

Searle India Ltd. Vs. the Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-25-1983

Reported in : (1983)LC(1999)DTri(Delhi)

Judge : V R Devi

Appellant : Searle India Ltd.

Respondent : The Collector of Central Excise

Judgement :

1. This is a revision application under Section 36 to the Central Government (now transferred to the Appellate Tribunal under Section 35P) against the order No. 550/1979 passed by the Collector of Central Excise (Appeals), Bombay.

2. The appellants manufacture diverse chemical and pharmaceutical preparations by using Benzene and Toluene. The appellants are covered by notification No. 276/67 wherein Benzene and Toluene were exempt from a large part of excise duty if they were, inter alia, cleared outside the refinery under a prescribed procedure and used in the manufacture of chemicals or chemical formulations. They had received a letter from the Asstt. Collector of Central Excise to the effect that the appellants were recovering Benzene or Toluene and therefore, they should pay excise duty on the same under tariff item No, 6. After receiving a reply to that, the said Asstt. Collector again sent a letter dated 14.2.1977 alleging that the appellants submitted a wrong declaration by informing the excise authorities that the recovered Benzene or Toluene did not fall under any excise tariff items

No. 1 to 67. They were also asked to state whether they had received any permission from the Central Excise authorities for the removal of such Benzene or Toluene under Rule 195 of the Central Excise Rules. The Asstt. Collector thereon levied a penalty of Rs. 100/- for the contravention of Rule 195 of the aforesaid rules and also ordered recovery of duty under Rule 196 of those rules. The Appellate Collector confirmed the same.

3. Shri Setalwad, on behalf of the appellants, contended that the entire quantity of Benzene and Toluene purchased by the appellants including the quantity purchased by the petitioners falling under notification No. 276/67 was used by the appellants either as a reactant or as a solvent in chemical process. He further stated that after thus used, certain quantities of liquids could be recovered from the processes which had been either Benzene or Toluene, as the case may be, with considerable admixtures. He explained that such Benzene or Toluene when redistilled, the petitioners could get distilled Benzene or distilled-Toluene. His contention was that such recovered Benzene or recovered Toluene was entirely different from fresh or ordinary ones and such recovered Benzene or Toluene could be sold only at a very low price and hence they could not be compared with the Benzene or Toluene as described under tariff No. 6. Further, he explained that the appellants were not the manufacturers of Benzene or Toluene and there was no manufacturing process involved. 4. Shri Setalwad brought to our attention Rules 192, 195 and 196 of the Central Excise Rules as they were relevant in the case. Rule 192 clearly provides for the remission of duty on excisable goods other than Salt used in a specified industrial process. In this connection Shri Setalwad relied on :J. K. Cotton Spinning & Weaving Mills Co. Ltd- v. The Sales Tax Officer, Kanpur and Anr.

4. Shell-Mex. and B.P. Ltd. v. Clayton (Valuation Officer) and Anr.

1955 (j) All England Reports, Page 102. and 5. Phelps & Co. Pvt. Ltd. v. Member, Board of Revenue, West Bengal 20 Sales Tax Cases 511.

to explain what is meant by "the use or use in the manufacture" etc. He submitted that the appellants availed of the remission under Rule 192 for the specific purpose of using Benzene and Toluene in the manufacture of chemicals and

pharmaceutical preparations and he stated that there was never any dispute about not using the Benzene and Toluene for that purpose. Then he went on to Rule 195 and explained that under that rule all refuse of excisable goods obtained under Rule 192 which may remain after the completion of the industrial process should be stored separately, and, should not be disposed of except after examination by and with the written permission of, and in accordance with the instructions of the proper officer. Shri Setalwad stated that if the Department's contention had been that the refuse of excisable goods was disposed of without the written permission, then, the question of not accounting for the excisable goods, namely, fresh Benzene and fresh' Toluene would not arise and no question could possibly arise of applicability of Rule 196, which provides for a duty to be levied on excisable goods obtained under Rule 192 and not duly accounted for. Finally, he stated that there appeared to- be total contradiction in the stand of the department when they penalised the appellant under Rule 195 as well as levied dutv under Rule 196.

5. Smt. Vijaya Zutshi, on behalf of the respondent, stated that there had been no contradiction and the lower authorities were correct in imposing penalty on the appellants under Rule 195 since they had disposed of all unused Benzene and Toluene without written permission.

She supported the orders of the lower authorities, so far as the applicability of Rule 196 goes, by stating that the appellants were bound to account for the entire excisable goods obtained under Rule 192 to the satisfaction of the proper officer". She further stated that the goods disposed of by the appellants were rightly classified under item 6 as they were Benzene and Toluene.

6. As Shri Setalwad rightly stated, the, appellants' case could either fall under Rule 195 or under Rule 196. When the case did not involve any surplus excisable goods obtained under Rule 192, it did not remain unaccounted for. Duty could be levied only on such excisable goods if they were not used for the purpose mentioned under Rule 192. This case did not fall under Rule 196 since it did not involve any surplus excisable goods. On the other hand, the contention of the appellants had been that they had used the entire quantity of goods obtained under Rule 192 in the manufacture of chemicals and pharmaceutical preparations.

We are also inclined to agree with Shri Setalwad when he stated that in the process of manufacturing after Benzene and Toluene was used, only certain quantities of liquids could be recovered from the process which contained either Benzene or Toluene, as the case may, be, with considerable admixtures and the same could be treated only as refuse or waste. Hence we hold that the appellants did contravene the provisions of Rule 195 when they disposed of the said material without complying with. the provisions of Rule 195. As such we uphold the penalty imposed on them under Rule 195. As regards the levy of duty, we hold that since the appellants did not manufacture any Benzene or Toluene and also did not possess any unused surplus Benzene or Toluene under Rule 196, no duty could be levied. To that extent we set aside the order of the Appellate Collector.

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