Solid Containers Ltd. Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Oct-20-1989

Reported in : (1990)LC64Tri(Delhi)

Appellant : Solid Containers Ltd.

Respondent : Collector of Central Excise

Judgement :

1. The facts of the case in brief are that the appellants submitted a classification list No. 23/82 effective from 28-2-1982 which was approved by the Assistant Collector vide his No. V(17)17-13/CLVC/82, dated 23-3-1982. At page 7 against Item No. 2(ii) of the classification list the appellants described the product as "Solid Boxes-unprinted, made as packing container from solid fibre board and composite board charged at appropriate duty manufactured in our factory only without any printing" falling under Item 17(4) and claimed exemption from central excise duty under Notification No. 66/82-CE, dated 28-2-1982.

On 29-7-1983 a show cause notice was issued to the appellants demanding duty of Rs. 66,328.00 for the period March, 1982 to December, 1982 on the ground that the appellants' product was not eligible to the exemption from duty under the aforesaid notification as the said product was printed boxes. Thereafter on different dates during the period from Octorer, 1983 to December, 1984, nine more show cause notices were issued to the appellants demanding duty under Section 11-A of the Central Excises and Salt Act, 1944 for various periods from April, 1983 to October, 1984. The Assistant Collector of Central Excise, Kalyan I Division, vide

his order-in-original No. V(17) 3-38/83/2064, dated 22-3-1985 held that the appellants' product was printed box and was not eligible to the exemption under the aforesaid notification as gravure printing used in those boxes were also considered as printing. He also held that the appellants herein had mis-represented and suppressed the facts in the classification list and wrongly claimed exemption under the aforesaid notification as unprinted solid fibre board boxes. Invoking the longer period of timelimit, the Assistant Collector confirmed all the ten demands for duty under Section 11A ibid. On appeal filed before the Collector of Central Excise (Appeals), he upheld the decision of the Assistant Collector that the boxes manufactured by the appellants had gravure printing and hence those were printed boxes, not eligible to the exemption under the aforesaid notifcation. The Collector (Appeals), however, held that there was no suppression of facts by the appellants and hence the demands for duty were confined by him to six months prior to the issue of the show cause notices. Hence, the present appeal before us.

2. We have heard Shri J.S. Agarwal, learned advocate for the appellants and Shri A.S. Sunder Rajan, learned DR for the respondent. The gists of the arguments of Shri Agarwal are as follows :- (i) The Assistant Collector of Central Excise relied on a test report dated 1-11-1985 vide internal page 3 of his order-in-original dated 22-3-1985, a copy of which is at page 20 of the paper-book filed by the appellants. This test report was obtained after issue of the show cause notices. Copy of the test report was not supplied to the appellants. This has resulted in denial of principle of natural justice.

(ii) Trade opinions in the form of letters from four companies were filed before the Collector (Appeals) to show that the disputed product is not printed box. These trade opinions have been mentioned at page 4 of the impugned order-in-appeal (page 13 of the paper-book), but the Collector (Appeals) has not given any finding as to why the trade opinions have not been accepted by him. Since the terms 'printed boxes and cartons' have not been defined in the notification, the classification should be decided on the basis of trade parlance and not dictionary meanings as has been done by the lower authorities. On this point, reliance have been placed on the decision of the Supreme Court reported in 1989 (20)-ECR-273 in the case of Collector of Central Excise, Kanpur v. Krishna Carbon Paper Co. It

was held by the Hon'ble Supreme Court in the said case that "It is well settled that in order to ascertain the correct meaning of a fiscal entry reference to a dictionary is apt to be a somewhat delusive guide, as it gives all the different shades of meaning....The correct guide, it appears in such a case, is the context and the trade meaning....If special type of goods is subject matter of a fiscal entry then that entry must be understood in the context of that particular trade, bearing in mind that particular word. Where, however, there is no evidence either way then the definition given and the meaning following from particular statute at particular time would be the decisive test".

(iii) In the present case, the approved classification was not reviewed under Section 35E (2) of the Central Excises and Salt Act and no appeal was filed against the Assistant Collector's order approving the classification. No show cause notice was issued for modification of the classification list. Change of classification should be prospective. Since no show cause notice was issued for modifying the approved classification list, the demand for duty issued under Section 11A of the Act with retrospective effect is void ab initio. On this point reliance has been placed on the Supreme Court judgment reported in 1988 (35) E.L.T. 349 (S.C.) in the case of Union of India and Others v. Madhumilan Syntex Pvt. Ltd. (decided on 3-5-1988), in which it was held that if the approved classification list had been modified by the Assistant Collector without any opportunity and the show cause notice was given only with regard to quantification of the amount of the short-levy, such a show cause notice could not be regarded as for modification of classification list and hence it was not covered under Section 11-A of the Central Excises and Salt Act, 1944 and the period of six months was not available.

