Princess Polymers Pvt. Ltd. and Vs. Commissioner of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Oct-09-2007

Reported in : (2008)(125)ECC72

Judge : P Chacko, K T P.

Appellant : Princess Polymers Pvt. Ltd. and

Respondent : Commissioner of Central Excise

Judgement :

1. M/s. Princess Polymers Private Limited (PPPL) and M/s. Ampol India (P) Ltd (Ampol) appellants herein are engaged in the manufacture and clearance of cushion gum, rubber solution etc. They availed small scale exemption under Notification No. 1/93 in respect of rubber solution.

They also availed a similar exemption under Notification No. 4/97-CE in respect of selected products such as "Cushion Gum". In the year 1996-97 Ampol received consignments of cushion compound for undertaking processes such as calendaring and returned them to PPPL. PPPL cleared them after finishing processes and paying applicable duty. It was tentatively decided by the department that Ampol had removed goods clandestinely and cleared to PPPL. If the value of such clearances were taken into account, in the year 96-97, the aggregate value of clearances by Ampol had exceeded the ceiling of Rs. 1.5 crore value and duty was payable to the tune of above Rs. 13 lakhs on clearances made in the ensuing year. After due process of law, Commissioner found that in the year

1996-97 rubber gum of total value Rs. 33.93 lakhs was cleared by Ampol to PPPL whereby the Ampol's clearances in 97-98 had attracted duty liability. Ampol had also cleared rubber solution in 96-97 in excess of the exempted value to PPPL without payment of duty.

PPPL was found to have abetted evasion of duty on these clearances in 96-97 and 97-98 by Ampol. In the impugned order, the duty of Rs. 13,20,225/- and interest was demanded under Section 11A(1) of the Central Excise Act read with Rule 9(2) of the Central Excise Rules, 1944 from Ampol on the above basis. Penalties of Rs. 13,20,225/- under Section 11AC of the Central Excise Act, 1944 and Rs. 3 lakhs under Rule 173Q of the Central Excise Rules were imposed on Ampol. A penalty of Rs. 2 lakhs was imposed under Rule 173Q of the Central Excise Rules, 1944 on PPPL.

2. Heard both sides. The appellants Ampol and PPPL have argued that cushion compound cleared by Ampol to PPPL was semi-finished goods and were not marketable. They could have followed the procedure prescribed under Rule 57F(4) or Notification No. 214/86 for clearance of these goods. In any case the goods cleared were received in PPPL, finished and cleared on payment of applicable duty. Once the value of cushion compound cleared to PPPL during 1/97 to 3/97 was deducted the value of clearances in 96-97 of Ampol came below the limit for availing SSI exemption in 97-98. Therefore, their clearances during 97-98 were eligible for exemption. The demand was thus not sustainable.

2.1 It was submitted in the appeal that details of all clearances made along with invoices were furnished to the Department by Ampol periodically. When the required information was supplied, Department could not allege suppression. Larger period could not be invoked.

However, the ld. Counsel for Ampol undertakes to pay Rs. 39,581.25, the duty due on clearances of rubber solution made to PPPL in 96-97.

3. We have studied the records and heard the parties. As argued by the appellants, goods cleared by Ampol were semi-finished goods and not excisable. Even otherwise, these goods had been taken on RG I by PPPL and cleared on

payment of duty after further finishing. Clearances of these goods by Ampol were eligible for exemption under Notification No.214/86 subject to the assessee following the procedure prescribed.

Value of these clearances was therefore not required to be added to determine the aggregate value of clearances of Ampol in terms of Notification No. 4/97. We find that in the Mangalore Chemicals & Fertilizers Ltd. v. Dy. Commissioner case, the Apex Court had observed that when the substantive conditions were fulfilled the subject had to be allowed the benefit of the exemption Notification and failure to follow technical and procedural conditions could be condoned. In view of this binding ratio we find that the value of clearances of cushion gum after calendaring etc to PPPL by Ampol need not be considered in deciding the aggregate value of clearances made under Notification No. 4/97. These were clearances after job work done for PPPL and exempt under Notification No. 214/86. Excluding this value, the aggregate value of clearances of Ampol in 96-97 was below Rs. 1.5 crores. Therefore, the demand for clearances made by Ampol in 97-98 on the ground that their clearances had exceeded the ceiling of Rs. 1.5 crores fixed in Notification No. 4/97 in the year 96-97 is not sustainable and the demand fails. Ampol shall pay an amount of Rs. 39,581/- short paid by them. As we set aside the demand made in the impugned order, the charge of abetment of evasion by PPPL cannot be sustained. Accordingly, we allow these appeals.