

Collector of Central Excise Vs. Shri Vindhya Paper Mills Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Nov-27-1989

Reported in : (1990)(28)LC188Tri(Delhi)

Judge : M T D.C., D Vasavada

Appellant : Collector of Central Excise

Respondent : Shri Vindhya Paper Mills Ltd.

Judgement :

1. As the common issue of law is involved in both these appeals, we heard them together and are disposing them by this common order.

The respondents are the manufacturers of the paper falling under T.I.17 of the Central Excise Tariff. The respondents had filed classification list for their product "paper" under T.I. 17 which was to be effective from 1.4.1983 and they had claimed concessional rate of duty under notification No. 46/83-CE dated 1.3.1983 and claimed concessional rate of duty of Rs. 560/-per M.T. which was applicable if the total quantity of clearances was not exceeding 3000 M. Ts. in the previous financial year. The Assistant Collector held that the clearances during the previous financial year from the other factory of the respondents situated at Nasik also should be taken into consideration and while clubbing clearances exceed 3000 M. Ts. and so the rate of duty leviable would be Rs. 900/- per M.T. The respondents went in appeal and the Collector (Appeals) allowed the appeal. So the Revenue has preferred this appeal.

2. The respondents had filed a classification list for their product 'paper' under T.I. 17 which was to be effective from 1.3.1984 and had claimed concessional rate of duty applicable to the slab of clearances not exceeding 3000 M. Ts. under C.E. Notification No. 25/84 dated 1.3.1984. They had also claimed benefit of Notification No. 92/84 dated 18.4.1984 whereby rate of duty to the slab, in question, was reduced to Rs. 275/- per M.T. and the respondents had claimed that this reduced rate should be made applicable from 1.4.1984 itself.

3. On adjudication, the Assistant Collector held that clearances from both the factories of the respondents (referred to above), in the previous financial year, should be clubbed together and so the rate of duty applicable would be Rs. 730/- per M.T. It appears that he did not discuss about the applicability of Notification No. 92/84. The matter went in appeal before the Collector (Appeals), who partly allowed the appeal and held that clubbing of clearances from two different factories was not proper but on the application of concessional rate envisaged under Notification No. 92/84 retrospectively from 1.3.1984, the Collector decided against the respondents. So, the Revenue preferred this appeal and the respondents preferred Cross-Objections.

4. We heard Shri A.S. Sunder Rajan, Id. D.R. for the appellant and Shri M.L. Lahoty, Id. Advocate for the respondents 5. In Appeal No. E/2574/85-C, we are concerned with Notification No.46/83-CE where the relevant portion reads as under: In exercise of the powers conferred by Sub-rule (1) Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Department of Revenue and Banking No. 128/77-Central Excises dated the 18th June, 1977, the Central Government hereby exempts paper of the description specified in column (1) of the Table annexed hereto, falling under sub-item (It of Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), and containing not less than fifty per cent by weight of pulp made from baggasse, jute stalks, cereal straw, elephant grass (*Imperata Cylindrica*), mesta (Kenaf) or waste paper, cleared for home consumption on or after the 1st day of April in any financial year, from so much of the duty of excise leviable thereon under the said Act at the rate specified in the said First Schedule as it in excess of the amount calculated at the rates specified in the corresponding

entry in column (2) of the said Table, subject to the conditions specified therein.

Description

Rates

other than paper boards, (i)Rs. 560 per metric tonne, if the cigarette tissue, glassine paper, total quantity of clearances of all grease proof paper, coated paper varieties of paper and paper board (including waxed paper) and paper in the preceding financial year, by of a substance not exceeding 25 or on behalf of a manufacturer, grammes per square metre.

from one or more factories, or one or more manufacturers did 6. While in Appeal No. E/2573/85-C we are concerned with Notification No. 25/84-CE, relevant portion of which reads as under: In exercise of the powers conferred by Sub-rule (1) of Rule 8 of the Central Excise Rules, 1944, and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 46/83-Central Excises, dated the 1st March, 1983, the Central Government hereby exempts paper and paper boards of the description specified in column (2) of the Table hereto annexed, falling under sub-item (1) of Item No. 17 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), manufactured out of pulp containing not less than 50 per cent by weight of pulp made from materials (other than bamboo, hardwoods, softwoods, reeds or rags) and cleared on or after the 1st day of April in any financial year, from so much of the duty of excise leviable thereon under the said Act at the rate specified in the said First Schedule, as is in excess of the amount calculated at the rates specified in the corresponding entry in column (3) of the said Table, subject to the conditions specified in the corresponding entry in column (4) thereof.

