

Collector of C. Ex. Vs. Weldekar Laminates Pvt. Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-16-1990

Reported in : (1990)(27)ECC179

Appellant : Collector of C. Ex.

Respondent : Weldekar Laminates Pvt. Ltd.

Judgement :

1. By the above-mentioned stay application, the applicant-Collector has prayed for stay of operation of the impugned order-in-appeal No.V(CH.39)18-15/89/2342, dated 31-3-1989 (issued on 17-8-1989) passed by the Collector of Central Excise (Appeals), Bombay, against which the Appeal No. E/3974/89-C has been filed by the Department. Earlier, a stay application filed by the Revenue in Appeal No. E/2068/89-C was dismissed vide Stay Order No. 227/89-C, dated 17-11-1989 in view of the fact that in Order Nos. 552-572/89-C, dated 29-9-1989 in the case of Meghdoot Laminart Pvt. Ltd. v. Collector of Central Excise, Ahmedabad, the Tribunal classified (i) paper-based decorative laminated sheets under Heading 4818.90 upto 28-2-1988 and Heading 4823.90 from 1-3-1988, and (ii) paper-based industrial laminated sheets (electrical grade) under Tariff Heading 8546.00, which were also the classification indicated by the Collector (Appeals) in his order-in-appeal No. V-2(48 CETA)2877/88/2478, dated 1-2-1989. For the reasons, stated in the stay order dated 17-11-1989 in Appeal No. E/2068/89-C, we have dismissed the present stay application.

2. Thereafter, we have taken up the two appeals for hearing. We have heard Shri Chandrasekharan for the appellants and Shri Willindon Christian for the respondents. Appeal No. E/2068/89-C relates to classification of the aforesaid two products manufactured by the respondents. On merits of this appeal, the learned advocate has relied on the following decisions :- The learned DR has reiterated the grounds given in the Department's appeal.

3. Appeal No. E/3974/89-C relates to refund claim of the respondents.

On 17-2-1989, they filed a refund claim in respect of the duty paid on the aforesaid products during the period from 1-3-1986 to 31-1-1989.

This was done after the Collector (Appeals) decided the classification of the products in his order-in-appeal No. V-2(48 CETA)2877/88/2478, dated 1-2-1989. The Assistant Collector of Central Excise rejected the refund claim prior to 29-10-1986 as time-barred as the respondents filed protest on 30-10-1986 only. Although copy of the Assistant Collector's adjudication order dated 16-5-1987 has not been filed before us, this position is stated in paragraph 9 of the impugned order of Collector (Appeals). It is stated in that paragraph that the respondents herein filed an appeal against that order and the same was pending before the Collector (Appeals). He has however, decided this portion of the refund claim for period prior to 30-10-1986 against the respondents without prejudice to the appeal said to have been filed on the earlier rejection. The respondents have not filed any appeal against this part of the impugned order, as a result of which the Collector (Appeals)'s order to this extent has become final and we have no materials before us to interfere with this part of the Collector's order.

4. The second part of the refund claim relating to the period from 30-10-1986 to 31-1-1989, which is the subject-matter of the Appeal No.E/3974/89-C, was rejected by the Assistant Collector of Central Excise on the ground of unjust enrichment as the respondents recovered duty element from the customers. He followed the judgment of Bombay High Court in the case of Roplas India Ltd. reported in 1988 (38) ELT 27 (Bombay). By the impugned order, the Collector (Appeals) has set aside the Assistant Collector's order on the ground that unjust enrichment cannot be a reason for denial of a refund which is otherwise

admissible under the Central Excises & Salt Act. Collector (Appeals) has followed the Tribunal's decisions reported in 1986 (24) ELT 73 (Collector of Central Excise, Rajkot v. Decora Ceramics Pvt. Ltd.) and 1989 (13) ETR 538 (Anand Metal & Steel Works v. Collector of Central Excise, Calcutta). In the second mentioned decision, the Tribunal relied on Supreme Court judgments in the case of Miles India Ltd. v. Assistant Collector of Customs 1987 (30) ELT 641 (SC) and in the case of Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills -1988 (37) ELT 478 (S.C.). During the hearing before us, the learned advocate has relied on the following decisions :- The learned DR has reiterated the grounds of appeal of the Revenue, viz., that the Collector (Appeals)'s order was in violation of the judgment of Bombay High Court in Roplas case.

5. The classification of paper-based decorative laminates and paper-based industrial laminated sheets of electric grade was already decided by the Tribunal in Order No. 552 to 572/89-C, dated 29-9-1989 in the case of Meghdoot Laminart Pvt. Ltd. and Ors. (supra). In that decision, this Tribunal classified paper-based decorative laminated sheets under Heading 4818.90 upto 28-2-1988 and under Heading 4823.90 w.e.f 1-3-1988. Paper-based industrial laminated sheets were classified by the Tribunal therein under Heading 8546.00 of the Central Excise Tariff. In 1989 (43) ELT 660 (Collector of Central Excise v. Metrowood Engineering Works), the Tribunal held that industrial laminates of paper-base without copper cladding were electrical insulators classifiable under Heading 8546.00 of Central Excise Tariff Act, 1985.

In 1988 (36) ELT 139 (Collector of Central Excise, Ahmedabad v. Melamine Fibre Board Ltd. and Ors.), this Tribunal held that laminated sheets manufactured from paper, by weight over 70% and resin was not classifiable under Tariff Item 15A(2) merely because resin falling under Tariff Item 15A(1) was used in the manufacture. The Tribunal classified the product under Item 68 of the erstwhile Central Excise Tariff. Further, in the case of Bakelite Hylam Ltd., Hyderabad v. Collector of Central Excise, Hyderabad, reported in 1985 (22) ELT 879 (Tribunal), it was held by this Tribunal that rigid plastic laminated sheets and electrical grade plastic laminated sheets in required sizes were insulators classifiable under Item 68, and not under Item 15A(2) of the Central Excise Tariff.

