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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Aug-31-1990

Reported in : (1991)LC203Tri(Delhi)

Appellant : Collector of Central Excise

Respondent : Formica India Division

Advocate for Def. : Shri. V. Sridharan

Judgement :

1. The issue for decision in this appeal is the eligibility of the respondent for availment of proforma credit of duty paid on BOPP film used as separators in the manufacture of rigid plastic laminated sheets falling under T.I. No. 15A in terms of Rule 56A of the Central Excise Rules.

The respondents herein manufacture rigid plastic laminates falling under T.I. 15A of the Central Excise Tariff and during the process of manufacture they use BOPP film (Biaxially Oriented Polypropelene film) falling under T.I. 15A(2) as separators. Sheets of BOPP cut to rectangular shape of suitable sizes are used to separate consecutive layers of rigid plastic laminates during the process of compression under heat and pressure. A particular film can be used repeatedly for a number of operations- before being discarded.

3. The respondents were availing of proforma credit of duty paid on BOPP film and utilising the same to pay duty on the final product i.e.

rigid plastic laminates. A show cause notice was issued to them on 25-6-1982 disallowing the credit taken during the period January to June 1982 and for recovery of the same. After adjudication the Assistant Collector passed an order holding that proforma credit under Rule 56A was not allowable as BOPP film was neither a raw material nor a component part of the finished product. He also denied the benefit of Notification No. 71/71-C.E., dated 25-5-1971 for the reason that BOPP film is not mentioned therein.

4. On appeal, the Collector of Central Excise (Appeals) set aside the ordei of the Assistant Collector and granted relief to the respondents, relying upon the decision of the West Regional Bench of CEGAT in the case of Megh Deo Enterprises and Moti Laminates (P) Ltd. v. C. C.E., Ahmedabad (Order dated 17-11-1983 E.D. (Bom.) Appeal Nos. 74 and 75 of 1983) wherein it was held as follows :- "It is correct that Rule 56A speaks of material or component parts or finished product for the manufacture of the specified goods. It does not confine the special procedure to raw material. That even finished products are placed on part with material confirms this.

Other conditions apart, the material must be used for the manufacture. If the intention was, as held by the Collector, that only material forming part of the final product would be entitled to credit then the words "manufactured out of" would have been more appropriate. While it may be true that in most cases, the material covered by this rule may form part of the final product, this need not be always so. The Central Government has the power to specify the final product covered by the rule and the conditions regarding the tariff item and remission of duty being specifically mentioned, are adequate protections against misuse of the concession, any, for instance, by a claim for set off of excisable fuel used for the manufacture of a product specified under Rule 56A(1). In any view of the matter, the four conditions of Rule 56A were complied with in these cases. Even assuming that the word "manufactured from" was restrictive in scope, its amendment by "in the manufacture of ...are used" puts the matter beyond doubt. If the Central Government in its wisdom grants and exemption to specified materials used in the manufacture of a specified product, as in Notification No. 71/71, it is not for an over-zealous revenue authority to deny the concession by a narrow or unjustified

interpretation of what the legal position ought to be. In this case we find no reason to disagree with the grounds urged in the appeal as well as the reasons given in order dated 20-10-1981 of the Assistant Collector setting aside the demand of Rs. 30,703.85 and are not convinced by the reasoning of the Collector. In the circumstances, we hold that the appellants in both cases are entitled to the benefit of proforma credit and consequential relief. We therefore, accept both these appeals and set aside the impugned orders." 5. The Collector observed that Rule 56A speaks of material or component parts of finished products for the manufacture of finished goods and does not set out that it applies to raw material alone. He has also held that the benefit of Notification 71/71 granting exemption in excess of 30% ad valorem duty is admissible since BOPP film is covered by the term "any plastic material" used therein. Aggrieved by the order of the appellant authority, the Department has come up in appeal before us.

6. We have heard Shri V. Chandra Sekaran, learned SDR for the appellant and Shri V. Sridharan, learned counsel for the respondents.

7. Regarding the eligibility of the respondent for availment of proforma credit under Rule 56A, the learned SDR brings to our notice the subsequent decision of the Southern Regional Bench of this Tribunal in the case of Seshasayee Industries Ltd. v. CCE, Madras - 1985 (21) ELT 193 in which the Bench held that what is thought of in Rule 56A is only raw material and not any material. This decision which was rendered on 11-2-1985, was not brought to the notice of the lower appellate authority at the time of hearing of the appeal.

8. However, there is a series of decisions of the Supreme Court on the issue of eligibility for proforma credit. In the case of CCE, Calcutta v. Jay Engineering Works Ltd. -1988 (2) SCALE 240 the Hon'ble Supreme Court held that nameplates put on fans have certain value and therefore the value added for accretion of nameplate was entitled to proforma credit in terms of Notification 201/79 dated 4-6-1979 - the order of the Tribunal was upheld. While interpreting the term "component parts" used in Notifications 201/79 and 105/82, the Hon'ble Supreme Court held, in the case of Star Paper Mills Ltd. v. CCE, Meerut -1989 (2) SCALE 337 that paper core necessary forrewinding of paper in rolls would come within the

purview of the expression "any process incidental or ancillary to the completion of a manufactured product" in Section 2(f) of the CES A, 1944 and for the same reason, would also be constituent part of paper and would thus fall within the term "component parts" used in the Notification. In the case of CCE, New Delhi v. Ballarpur Industries Ltd. -1989 (43) ELT 804 the Tribunal's order holding that 'Sodium Sulphate' was used in the manufacture of paper as raw material (within the meaning of Notification 105/82) (emphasis supplied), was upheld by the Hon'ble Supreme Court. The Tribunal, in its order had adopted the reasoning in its earlier decision in Seshasayee Paper & Boards Ltd. v. CCE - 1985 (22) ELT 163 in which the Tribunal had held that the term 'raw material' has to be interpreted in the circumstances of each case in the absence of any acceptable or useful definition of the term either in the dictionary or in technical literature. The words & phrases "component parts" & "raw materials" have been interpreted by the Supreme Court in the case of CCE v. East End Paper Industries Ltd. -1989 (43) ELT 201 as "anything that enters into and forms part of manufacturing process or is required to make the article marketable".

9. In the instant case,, there is no dispute that BOPP film is used as separators in the manufacture of the final product viz. rigid plastic laminates. Therefore, applying the ratio of the decisions of the Supreme Court (supra), the benefit of proforma credit is available in respect of BOPP film in terms of Rule 56A. The benefit of Notification 71/71 is also admissible as BOPP film is covered by the term "any plastic material".

10. In the result, we see no reason to interfere with the impugned order and uphold the same. The appeal is thus dismissed.

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