Universal Cables Ltd. Vs. Collector of C. Ex.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Apr-11-1990

Reported in : (1990)(27)ECC251

Appellant : Universal Cables Ltd.

Respondent : Collector of C. Ex.

Judgement :

"Whether, in the facts and circumstances of this case the Tribunal was right in holding that the Petitioner was not entitled to permission under Rule 56B of the Central Excise Rules, 1944 for movement of bare copper wire without payment of duty to another factory for insulation and then being brought back to the factory of the Petitioner for further processes." 2. In order to appreciate the aforesaid purported question of law brief facts of the case as found by the Tribunal are set out below :- "The appellant company is a manufacturer of insulated wires and cables of various sizes and specifications. It added a new item namely copper winding wire in its range of products. It appears that the company did not have enough insulation capacity of bare copper wires to meet the demands of its customers. It was, therefore, drawing copper wires from duty paid copper rods in the factory and thereafter wanted to send the copper wires so drawn for further processing i.e. insulation with PVC compound to another factory. The company, therefore, sought permission for being allowed the facility under Rule 56B for movement of the bare copper wire so drawn without payment of duty to the other factory for insulation and then being brought back to their own factory for further processes.

The Collector by the impugned order after considering the appellants' detailed arguments in its letter dated 27-8-88 and after seeing the samples of copper wire and of winding wire, has declined to give permission under Rule 56B. The Collector's reasons are as follows :- "The copper wire falls under Chapter 74 and winding wire under Chapter 85 of the CET. According to Rule 9 of the Central Excise Rules, 1944 no excisable goods can be removed whether for captive consumption or outside, for manufacture of any other commodity, without payment of duty. It is an admitted fact that copper wire as such is classifiable under Chapter 74 and thus, it must pay duty before it can be further used for manufacture of any other commodity falling under any other heading or sub-heading." 3. Learned Advocate, Shri N.R. Khaitan has argued that the impugned order of the Tribunal raises a question of interpretation of Rule 56B vis-a-vis Rule 9 of the Central Excise Rules. It is, therefore, a pure question of law and should, therefore, be referred.

4. Learned SDR appearing for the respondent has left the matter to the Bench.

5. We agree with the learned advocate for the applicants that the question raised if the application is a question of law because it involves interpretation of Rules 56B and 9 of the Central Excise Rules, 1944. Findings of the Tribunal on interpretation of Rule 56B as given in paras 5 and 6 of the Tribunal's Order No. A/301/89-NRB dated 28-7-89 are reproduced below:- "5. We have carefully considered the pleas advanced on both sides.

We agree with the learned advocate that Rule 56B does not, in terms, make a distinction that the semi-finished goods and the finished goods should fall under the same heading or sub-heading of the Central Excise Tariff. Nevertheless, it is to be noted that both Rule 56B and Rule 9 are part of the Central Excise Rules, 1944.

Neither of these rules is subject to the other rule. It is a well settled principle of construction of statutes that if there is a conflict between the two provisions they have to be construed harmoniously. Rule 9 stipulates, inter alia, very clearly that no excisable goods can be removed from its place of manufacture, whether for consumption, export or manufacture of any other commodity until the excise duty leviable thereon has been paid at such place and in such manner as is prescribed in these rules. It has not been disputed by the appellants that the copper wires drawn by them and sought to be removed by them under Rule 56B are liable to duty under Chapter 74 of the GET. It, therefore, follows that duty is required to be paid on such copper wires at the time when they are removed from the place of its manufacture whether for consumption or for export, or for manufacture of any other commodity. In view of the provisions of Rule 9, scope of Rule 56B will have to be restricted to such semi-finished excisable goods, which after carrying out certain manufacturing processes, continue to fall in the same heading or subheading without incurring any liability for fresh excise duty.

6. The above view is fortified by another Tribunal's decision in the case of CCE Bombay - II v. Reliance Textile Ltd. [1986 (26) ELT 227 (Tribunal WRB)]. WRB had observed in the aforesaid citation in paras 31 and 32 as follows :- 31. It may be pointed out that according to the scheme of the Central Excise Rules, no excisable goods could be removed from the factory or from the approved places of storage without payment of duty. Removal of excisable goods for captive consumption is also not permitted without payment of excise duty. When that being the law, the Collector under Rule 56B cannot permit removal of a finished excisable goods for the manufacture of a different excisable goods.

The application of the Reliance was for removal of POY for the manufacture of textured filament yarn. As has been held by us both POY and textured yarn are two different excisable articles and the removal of one excisable article for manufacture of another without payment of duty, would violate Rule 9 of the Rules. The contention of Nariman that the removal will only result in postponemnt of duty cannot be accepted. Even assuming that it results in postponement of duty even then the Collector has not been authorised under Rule 56-B to permit removal of a finished product for the manufacture of another finished product even if the manufacturer of both the products is one and the same person.

32. We agree with the contention of Shri Nariman that semi-finished has relation to subsequent manufacturing process but then we are unable to agree with his submission that the further manufacturing process would include converting an excisable semi-finished goods into a different excisable goods. The Collector could permit removal for carrying out manufacturing process which would complete semi-finished into finished product." Extracts of Rules 9 and 56B of the Central Excise Rules, 1944 are also enclosed (at Annexure 1) for the facility of the Court.

6. Accordingly, the aforesaid question, as mentioned in para 1 above is referred to the Hon'ble High Court of Madhya Pradesh, Jabalpur for their opinion.