Collector of Central Excise Vs. Prabhat Packaging Corp.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-18-1989

Reported in : (1990)(47)ELT102TriDel

Appellant : Collector of Central Excise

Respondent : Prabhat Packaging Corp.

Judgement :
1. In these appeals, common question of fact and law arises and hence they are disposed of by a common order. The appellants are the Revenue.

They have challenged the correctness of the order-in-appeal dated 6-5-83 passed by the learned Collector of Central Excise (Appeals) Bombay.

2. The respondents were served with four show cause notices-cum-demand by the Superintendent of Central Excise, Range II and III, Vapi for recovery of duty mentioned therein totalling to an amount of Rs. 15,91,956.31 P. for four periods viz. 4-9-79 to 22-1-80; 22-1-80 to 31-5-80; 1-6-80 to 30-11-80 and 1-12-80 to 31-5-81. The allegation made in the show cause notices-cum-demand are that the respondents are engaged in the manufacture of 'kum kum'. Further, it is alleged that the respondents had stopped the payment of Central Excise duty on the goods manufactured by them under Tariff Item 68 thus contravening Rule 9(2) of the Central Excise Rules, 1944. Further it was alleged that they had followed the procedure laid down under Rule 173-G of the Central Excise Rules, 1944 besides having failed to file classification list of the exciseable goods manufactured and

cleared by them as required under Rule 173-B of Central Excise Rules. It was also alleged that they had cleared the goods without transport documents as required under Rule 52(A) read with Rule 173-G of the Central Excise Rules, 1944.

3. The respondents had explained in their reply to show cause notices that kum kum falling under Tariff Item 68 was fully covered by M/s.

Ideal Beauty Products Pvt. Ltd. in their factory and it was sold by them to M/s. Paramount Products, Vapi. They further stated that the excise duty was exempted under Notification No. 85/79 dated 1-3-79 as the number of workers employed in the said factory had never exceeded nine. The kum kum was manufactured in power and liquid form and packed in the factory in bulk packing in plastic bags and containers and cleared in duly packed condition and sent to the respondents for repacking on behalf of M/s. Paramount Products. The respondents submitted that they, after repacking the product, re-delivered the product to M/s. Paramount Products. They had contended that they were not carrying out any manufacture under Section 2(F) of the Act as they were only re-packing from bulk to retail packs. Their case was that re-packing of exciseable goods from bulk to retail packs did not fall within the definition of manufacture in respect of the exciseable goods falling under any other tariff at all. Hence, they have sought for dropping of the proceedings raised by the Superintendent of Central Excise.

4. The Assistant Collector of Central Excise, Bulsar adjudicated the proceedings by virtue of order-in-original No. SCN 6/MP/83 dated 25-2-83 and by another order-in-original in F.No. V(68)(3)1/80-/MP-III dated 25-2-83 and passed the orders. The Assistant Collector held that the respondents were the manufacturers of kum kum and the product was classifiable under Tariff Item 68 and therefore, he confirmed the demand raised in the four show cause notices by virtue of the above two orders. The respondents filed two appeals before the Collector of Central Excise Bombay No. C-1151-1152/BD-324-325/83. The Collector of Customs, Bombay adjudicated the appeals and held in favour of the respondents. He held that repacking does not amount to manufacture in respect of goods covered under Tariff Item 68. Further, he held that in terms of Notification No. 85/79 and No. 46/81 goods produced otherwise in a factory registered under the Factories Act

are exempted from duty.

Therefore, he held the demand as unsustainable. However, he held that duty liability of the goods were in the hands of M/s. Ideal Beauty Products.

5. Against the order of the appeals passed by the learned Collector (Appeals) Bombay, the Revenue has filed these two appeals. The contention of the Revenue in these two appeals are that upto 3-9-79, the respondents were receiving kum kum in bulk manufactured by M/s.

Paramount Products, Vapi for filling it in unit containers for consumers and delivered back again to M/s. Paramount Products, Vapi.

The case of the Revenue further is that kum kum filled in unit containers by virtue is owned by M/s. Paramount Products. On 4-9-79, M/s. Paramount Products stopped the manufacturing of kum kum in bulk but instead purchased kum kum from M/s. Ideal Beauty Products, Vapi in bulk and got it re-packed in retail containers by the respondents.

6. Further ground made by the Revenue is that M/s. Ideal Beauty Products, Vapi manufactured kum kum under a licence to manufacture cosmetics for sale under the Cosmetics and Drug Act, 1940. M/s.

Paramount Products, Vapi have also obtained a loan license to manufacture cosmetics on the premises situated at Shed No. Cl-B/704, G.I.D.C. Vapi C/o M/s. Ideal Beauty Products Pvt. Ltd., Vapi. The kum kum manufactured by M/s. Ideal Products were manufactured under the direction and personal supervision of M/s. Paramount Products, Vapi.

Thus the activity of manufacture of kum kum in bulk at M/s. Ideal Beauty Products were by M/s. Ideal Beauty Products, Vapi who were getting the same filling in unit containers from the respondents on job charges. On the basis of these contentions, the Revenue submits that kum kum is not a product to be sold in bulk to wholesale dealers. It needs to be packed in retail consumer packs for marketing and as such, the process of repacking of kum kum in retail consumer packs is a process incidental or ancilliary to the completion of manufactured products. Since this activity of re-packing is carried at the respondents factory covered under the Factories Act, the re-packed goods becomes liable to duty as the value of goods was re-packed and cleared exceeded Rs. 30 lakhs.

7. We have heard Shri S. Chakraborti, Departmental Representative for the appellants and Shri J.F. Pochkhanawalla, Advocate for the respondents. Shri S. Chakraborti submitted that the Directors of all the three companies were one and the same and hence there was an arrangement between them to avoid excise duty. At this stage, the counsel for the respondents, seriously objected for taking these grounds as the same had not been made at the time of show cause notices. This objection is sustainable as we find that the said charge is not made in the show cause notices and hence we reject this ground taken by Shri Chakraborti. Shri Chakraborti further submitted that the repacking of kum kum from bulk to retail packing in plastic containers amounts to manufacture and that the respondents are liable to pay Excise duty. Shri J.F. Pochkhanawalla advocate submitted that the order is sustainable and that the order in appeal does not suffer from any infirmity. The Collector (Appeals) has rightly held that the re-packing of kum kum is not a manufacturing activity and re-packing does not amount to manufacture in respect of goods covered under Tariff Item 68.

8. We have heard both sides, perused the records and carefully considered the submissions made by the parties. The main question that arises for our consideration is as to whether re-packing of kum kum from bulk to retail containers amounts to manufacturing activity or not. Admittedly, the goods are covered under Item 68. It is well settled that repacking of goods does not amount to manufacture in respect of goods covered under Tariff Item 68. Admittedly, the kum kum is manufactured and produced in fully finished condition by M/s. Ideal Beauty Products. The goods are cleared from M/s. Ideal Beauty Products.

As rightly held by the Collector(A), the duty liability of the goods is in the hands of M/s. Ideal Beauty Products, There is no process incidental or ancilliary to manufacture as contended by Revenue in this appeal. The entire products are fully manufactured and they are received in bulk quantity and they are only re-packed and such a re-packing of an already manufactured product, does not amount to manufacturing activity. There is no new commodity emerging having a distinct name, character and use and known to the trade as such. The kum kum remains identical whether in bulk or in small retail packs.

Hence the contention raised in these two appeals does not merit any consideration in view of the well-settled law and hence, the appeals are dismissed. The cross objections are only in the nature of comments.

They are also disposed of accordingly.