Having regard to the aforesaid earlier decisions, the classification decided by the Collector (Appeals) in paragraphs 14-15 of the impugned order No. V-2(48 CETA)2877/88/2478, dated 1-2-1989 is to be held correct. We, therefore, uphold the said order and dismiss the Department's Appeal No. E/2068/89-C.6. So far as the Appeal No. E/3974/89-C is concerned, the dispute before us is the question, whether the refund claim of the respondents for the period from 30-10-1986 to 31-1-1989 could be lawfully rejected on the ground that the payment of refund of duty would amount to unjust enrichment of the respondents as they had recovered such duty from their customers. The Collector (Appeals) has held in the paragraph 8 of the impugned order-in-appeal No. V(CH.39)18-15/89/2342, dated 31-3-1989 that the quasi-judicial authorities functioning under the Central Excise Act did not have the power to deny the refund on the ground of unjust enrichment in the absence of any provision existing in the Central Excise Law authorising such denial. On this point, the learned advocate has cited four decisions of this Tribunal. We observe that in the case of Collector of Central Excise, Rajkot v. Decora Ceramics Pvt.

Ltd., Rajkot, reported in 1986 (24) ELT 73 (Tribunal), it was held by the Tribunal that unlike courts of law having extraordinary jurisdiction the appellate Tribunal acting within the statute was not ex-powered to deny relief on the score on unjust enrichment. It was also held that the refund was not conditional in Section 11-B of the Central Excises and Salt Act. In 1985 (6) ETR 450 in the case of Collector of Central Excise, Guntur v. Andhra Asphalt (Private) Ltd., Visakhapatnam, this Tribunal has held that Section 11-B of the Central Excises & Salt Act does not refer to any other requirement such as the recipient of the amount of refund passing on the same to his customers.

Therefore, when the refund claim is received Within six months from the relevant date, refund is due. Again, in 1986 (26) ELT 133 (Tribunal) in the case of Collector of Central Excise, Madras v. Sahu Cylinders and Udyog Private Limited, the Tribunal did not agree to accept the plea of unjust enrichment and held that the department could not withhold the refund otherwise lawfully due to the party on the principle of 'unjust enrichment'. Similar view was held by this Tribunal in the case of Anand Metal & Steel Works, Calcutta v. Collector of Central Excise, Calcutta,

reported in 1989 (13) ETR 538. In the said decision, the Tribunal considered the judgment of Supreme Court, reported in AIR 1985 SC 901 in the case of State of Madhya Pradesh v. Vyankatlal and Judgment of Bombay High Court, reported in 1988 (38) ELT 27 (Bom.) in the case of Roplas (India) Ltd. and Anr. v. Union of India and Anr. and also Calcutta High Court Judgment, reported in 1988 (33) ELT 29 (Cal.) in the case of The Assistant Collector of Central Excise and Ors. v. Madura Coats Ltd. In paragraphs 16 & 17 of the decision, the Tribunal observed as follows :- "16. However, the controversy does not rest here. The further question that arises for consideration is as to whether the excise authorities or the Tribunal can decline to grant relief on the ground that it would amount to unjust enrichment. In my consideration opinion the law is clear that under the Central Excises & Salt Act this Tribunal acting within the statute has no power to deny relief on this ground, if relief is due on the merits of the dispute before it as held by this Tribunal in the case of Collector of Central Excise v. Decora Ceramics (Private) Limited, 1986 (24) ELT 73 wherein it was held that unlike Courts of law (the High Courts and the Supreme Court) which, in their extraordinary jurisdiction may decline to grant relief on the ground that it would amount to unjust enrichment of the claimant, this Tribunal, acting within the statute, has no power to deny relief on this ground, if relief is due on the merits of the dispute before it. Central Excise Law does not authorise denial of relief on the score of unjust enrichment nor does it make refund of duty conditional on the relief being passed on to the ultimate consumer. In the case of Miles India Limited v. Assistant Collector of Customs, 1985 ECR 289 the Hon'ble Supreme Court also observed that the Customs Authorities, acting under the Customs Act, were justified in disallowing the claim for refund as they were bound by the period of limitation provided therefor under Section 27(1) of the Customs Act, 1962. It further observed that if really the payment of the duty was under a mistake of law, the aggrieved party may seek recourse to alternative remedy as it may be advised. The Hon'ble Supreme Court reiterated the same view in the case of Collector of Central Excise, Chandigarh v. Doaba Co-operative Sugar Mills, 17. In view of the above, there is no alternative but to allow the appeal since neither the Tribunal has the power to reject the claim for refund of the excise duty on the ground of unjust enrichment nor it has any power to evolve its own scheme for the refund of the amount to the ultimate

consumers as done by the Hon'ble Supreme Court and the Calcutta High Court in the aforesaid cases. However, it may be observed that it is the high tune when the Legislature should step in to check such a fraud on consumers and the society when such a claim is made for the refund of the excise duty which the manufacturers have already recovered from their customers." 7. Following the aforesaid decisions, we also hold that 'unjust enrichment' cannot be a ground for denying refund of duty otherwise due under Section 11-B of the Central Excises & Salt Act, 1944. In the result, we uphold the impugned order and dismiss the Appeal No.E/3974/89-C filed by the Revenue.

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