3. The learned DR has argued that decorative printing is also a printing. Here it is gravure printing, which is decorative printing.

Notification No. 66/82-CE, dated 28-2-1982 does not qualify the word 'printing'. Therefore, the boxes having gravure printing are printed boxes for the purpose of aforesaid notification. The second argument is that the Deputy Chief Chemist's report is not the only evidence relied on by the lower authorities. This is a supporting evidence. The Collector (Appeals) has gone by the facts of the case.

His third argument is that despite approved classification list, demand for duty could be raised for six months. Collector (Appeals) has restricted the demand for duty to six months under Section 11-A of the Central Excises & Salt Act, 1944. Hence the order of the Collector (Appeals) is correct in law. He has relied on the following judgments in support of his contention :-E.L.T.-605 (S.C.) Tata Iron & Steel Co. Ltd. v. Union of India and Others(S.C.) Elson Machines Pvt. Ltd. v. Collector of Central ExciseE.L.T.-751 (Karnataka) Shyam Sunder U. Nichani v. Assistant Collector of Central Excise, Bangalore and Another (iv) 1988 (34)-E.L.T.-473 (Cal.)I.7X. Ltd. and Anr. v. Union of India & Others 4. We have considered the records of the case and the arguments advanced before us. In the case of Elson Machines Pvt. Ltd. (supra) (decided on 15-11-1988), the Hon'ble Supreme Court in paragraph-8 of the judgment held as follows:- "The next submission on behalf of the appellant is that the Classification Lists had been approved earlier and the Excise authority was estopped from taking a different view. Plainly there can be no estoppel against the law. The claim raised before us is a claim based on the legal effect of a provision of law and, therefore, this contention must be rejected." In the said case the classification list was approved by the Department. The question arose whether the central excise authorities could take a view different from that in the approved classification list. In that context the Hon'ble Supreme Court gave the above quoted findings. This judgment is later than the judgment reported in 1988 (35)-E.L.T. - 349 (S.C.) in the case of Madhumilan Syntex Pvt. Ltd. Therefore, following the latter judgment of the Hon'ble Supreme Court, we hold that in the present case the Department is not estopped from taking a view than that reflected in the approved classification list.

In the judgment reported in 1985 (22)-E.L.T.-751 (Karnataka) in the case of Shyam Sunder U. Nichania (supra), the Hon'ble Karnataka High Court held that the approved classification list could be re-opened and re-assessed under Section 11-A of the Central Excises & Salt Act and that withdrawal of approval of the classification list was not review by the same Officer. It was also held that Section 11 of the Act ibid was not only a recovery provision, but it enabled the original authority to re-open the classification list and re-assess the goods.

Similarly in the case of I.T.C. Ltd. and Anr. (supra), the Hon'ble Calcutta High Court has held that Sections 11-A and 11-B of the Central Excises & Salt Act are applicable even if no appeal is filed against the approval of the price list or classification list. It has been held therein that the provisions of appeal under Section 35A and 35EE do not over-ride the Sections 11-A and 11-B. Therefore, the lower authorities were competent to demand duty for a period of six months under Section 11A of the Central Exicses and Salt Act even though the classification list was approved allowing the exemption notification. In view of this legal position, we reject the contention of the learned advocate that the demands for duty could not be legally raised even for a period of six months under Section 11-A of the Act ibid.

5. We, however, observe that the Assistant Collector relied on a report of the o Deputy Chief Chemist, but the copy of the report was not furnished to the appellants. This has violated the principle of natural justice. Further, the appellants submitted trade opinions from four company's before the Collector (Appeals). Although Collector (Appeals) has mentioned about these trade opinions, but he has not given any findings as to why he has not accepted these opinions. He has not discussed the point of trade parlance agitated before him by the appellants. For these two reasons the impugned order should deserve to be set aside and the matter be remanded to the lower authority for re-decision. Accordingly, we set aside the impugned order and remand the matter to the Collector (Appeals) for re-decision after considering the trade opinions submitted by the appellants and giving his detailed findings thereon. A copy of the Deputy Chief Chemist's report should also be made available to the appellants before the matter is redecided by the Collector of Central Excise (Appeals), Bombay. He should also give necessary personal hearing to the appellants before the matter is decided afresh.