

Ariya Flexi Label Vs. Cce

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

Decided On : Dec-13-2007

Judge : P Chacko, K T P.

Appellant : Ariya Flexi Label

Respondent : Cce

Judgement :

1. These appeals are by the assessee who, during the relevant period, was working as a small scale industrial unit. They were engaged in the manufacture of plastic film [SH 3920.32], plastic laminated film [SH 3920.38] and plastic pouches [3923.90]. Plastic film and plastic laminated film were manufactured out of plastic granules and were captively consumed in the manufacture of the pouches. The appellants were availing SSI exemption under Notification No. 8/98-CE dated 2.6.1998 for their products, plastic film and plastic laminated film and exemption under Notification No. 5/98-CE dated 2.6.1998 for their product plastic pouches. In other words, they did not pay duty on any of these products during the financial year 1998 - 99. For the period 29.7.1998 to 30.9.1998, the original authority raised a demand of duty of Rs. 10,963/- on them in respect of plastic pouches by taking into account the value of clearances of plastic films also computing the aggregate value of clearances under Notification No. 5/98-CE. For the period January - March 1999, the original authority demanded duty on the plastic films by taking into account the clearances of pouches also in the computing aggregate value of clearances for purposes of Notification No. 8/98-CE *ibid*. The authority also

imposed penalties in respect of both the periods. The orders of the original authority were sustained by the Commissioner (Appeals). However, in one case, he allowed reduction of penalty. Appeal No. E/356/2003 and E/355/2003 are, respectively, against the appellate Commissioner's orders for the periods 29.7.1998 to 30.9.1998 and January to March 1999.

2. Appeal No. E/470/2003 is against a third order of the Commissioner (Appeals) setting aside a demand of duty of Rs. 1,44,324/- for the period 18.1.1999 to 31.3.1999 and remanding the case to the lower authority. In that case, the case of the Revenue was that the assessee had exceeded the aggregate clearance value limit of Rs. 85.00 lacs on 19.1.1999 under Notification No. 5/98-CE *ibid*. The Revenue took the stand that clearances of all excisable goods, whether it be pouches or films, should be taken into account while computing the aggregate value of clearance of the specified goods. The original authority demanded differential duty from the assessee for the above period and imposed on them a penalty. The appellate authority remanded the case to the lower authority after holding that the value of goods cleared by the assessee by availing the benefit of Notification No. 8/98-CE was not to be taken into account for computation of the aggregate value of clearances for purposes of Notification No. 5/98-CE. The present appeal [E/470/2003] is for widening the scope of remand already ordered by learned Commissioner (Appeals).

3. We have examined the records and heard both sides. The periods of dispute in these three appeals are comprised in the financial year 1998 - 99. The SSI scheme, under which the assessee was working, was to operate fiscal yearwise. The impugned orders apparently envisaged a different scheme inasmuch as a demand of duty on plastic pouches was confirmed against the assessee for a part of the financial year, a demand of duty on plastic films was confirmed against them for another part of the financial year and a dispute for yet another part of the financial year was remanded to the original authority. It is not in dispute that all the above products were specified goods for the purpose of SSI exemption. Therefore, under the SSI Notification (No.8/98-CE), the aggregate value of clearances of all the specified goods should have been considered for the entire period [2.6.1998 to 31.3.1999]. In this computation, whether the value of clearances of any particular

category of specified goods was to be included or excluded would depend upon the terms of the SSI Notification. Unfortunately, in these cases, this question appears to have been considered by the authorities below not for the entire period but for segments of such period. After correct computation of the aggregate value of clearances, one has to see as to whether the limit prescribed in the SSI Notification was exceeded. If it was exceeded, there would be a demand of duty and that demand would be a demand on all the specified goods.

The lower authorities appear to have overlooked this scheme. Therefore, we are of the view that all the three appeals must be allowed by way of remand to enable the original authority to pass a composite order in adjudication of all the show-cause notices covering the entire period [2.6.1998 to 31.3.1999] after correct computation of the aggregate value of clearances of all the specified goods. It goes without saying that the assessee should be given a reasonable opportunity of being heard. CCE, Jalandhar v. K.F. Beltings Pvt. Ltd. similar issue, which had arisen under SSI Notification No. 8/99-CE [successor to No. 8/98-CE] and a general exemption Notification No.5/99-CE [successor to No. 5/98-CE] was examined. CCE, New Delhi v. Universal Electrical Industries , wherein SSI Notification No. 175/86-CE was considered and the question as to whether the value of inputs manufactured and captively consumed in the manufacture of finished goods was to be excluded from the aggregate clearance value was addressed. It is open to the original authority to consider the cited case law and any other binding case law which may be cited before it by the assessee or the Revenue.

6. In the result, the appellate Commissioner's orders impugned in appeals E/355/2003 and E/356/2003 stand set aside while his order impugned in the remaining appeal stands modified. All the three appeals get disposed of accordingly.

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