Polymer Papers Limited Vs. Collector of Central Excise

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-22-1990

Reported in : (1990)(28)LC455Tri(Delhi)

Judge : R T I.J., J Balasundaram

Appellant : Polymer Papers Limited

Respondent : Collector of Central Excise

Judgement :

1. For reasons that will be apparent, we took up the appeal also along with the stay application, after waiving the pre-deposit of the duty demanded. This course of action had the consent of both the sides.

2. Briefly the facts are that the appellants manufacture PVA based compound and clear it from their factory under three trade names. This was mentioned in the classification list filed by them to be effective from 24.9.1984, copy of which has been placed before us with the appeal. In this classification list they mentioned that there was no manufacture but "only mixing of duty-paid polyvinyl acetate, polyvinyl alcohol, etc. with water and fillers." 3. Though this classification list was approved, the Department in December, 1985, initiated proceedings to demand duty on the compound for the period April, 1984 to May, 1985.

4. Shri Vohra, the learned Consultant for the appellants has two main grounds to urge before us. One is that the show cause notice itself is not maintainable

inasmuch as this notice invoked the enlarged period of limitation and was issued on 16.12.1985 by the Superintendent of Central Excise, contrary to the provisions of Section 11A (as amended on 6.12.1985) which required that where the enlarged period of limitation is to be invoked, the Collector should issue the show cause notice. According to Shri Vohra, such show cause notices issued on or after 6.12.1985 other than by the Collector would be void. Without prejudice to this ground Shri Vohra urged that in the given circumstances of this matter, there cannot be a charge of suppression against the appellants who declared their product in the classification list. The learned Consultant submitted that he had other grounds also to show that no manufacture is involved.

5. Shri Chandrasekharan, the learned SDR supported the impugned order submitting that as the appellants mis-classified the goods in their classification list it amounted to suppression.

6. We have considered the arguments of both sides. In so far as the technical omission is concerned it is seen that show cause notice was issued on 16.12.1985 and the amendment to Section 11A of the Act was dated 27.12.1985. Therefore, this ground does not succeed.

7. There is some force on the other ground, that this matter did not involve suppression of facts or misstatement. The show cause notice itself records the grounds of such an allegation as being that the appellants misdeclared the goods as falling under TI15A and that they claimed the exemption in the classification list.

8. A perusal of the show cause notice does not disclose any allegations that there is any misdeclaration of the goods themselves. The classification declared by the appellants could have been due to ignorance. The Assistant Collector's order and the Appellate Collector's order do not disclose that the appellants misdeclared any part of the descriptions of the goods. The classification list was subject to scrutiny, questions and verifications by the Department.

Therefore, in our opinion the alleged error (about which we are not expressing any opinion) cannot amount to suppression of facts. In this view we hold that the show cause notice dated 16.12.1985 for the period April 1984 to May 1985 for amount of

Rs. 26097.40 paise is time barred.

We allow the appeal on this ground, without going into the merits of the classification.