Collector of C.E. Vs. Aarti Enterprises

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-29-1988

Reported in : (1989)(19)ECC25

Appellant : Collector of C.E.

Respondent : Aarti Enterprises

Judgement :

1. In these appeals filed by the Revenue a common question is involved.

We are, therefore, disposing of all the 3 appeals by this common order.

2. When the appeals were taken up none represented the respondents.

There was no request for adjournment by the respondents. Therefore, we heard the JDR and examined the papers.

3. Briefly the facts giving rise to these appeals filed by the Revenue are that the respondents manufactured tooth brushes falling under Tariff Item 68 at the relevant time. They received raw materials viz.

bristles handles, cartons and cellophone from their customers and manufactured tooth brushes. They paid duty on the value of the tooth brushes. Subsequently they applied for refund of part of the excise duty paid by them on the ground that they were entitled to the benefit of paying duty on labour charges only in terms of Notification No.119/75-CE. They lodged 3 refund claims covering the periods

4.6.1978 to 30.7.1978, 6.8.1978 to 29.9.1978 and 4.2.1979 to 27.2.1979. The Assistant Collector rejected the refund claims holding that the respondents not having claimed the benefit of Notification No.119/75-CE in the classification list they are not entitled to the refund. The Assistant Collector also held that in view of the explanation to the notification, the respondents are not entitled to the refund as they manufactured tooth brushes.

4. The respondents then filed appeals before the Collector of Central Excise (Appeals). The Collector allowed the appeals holding that though the respondents manufac-tured tooth brushes out of raw materials supplied by the customers and charged them only job charges, they would be entitled to pay duty only in respect of charges for job work. In coming to the conclusion the learned Collector recorded that he was following an order of the Gujarat High Court in Anup Engineering Ltd. v. Union of India reported In 1978 E.LT. 533. The learned Collector also took note of judgments of other High Courts and of the CEGAT (Indian Steel Rolling Mills v. Collector of Central Excise -1983 E.LT.2396).

5. The Department felt that the order of the Collector (Appeals) appeared to be incorrect, improper and not legal. Hence, these 3 appeals, filed by the Revenue.

6. Shri Durghayya, the learned JDR reiterating the contents of the appeal, submitted that the provisions of Notification No. 119/75 enabling payment of Central Excise duty on job charges alone were not applicable to the facts of the present matter. He pointed out that the respondents received various parts of the tooth brushes and then assembled them and manufactured a completely new Article viz. the tooth brushes. He submitted that the notification contemplated the extension of the concession, as mentioned in the explanation to the notification, only where an Article intended to undergo manufacturing process is supplied to the worker and that Article is returned by the job worker to the sup-plier after the Article has undergone the incidental manufacturing process. He underlined the fact that each of the parts of the tooth brush supplied to the respondents are not returned after some process on each of them, but it is only tooth brushes, an entirely different commodity, that is returned.

7. In support of his arguments, the learned JDR relied upon a judgment of the Tribunal (Larger Bench) in National Organic Chemical Industries Ltd. (NOCIL), Bombay v. Collector of Customs, Bombay [(1985 (21) E.LT.252 (Trib.)]. He submitted that this judgment considered several judgments on the same issue and amongst such judgments were, the judgment of the Gujarat High Court, Madras High Court, and the judgment of the Tribunal referred to by the Collector of Central Excise (Appeals).

8. We have perused the appeal papers and considered their contents and the submissions made by Shri Durghayya at the time of hearing. There is no dispute about the fact that the respondents received various parts of the tooth brush including polythene paper in which the tooth brush is wrapped, manufactured tooth brushes and returned the same to their customers who in this case are Colgate. We are aware that there were conflicting decisions about the scope of Notification No. 119/75. The larger Bench of the Tribunal considered the existing law in NOCIL (supra). After considering a large number of judgments delivered by the various High Courts and the Tribunal, the Tribunal held that the manufacturing process involved should be incidental or ancillary to the completion of the manufacture in order to make the goods entitled to the benefits of the notification. The Tribunal further held that the Article entrusted by a customer (to the job worker) should retain its essential identity after the manufacturing process undertaken by them.

They further held that the emergence of a new product by manufacturing activity ipso facto is no ground to Rule out the benefit and that, therefore, it has to be considered what would be the nature of the activity that would be comprehended within the explanation to the notification as job work.

9. Applying the ratio of the Tribunal's judgment in NOCIL (supra) to the facts of these appeals we find that the appellants made out a very good case for setting aside the impugned order of the Collector (Appeals). in these appeals what took place is not a process incidental or ancillary to the completion of a product but manufacture of a new product. Besides, the various articles received by the respondents were in no case returned to the customers after some process on such articles but were used up in the manufacture of a totally new product namely

the tooth brush. Following the ratio of the Tribunal's orders we allow these 3 appeals with the result that the orders passed by the Collector of Central Excise (Appeals) are set aside and the order of the Assistant Collector is restored.