has been placed at page 47 of the paper book, the appellants stated that they were conducting trial with an electric motor without giving proper declaration to the Excise Authorities, but they had removed the said motor and its connection immediately.

6. Arguing for the respondent, Shri Doiphode has stated that the Additional Collector's order is based on the confession that power was used in the manufacture of detergent cakes. The statements were retracted after 5 days. The retraction, not being prompt, was not accepted. The appellants' letters at pages 46, 50 and 51 of the paper book show that power was used. On 19.3.1983 the appellants applied for registration as Small Scale Industries. Only those units which used power could apply for such registration. It shows that power was used by the appellants. Shri Doiphode has further stated that the fact that the appellants were acquitted by the Judicial Magistrate in the prosecution case would not affect quasi-judicial proceedings as the criminal proceedings are separate from quasi-

judicial proceedings. For this argument Shri Doiphode has relied on the decisions reported in 1987 (29) ELT 450 (Tribunal), (Satyanarayanan, Indore v. Collector of Central Excise, New Delhi) (Para 6) and 1987 (29) ELT 601 (M.V.Chidambaram and Ors. v. Collector of Customs, Madras) (Para 6).

7. We have considered the records and the arguments of both sides. We do not find sufficient evidence to support the Department's contention that detergent cakes were manufactured by the appellants with the aid of power with effect from 1-4-1982 till 24-3-1983. We find from the impugned order that Shri P. Damodaran, partner of the firm stated on 25-3-1983 that they were manufacturing detergent cakes with the aid of power and their supervisor Shri S. Loganathan attempted to disconnect power from the machine when the Central Excise Officers arrived at the factory. Shri S. Loganathan confirmed the above statement. Shri V.Govindaswamy, a daily wages employee of the factory stated that for the past four or five months the detergents were manufactured with the power connected machine. Another daily wages employee Shri S. Kittysamy stated that he was employed in the manufacture of detergent cakes for the past six months and that the said goods were manufactured in the plodder machine connected with electricity. None of the above persons has stated that the detergent cakes were manufactured with the aid of power with effect from 1-4-1982. The statements were also retracted by letter dated 29-3-1983 in which it was stated that the statements were recorded under duress and those were not voluntary. It was also stated in that letter that the seized goods except a small quantity of the goods which were produced on 24-3-1983 on trial basis using power were manufactured only by manual power and no electric power was used in the production. This retraction cannot be said to be very late. In their letter dated March, 1983 to the Superintendent of Central Excise, Erode (photocopy of the letter placed at page 46 of the Paper Book), the appellants stated that they were conducting trial with an electric motor. We also find from paragraph 16 of the impugned order that in support of their contention that on 24-3-1983 manufacture of the detergent cakes was being done only on experimental basis and prior to that no power was utilised for the manufacture by them, the appellants produced at the time of hearing before the Additional Collector two persons, viz., S/Shri V. Mani and S.K. Ramaswamy. Shri Ramaswamy has stated that the electric motor was taken from him as a loan

and Shri Mani has stated that the trial run was undertaken by him; the experiment was not successful and the plodder machine was not capable of running with motor and no product came out of the machine. The Department could easily test the veracity of the evidence of these two persons. No enquiry seems to have been done by the Department to verify the correctness of the averments of these persons. An enquiry was all the more necessary in the face of the fact that the appellants produced a letter from M/s. Sivasakti Industries to the effect that the plodder machine has to be suitably altered for use of power in the manufacture of detergent cakes and that too 2 HP three phase motor is essential for running the machine. Such an enquiry was also called for in view of the letter of the Industries and Commerce Department refusing to issue a permanent Small Scale Industries certificate on the ground that the factory was not having a machine operated by power.

8. Paragraph 9 of the impugned order shows that the appellants produced, the electric meter readings showing the consumption of electricity from April, 1982 to May, 1983. The Additional Collector has not given any findings as to whether on the basis of units of electricity consumed by the appellants it could be proved that detergent cakes valued at Rs. 12,38,281.50 were manufactured with the aid of power over and above the consumption of electricity other than for the manufacturing process. In view of the retraction of the written statements and the other evidence produced by the appellants in support of their contention, it was necessary to make proper investigation from this angle for the purpose of establishing the charge framed against the appellants. The Department did not make proper investigation to bring home the charge. The Additional Collector brushed aside all the evidence produced by the appellants and he has based his decision only on the retracted statements of one partner and some employees of the firm. In the facts and circumstances of the case, those evidence could be rejected if proper investigation had been done and the results of investigation showed that the contention of the appellants was untenable. No such material has been produced by the Revenue. In the circumstances, benefit of doubt has to be given in favour of the appellants.

9. Consequently, we give benefit of doubt to the appellants, set aside the impugned order and allow the appeal. The amounts already recovered from them for provisional release of the seized goods and also in terms of the impugned order and this Tribunal's interim order on the stay petition should be refunded to them.

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