Description Rate Conditions No.1.

2.

3.

Printing and writing Rs. 450 Provided that the total paper.

per M.T. quantity of clearances, (ii) All sorts of paper Rs. 450 if any, of all varieties commonly known as per M.T. of paper and paper boards kraft paper (including in the preceding financial year and paper boards year, by or on behalf of the type known as a manufacturer, from one or more factories, or from kraft liners for corrugating medium) of a factory by or on behalf of substance equal to or of one or more manufacturers exceeding 65 gram- did not exceed 3000 Metric tonnes per square metre.

Tonnes." 7. Following facts are admitted that both the factories, in question, are owned and operated by the same manufacturer i.e. the present respondents. If clearances of both the factories during the previous financial year are clubbed together, they did not exceed limit of 3000 M.Ts. during the relevant period in both the appeals, 8. As far as factory at Nasik is concerned, the respondents are doing only coating of duty-paid paper purchased from outside and according to them, this process is not 'manufacture' & for this, reliance is placed on *Golden Paper Udyog Pvt. Ltd. v. C.C.E., Delhi 1983 E.L.T. 1123 (CEGAT) : 1983 ECR 799D Cegat*. So, according to the respondents, clearance of these goods cannot be considered to be clearance of paper or paper board for the purpose of above referred two notifications. In the impugned orders, the Collector (Appeals) has accepted this contention and he has, further, held that by the notifications in question, the Central Government has exempted paper and paper boards falling under T.I. 17 and manufactured out of pulp containing not less than 50% by weight of pulp made from materials other than bamboo, etc.

from so much of the duty of excise leviable thereon as stated in the respective notifications. So, in his view, only paper of above variety should be considered for all purposes of this notification including for the purpose of clubbing. We are unable to accept this view because both these notifications were issued with a view to help small scale units and the Government, in its wisdom, thought it fit to give less concession to units whose production and clearance is more than 3000 M.Ts. per year, possibly considering them to be bigger units. Bare reading of the

notifications do not warrant interpretation sought to be put by the Collector (Appeals). It is open to the Government to consider clearance of all varieties of paper for fixing slabs of concessional rate and that is exactly what in our view the Government has done. Notifications do not require anything to be added and the words "as they appear" should be taken into consideration and interpreted as they read.

9. It has been contended by the respondents that the process they undertake in their Nasik factory, is not process of 'manufacture' as per provisions of Section 2F of the Central Excises & Salt Act, 1944 for which they relied upon Golden Paper Udyog Pvt. Ltd. (supra), but then here, we are not concerned whether the process would answer the description of 'manufacture'. For the purpose of interpreting the notifications in question, we have to take into consideration clearances of their product from the Nasik factory So, for the purpose of these appeals, this contention is not relevant and we do not think it necessary to deal with it in detail. So, both these appeals require to be allowed.

10 As far as question of applicability of amending Notification No.92/84 is concerned, interpretation put by the Collector (Appeals) in the impugned order in appeal No. E/2573/85-C that it has no retrospective effect, is correct. Notification has to be read as it is unless there is any ambiguity or unless it creates any incongruity or absurdity. Bare reading of the notification does not suggest that the Government intended it to be applied with retrospective effect. So prayer of the respondents claimed in cross objections cannot be granted and they require to be dismissed. So, we pass the following final order: (1) Appeal No. E/2574/85-C is allowed and the impugned order is set aside as far as the question of clubbing of clearances is concerned and order of the Assistant Collector is restored, (2) E/Cross Objection No. 60/86-C is dismissed and impugned order to the extent of interpretation put on Notification No. 92/84 is upheld. (3) Appeal No. E/2573/85-C is allowed and impugned order is set aside and order of the Assistant Collector is restored.